

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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Elena Ruth Sassower, Director

April 19, 2013

Senator Malcolm A. Smith
Albany, New York

RE: Being a Force for Good:

- (1) by giving testimony to U.S. Attorney Bharara against Governor Cuomo and other corrupt, high-level constitutional and public officers; and
- (2) by building a Rules Reform Conference dedicated to securing debate and a simple Senate vote on the non-partisan, good-government rules reforms proposed by the 2009 Temporary Committee on Rules and Administration Reform

Dear Senator Smith,

As you know, immediately upon U.S. Attorney Preet Bharara's April 2nd press conference announcing your arrest on corruption charges, Governor Cuomo and several of your Senate colleagues not only rushed to decry what you had done, but self-righteously used the occasion to posture as if they were clean of corruption. In the words of Governor Cuomo, "... We have zero tolerance for any violation of the public integrity and the public trust" – which he reiterated at his April 10th press conference announcing his "Public Trust Act" as if no conduct of his would fall within its purview

On Monday, April 15th – the same day as the Legislature came back into session after passing the budget – a day on which your seat on the Senate floor was moved to the back corner, next to the most freshman Senator – we filed a corruption complaint against Governor Cuomo and other highest constitutional and public officers of our state government, including Temporary Senate President Skelos, Independent Democratic Conference Leader Senator Klein, and Democratic Conference Leader Senator Stewart-Cousins. It is enclosed herewith, as you are its first and only named indicated recipient because of its suggestion that U.S. Attorney Bharara offer you immunity in exchange for your testimony about the legislative corruption chronicled by the verified complaint in *Center for Judicial Accountability, Inc., et al. v. Andrew Cuomo, as Governor, et al.*, and by our subsequent correspondence about it, beginning with our December 7, 2012 letter to the members of the Independent Democratic Conference, which you had joined.

* **Center for Judicial Accountability, Inc.** (CJA) is a national, non-partisan, non-profit citizens' organization, working to ensure that the processes of judicial selection and discipline are effective and meaningful.

We hereby call upon you to offer such testimony to the U.S. Attorney, so that you might be remembered, if not heralded, as a force for good in New York State – achieving, through your cooperation and disclosure, what could not otherwise be accomplished. Certainly, in view of the statements of your Senate colleagues about how important public integrity is, they should join you in offering testimony to the U.S. Attorney about the allegations of the *CJA v. Cuomo* verified complaint and our correspondence based thereon, which they also received.

Finally, the record must be set straight about your tenure in 2009 as Temporary Senate President – which the press and others routinely deride. As I told Brendan McGuire, Chief of the U.S. Attorney’s Public Corruption Unit, with whom I spoke on April 9th, groundbreaking advances were made in 2009 as a result of your leadership in spearheading reform of Senate rules, including by the first resolution you introduced as Temporary Senate President to create a Temporary Committee on Rules and Administration Reform.¹ Indeed, the Senate Judiciary Committee under Senator Sampson would doubtless never have held its historic 2009 hearings on the Commission on Judicial Conduct and court-controlled disciplinary system, at which so many witnesses had the opportunity to come forward with testimony and evidence of corruption, but for your leadership on rules reform – and the recognition that a properly functioning legislature requires properly functioning committees, discharging oversight responsibility and serving as a locus for developing and refining legislation.

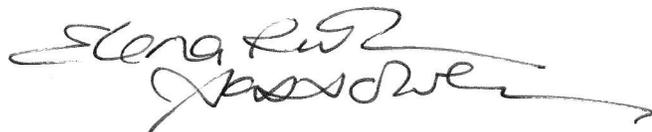
Unless and until the rules changes recommended by the 2009 Temporary Committee on Rules and Administration Reform – both its majority and minority reports – are deliberated and implemented, the Senate will never be other than dysfunctional and corrupt, unworthy of public trust. As you have been expelled from the Independent Democratic Conference, headed by Senator Klein, and spurned by the Democratic Conference, headed by Senator Stewart-Cousins, you have the freedom to forge your own conference – a Rules Reform Conference – dedicated to securing debate and a simple Senate vote on the good-government, non-partisan Senate rules changes proposed by the 2009 Temporary Committee on Rules and Administration Reform. Shouldn’t you be able to count on the participation of Senators Valesky and Bonacic, the co-chairs of the Temporary Committee, and upon Senators Klein, Stewart-Cousins, Squadron, Serrano, Parker, and Griffo, who were members? How about other Senators who participated in its proceedings, such as Senators Krueger, Little, and Ranzenhofer? Indeed, can any Senator purport to be committed to cleaning up Albany and restoring the public trust, yet be against those salutary non-partisan rules reforms?

At very least – and consistent with rules reform – we urge that you use your “bully pulpit” as Senator to demand functioning committees that hold hearings in discharge of their oversight responsibilities and on all significant legislation, as, for instance, on Governor Cuomo’s “Public Trust Act” and on the ethics reform packages that Senators and the Senate Conferences are proposing, followed by committee mark-ups, substantive reports, and votes thereon. Certainly, it is only through hearings that Senators will have the expert testimony and public participation necessary to achieve a sound legislative product. In the words of Senator Bonacic, stated by him more than once while he was

¹ That your leadership of this issue predated your becoming Temporary Senate President is reflected by the enclosed page 1 of the Brennan Center’s 2008 report “*Still Broken: New York State Legislative Reform*”.

co-chair of the Temporary Committee on Rules and Administration Reform, including in thanking you for “allowing this process to go forward on reform”, “good process results in good policy”².

