

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, September 3, 2019 1:24 PM
To: 'tips@nypost.com'; 'letters@nypost.com'; 'online@nypost.com'; 'bhogan@nypost.com'; 'ccampanile@nypost.com'
Subject: NEWS TIP/LEAD -- Follow-up to your excellent editorial "Why judges will end up writing New York's new campaign laws" (NY Post Sept 2, 2019/Sept. 3)
Attachments: 9-3-19-foil-public-campaign-finance.pdf; 8-21-19-nylj-ltr.pdf

TO: THE NEW YORK POST

To enable you to follow-up on your excellent editorial "["Why judges will end up writing New York's new campaign laws"](#)", posted on line yesterday evening and presumably appearing in today's printed paper, attached is a FOIL/records request, sent early this morning to the Governor, Senate, and Assembly.

Also, your editorial – as right-on as it is – is MISSING AN IMPORTANT WORD. It is not enough to call the Public Campaign Financing and Election Commission "a farce of representative democracy" and to state "it's insane to have an unelected panel revise the rules of a democracy". The Commission is UNCONSTITUTIONAL – and you can easily confirm this by "**getting expert opinion from New York's 13 law schools, multitudinous bar associations, universities, colleges, think-tanks, and institutes**" – as proposed by my below August 21st e-mail to you, alerting you to the [New York Law Journal's](#) August 20th internet publication of my letter "*A Call for Scholarship, Civic Engagement & Amicus Curiae Before the NYCOA*". As I received no response from you, I now resend it, attaching the [Law Journal's](#) publication of my letter in its August 21st print edition.

In light of your referencing the Brennan Center for Justice, whose former counsel Denora Getachew you identify as a member of the Public Campaign Financing and Election Commission, why don't you start by getting an "expert opinion" from [the Brennan Center, which operates as part of New York University Law School](#), as to the unconstitutionality of the Commission, as laid out by the *CJA v. Cuomo* citizen taxpayer action, now at the Court of Appeals. Though promoting itself as "a nonpartisan law and policy institute" and asserting that it "start[s] with rigorous research", the Brennan Center has, for years, had ALL the primary-source evidence substantiating *CJA v. Cuomo*, whose sixth cause of action challenges the constitutionality of the "force of law" commission/committee scheme, *as written* and by its enactment, and whose seventh and eighth causes of action lay out grounds upon which, *as applied*, the Public Campaign Financing and Election Commission would, already, be struck down as unconstitutional -- and statutorily-violative.

Nevertheless, the Brennan Center has refused to even discuss the sixth, seventh, and eighth causes of action – or the other seven causes of action pertaining to the unconstitutionality and unlawfulness of the New York State budget, its culminating behind-closed-doors "three-men-in-a-room" budget-deal-making, and the Legislature's closed-door party conferences that substitute for open legislative committee meetings – let alone file an *amicus curiae* brief. This includes before the New York Court of Appeals, as to which, by an April 23, 2019 letter, I entreated it and other organizations for their "amicus curiae support & other assistance". These organizations – all routinely-touted as "good government" groups – include Citizen Action of New York, to which you identify the Brennan Center as an "ally", as well as Common Cause, NYPIRG, Citizens Union, Reinvent Albany, all prominent in the "Fair Elections NY coalition" which you also identify.

Here's the direct link to the webpage for my April 23, 2019 letter to all six of these supposed "good government" groups: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/outreach/orgs-institutes.htm> – furnishing them with my March 26, 2019 and April 11, 2019 letters to the Court of Appeals in support of an appeal of right on the mountain of constitutional issues directly involved. The relevant discussion pertaining to the unconstitutionality of the Commission/committee scheme is:

(1) at pages 9-22 of [my March 26, 2019 letter to the Court of Appeals](#) – whose quote from the *CJA v. Cuomo* sixth cause of action includes what the New York City Bar Association had to say in its 2007 *amicus curiae* brief to the New York Court of Appeals pertaining to a predecessor challenge, which the Court refused to hear:

‘a process of lawmaking never before seen in the State of New York’ (at p. 24);

a ‘novel form of legislation...in direct conflict with representative democracy [that] cannot stand constitutional scrutiny (at p. 24)’;

a ‘gross violation of the State Constitution’s separation-of-powers and...the centuries-old constitutional mandate that the Legislature, and no other entity, make New York State’s laws’ (at p. 25);

‘most unusual [in its]...self-executing mechanism by which recommendations formulated by an unelected commission automatically become law...without any legislative action’ (at p. 28);

unlike ‘any other known law’ (at p. 29);

‘a dangerous precedent’ (at p. 11) that

‘will set the stage for the arbitrary handling of public resources under the guise of future temporary commissions that are not subject to any public scrutiny or accountability (at p. 36).^{[fn]”} and

(2) at pages 13-15 of [my April 11, 2019 letter to the Court of Appeals](#), including the following:

“...As anticipated by appellants’ February 26, 2019 Preliminary Appeal Statement (#12, ¶2), the budget for fiscal year 2019-2020, just enacted, replicates virtually all the constitutional, statutory, and rule violations detailed by appellants’ September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 [R.87-392] and their March 29, 2017 verified supplemental complaint pertaining to fiscal year 2017-2018 [R.671-743]. Indeed, as a result of this year’s behind-closed-door, “three-men-in-a-room” budget deal-making, a new commission having “force of law” legislative powers was, on March 31, 2019, popped into the fiscal year 2019-2020 budget as Part XXX of Revenue Budget Bill #S.1509-C/A.2009-C and enacted just hours later. The commission – this time, to establish a system of voluntary campaign financing – is, in material respects, identical to Chapter 60, Part E, of the Laws of 2015 [R.1080-1082] – whose unconstitutionality, *as written and by its enactment*, is the subject of appellants’ sixth cause of action, as to which the Attorney General March 26, 2019 letter focuses so much of its deceit. A copy of Part XXX of the 2019 Revenue Budget Bill is annexed (Exhibit B), from which the Court can discern, for itself, that its adjudication of the issues of constitutional construction presented by appellants’ sixth cause of the action pertaining to Chapter 60, Part E, of the Laws of 2015 – and by their fourth, fifth, and ninth causes of action pertaining to the budget – will obviate foreseeable litigation challenges to void Part XXX.”

Needless to say – and as reflected by [my April 23, 2019 letter](#) – it is not only the “lefty” groups that have been covering up what has been going on, but those on the right, as well, such as the Empire Center for Public Policy and Reclaim New

York, both involved in the Government Justice Center, to which you refer. NONE have been willing to discuss the *CJA v. Cuomo* causes of action, nor the “summary judgment” state of the record – for years.

Finally, on November 30, 2018, I **publicly** testified as to the unconstitutionality of the “force of law” commission/committee scheme, as **established** by the record of *CJA v. Cuomo*. This was at the Manhattan public hearing of the Committee on Legislative and Executive Compensation, at which Reinvent Albany and Common Cause was present and also testified. CJA’s webpage for the November 30, 2018 hearing -- from which you can access the VIDEO of my DISPOSITIVE oral testimony that Mr. Campanile heard, live, because he was present – and my DISPOSITIVE written testimony that I thereafter gave him, *in hand*, is here: <http://www.judgewatch.org/web-pages/searching-nys/force-of-law-commissions/part-hhh-chapter59-laws-2018/cja-testimony-11-30-18.htm>.

There is much, much more to say – including about Henry Berger, Esq. – who, like Ms. Getachew, you also identify as a member of the Public Campaign Financing and Election Commission. Please let me hear from you, as soon as possible, so that I can assist you, to the max, in informing and empowering your readership about the unconstitutionality and fraud that has been taking place *via* “force of law” commission/committee schemes through which New York’s state legislative, executive and judiciary constitutional officers have all gotten for themselves HUGE pay raises – whose total amount, since 2012, is in the vicinity of \$400 million dollars. I will withhold forwarding this letter to others, until tomorrow, so as to give you the LEAD.

Thank you.

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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
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Subject: Is NY's new Public Campaign Financing & Election Commission constitutional?

Is New York’s new Public Campaign Financing & Election Commission constitutional?

Or doesn’t it matter? How about getting expert opinion from New York’s 13 law schools, multitudinous bar associations, universities, colleges, think-tanks, and institutes?

To help get the ball rolling, here’s the link to CJA’s letter to the editor that the New York Law Journal published yesterday afternoon on its website, <https://www.law.com/newyorklawjournal/2019/08/20/a-call-for-scholarship-civic-engagement-amicus-curiae-before-the-nycoa/>, responding to a perspective column entitled “*It’s Legally Perilous to Have a Commission Responsible for Election Laws*”.

By the way, CJA’s website, www.judgewatch.org, not only posts the full record of CJA v. Cuomo, but it aggregates records of the six other lawsuits, currently unfolding in state and federal courts, challenging the constitutionality of the delegation of legislative powers to commissions/committees. These six lawsuits are listed at pages 2-3 of CJA’s August 9, 2019 letter to the Court of Appeals, as part of a “NOTICE” to Attorney General Letitia James of her duty to provide the Court with an “appropriate status report” about them. Additionally, CJA’s webpage for the August 9th letter posts links to webpages created for each of the six lawsuits, with their records.

Suffice to note that among the six, [Delgado v. New York State](#), has now joined [CJA v. Cuomo at the Court of Appeals](#) – a notice of DIRECT appeal to the Court of Appeals having been filed by its plaintiffs on August 9th, solely on the issue of constitutionality.

I am available to assist you – and to be interviewed.

Thank you.

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