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Via U.S. Mail and E-mail

Diane Burman
Counsel to the Majority
Room 335
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Albany, NY 12247

Dear Ms. Burman,

We have recently learned of a serious step backwards in the functioning of the New York State Senate, based upon an interpretation of the Senate Rules from your office that is plainly wrong. Specifically, in clear violation of Senate Rules first passed by a Democratic majority in 2009 and passed again by the Republican majority in 2011, you have instructed committee chairs to reject, without a public vote, petitions for hearings on specific bills. This "interpretation" of the Senate Rules has no support in either the text of the rules themselves or in the context of their passage. It is a change by fiat and an obvious attempt to reduce the transparency and accountability of the Senate without a change in the rules themselves. Of course, such a change would require a public vote by all members, and it would no doubt be politically embarrassing to those who supported it. Needless to say, we believe avoiding political embarrassment is an insufficient justification for the action taken by your office.

On April 27, 2011 you sent a letter (the "April 27 Letter") to the chairs of the Senate's standing committees expressing concerns about a "misinterpretation" of Senate Rule VII (4)(e), which expressly authorizes one-third of the members of a committee to schedule a public hearing on a "specific bill or number of bills within the jurisdiction of a committee, unless a majority of members of the committee rejects the hearing petition." The tortured reading of Rule VII (4)(e) that follows directly contradicts the text and context of the rule, and undermines its democratic goals.

In the April 27 Letter, you write that Rule VII (4)(e) shall not apply to petitions for public hearings whose "purpose [is] advancing specific legislation and drawing public attention to the same." In fact, as detailed later in this letter, that was the very purpose for which this rule was drafted. Instead, without support, you argue that hearings will only be permitted when they satisfy certain criteria. This list of criteria was apparently taken from subsection 4(a) of Senate Rule VII. But subsection 4(a) is not a proscriptive rule. It does not limit the subject of standing committee hearings, but rather "encourages" chairs of standing committees to hold certain kinds of hearings.

More importantly for the purposes of understanding subsection 4(e), subsection 4(a) should be irrelevant to its interpretation; it is an entirely different subsection of the Senate Rules. Subsection 4(e) establishes *a procedural standard* through which the members themselves, through their votes, can determine whether a particular bill requires a hearing. This is true *regardless of the topic of that hearing*, so long as its subject is a "specific bill or number of bills within the jurisdiction of a committee."

Beyond the text, your letter ignores the context within which this rule was first enacted by the Democratic Senate majority in 2009 and then again by the Republican majority in 2011. If there were ambiguity in rule 4(e) that required interpretation (and there is not), the record surrounding the adoption of the rule would certainly make clear the unlawfulness of your interpretation.

The rule itself is the product of years of criticism of the imperial practices of the New York State Legislature, documented empirically in 2004 by the Brennan Center's widely-cited study, titled *The New York State Legislative Process: an Evaluation and Blueprint for Reform*.

The fundamental finding of that report deserves repeating, both because of its relevance to the rule in question and because of the Senate majority's ongoing efforts to ignore its democratic import.

> In most legislatures, committee hearings serve four important purposes. First, they allow a committee to obtain the testimony of experts in the policy field at issue that addresses both the precise nature of the problems that require legislative attention and the wisdom of the specific bill under consideration. Second, hearings allow members of the public and other witnesses to comment on both the topic and the bill at hand. Third, through debate between committee members at the hearing, and media and public reactions to the hearing, legislators gain both specific ideas to improve the bill under consideration and a better understanding of the public consensus, or competing views, on the proper legislative course. Such fact gathering and debate are critical to shape and draft legislation, to determine legislative priorities, and to understand the intended and unintended consequences of a proposed bill. Fourth, hearings provide the chief mechanism for a legislature to oversee the administrative agencies for which it is responsible under the law.
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> In New York, however, a committee hearing devoted to a specific piece of legislation is all but unheard of. In the Senate, out of the 152 pieces of major legislation that were ultimately passed into law from 1997 through 2001 for which complete data were available, only one bill was the subject of a hearing devoted specifically to its consideration (*i.e.,* 0.7%). The Senate Majority Leader sponsored that bill. Moreover, in only eight cases (*i.e.,* 5.3%) were hearings held to address the general topic or problem addressed by a bill, and none of those hearings addressed the bill itself. Daniel Hevesi, a former Democratic State Senator, summed up the situation as follows: "[T]he system of governance in Albany is so broken that I don't believe it functions any longer as a representative democracy. There's no debate, no discussion, *never any hearings* (emphasis in original) (citations omitted).

As the Center's follow-up reports in 2006 and 2008 make clear, nothing occurred in those years to alter the above findings. The Brennan Center and a number of other reform-minded groups continued to push for rules reform, including adoption of the practice, standard in state legislatures from New Hampshire to Texas, of encouraging standing committees to hold public hearings on specific pieces of legislation.

In April of 2009, the Senate Temporary Committee on Rules and Administration Reform's draft report reaffirmed the important role public hearings play in identifying potential flaws in legislation and improving the final product. It quoted Lawrence Norden of the Brennan Center in support of this position: "[at hearings] in other states and in Congress, problems with legislation are sometimes brought out that legislators haven't thought about. And that can result in changes to legislation and in changes…in the positions of legislators on that legislation."

The report went on to recommend the adoption of a rule to allow for one third of the members of a committee to petition to hold a hearing on a specific bill.

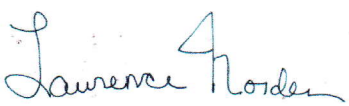
In July of 2009, after years of criticism about the lack of hearings on legislation, and following the turmoil that marked the early part of that year (including two changes in party control of the chamber), the Senate adopted a series of new rules, one of which is now numbered VII(4)(e). At the time, the Senate trumpeted the bipartisan passage of these rules in a joint statement that included then Senate President Malcolm A. Smith and Minority Leader Dean Skelos. The statement noted that the new rules would "increase transparency, strengthen the committee process, provide the public with more information, and give senators greater ability to bring bills to a vote in committees or by the full Senate." It also pointed out that "committees will have guidelines to encourage public hearings on bills and invite speakers to committee meetings to discuss pending legislation."

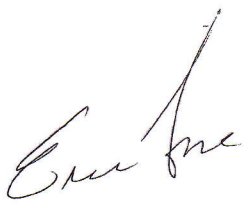
The Brennan Center and other reform groups applauded those changes as small but "important steps to empower rank and file members and increase chamber transparency," and took particular note of the rule that would allow "one third of the membership of a committee to petition to hold hearings on specific bills (subject to the approval of a majority of the committee)."

Given that your reading of Senate Rule VII (4)(e) is unsupported by a plain reading of the text itself, the contemporaneous comments of the senators who passed it, or the context of criticism under which it was passed, we urge you to reconsider your finding. There is a serious danger to the integrity of the Senate chamber if senators can avoid the clear purpose of the Senate Rules by simply having majority counsel find that the rules mean what the majority would like them to mean, regardless of what they actually say.

If the majority conference determines, for whatever reason, that it does not want to hold public votes on petitions for public hearings as required by the Senate Rules, it should not hide behind a tortured reading of the rules that is without any support. Instead, it should vote to amend the rules, so that voters can see for themselves which senators supported a less deliberative and transparent chamber.

Sincerely,





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