Thank you.

A handwritten signature in black ink, appearing to read "Steven R. Weisberg". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Enclosure: Page 1 of Brennan Center’s report 2008 “*Still Broken: NYS Legislative Reform*”.
Page 3 of the transcript of the Temporary Committee’s March 18, 2009 meeting

CJA’s April 15, 2013 complaint to U.S. Attorney Bharara,
with its enclosed December 7, 2012 & December 7, 2012 letters
to the Independent Democratic Conference

cc: U.S. Attorney Preet Bharara
ATT: Brendan McGuire, Chief, Public Corruption Unit
All Senators & Assembly Members
The Public & Press

²

See, *inter alia*, the enclosed page 3 of transcript the Temporary Committee’s March 18, 2009 meeting.

Brennan Center report

"Still Broken: New York State Legislative Reform - 2008 Update"

I. INTRODUCTION

"Dysfunctional" is the adjective ascribed to the New York State Legislature by two reports issued by the Brennan Center for Justice: *The New York State Legislative Process: An Evaluation and Blueprint for Reform* released in 2004 and the follow up, *Unfinished Business: New York State Legislative Reform 2006 Update*.

The legislative leadership largely dismissed the findings of the 2004 report. Assembly Speaker Sheldon Silver told the New York Times, "Nothing happens here in Albany, in the Assembly, without the input of the rank-and-file legislators."¹ Joe Bruno, who recently left the Senate after serving for 14 years as its Majority Leader, called the report "pure nonsense" and equated a more democratic process with that of a Third World country.²

Yet when the Legislature came back into session in early 2005, the Leaders announced rules changes—the first time in a generation—accompanied by self-congratulatory fanfare.³ In press releases that described the reforms' aspirational effect on the Legislature, the Assembly Speaker and Senate Majority Leader claimed that the new rules would usher in an era of openness, effectiveness, and accountability. The Senate even went so far as to claim that it addressed most of the recommendations made by the Brennan Center.⁴

Unfinished Business: New York State Legislative Reform 2006 Update concluded that the changes on the whole, while a good start, were by no means transformative. The Legislature failed to adopt a comprehensive set of new rules that incorporated the Brennan Center's recommendations for making the legislative process more robust and democratic. Of the changes that the legislature did adopt, some, quite cynically, codified the status quo in new ways. The continued presence of these rules stifles rigorous deliberation and debate and hobbles the sincere efforts of a number of rank-and-file legislators to represent the best interests of their constituents and the state as a whole.

In 2006 and 2007, most standing committees met infrequently or not at all. Almost no oversight hearings or hearings on major legislation occurred. Not a single major bill was the subject of a detailed committee report. Leadership maintained near total control over what bills reached the floor. And on the floor, there was little substantive debate; every bill brought to the floor for a vote in either chamber passed.

The good news is that, for the first time in years, there is reason to hope that at least one chamber will begin to make the structural changes that could remake the legislature. Come January, majority control of the Senate may shift to the Democrats.⁵ In 2007, likely incoming Senate President Pro Tempore Malcolm Smith introduced new rules in line with our previous recommendations (the one-house resolution failed along a party-line vote). During a Reform Day New York panel last year, Senator Smith reaffirmed his commitment to introducing the same package of rules reform "without question" ⁶ if the Democrats regained the majority. He previously stated, "We cannot truly reform the legislative process in Albany until we have successfully reformed the rules that govern the Legislature."⁷ More recently, Senator Smith told the New York Times that the under his leadership, the Senate "would be more transparent, more participatory." Smith reaffirmed that rules reform under a Democratic majority would include broader latitude for members to put bills on committee agendas or vote them out of committee and onto the floor, abolishment of secretive canvass of agreement votes and restrictions on discharge motions, and the enactment of new rules requiring committee members to be physically present to vote.⁸



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BEFORE THE NEW YORK STATE SENATE

STANDING COMMITTEE ON RULES & ADMINISTRATION

COMMITTEE MEETING

Capitol - Albany

March 18, 2009

PRESENT: David Valesky, Chairman
John Bonacic, Co-Chair
Daniel Squadron
Joseph Griffo
Jeffrey Klein
Jose Serrano
Andrea Stewart-Cousins
George Winner

1 Recorded Votes, Open Co-Sponsorship of Bills, a
2 Commitment to Transparency, and also Dual References
3 of bills in cases where legislation is effected by
4 more than one committee, so, those are some of the
5 changed that have already been made to the rules of
6 the Senate, and perhaps most significantly, the
7 establishment of this Committee. We are changed with
8 reporting back to the Senate Majority and Minority
9 Leaders within 90 days as to recommendations for
10 additional changes of the rules of this House.

11 So with that, I ask Senator Bonacic to make
12 some opening comments, and we can begin.

13 SENATOR BONACIC: Thank you, David.

14 You know, we've had four public hearings,
15 and I have thanked Malcolm Smith for putting himself
16 out there, to allowing this process to go forward on
17 reform. And I believe that good process results in
18 good policy. And the problem for years in Albany, the
19 Albany culture, is that there is too much power in the
20 leaders and it diminishes the power of the members.
21 And I am hopeful, if we have people of good will that
22 want to change the culture of Albany, it starts today.
23 And when leaders control money, they control
24 everything in terms of whose chair people, chairwomen,