

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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November 24, 2009

TO: Commission on Judicial Nomination

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

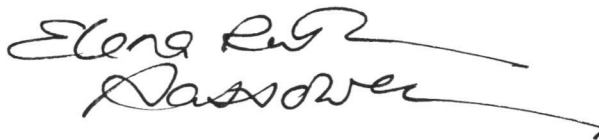
RE: "Reforming [the] Court of Appeals Nominating System"
by Re-introducing Bill A-3866-A & Other Legislation

Enclosed is the Center for Judicial Accountability's self-explanatory November 23, 2009 memo to the bar association/"good government" recipients of our September 21, 2009 comment to the Commission's proposed rules. The Commission is an indicated recipient – as likewise of our October 2, 2009 memo to Assembly Judiciary Committee Member Rory Lancman, enclosed with it.

As highlighted by those memos, the Commission's failure to respond to CJA's September 21, 2009 comment must be deemed a concession of its truth and accuracy, "propelling the critical statutory, if not constitutional, changes discussed therein."

Should the Commission disagree with this proposition, please advise Assemblyman Lancman and the Senate Judiciary Committee, providing the basis therefor.

Thank you.



Enclosure

cc: Assembly Judiciary Committee Member Rory I. Lancman
Senate Judiciary Committee Chairman John L. Sampson
Senate Judiciary Committee Ranking Member George D. Maziarz

* **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.

Exhibit J-2

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BY FAX: 5 pages

November 23, 2009

TO: New York State Bar Association
Fax: 315-732-0755 ATT: Michael E. Getnick, President
Fax: 518-487-5564 ATT: Patricia Bucklin, Executive Director
Fax: 518-487-5694 ATT: Ronald Kennedy, Director/Governmental Affairs
Kathleen Mulligan Baxter, Counsel

New York City Bar Association
Fax: 212-768-8116 ATT: Patricia M. Hynes, President
Fax: 212-398-6634 ATT: Alan Rothstein, General Counsel
Fax: 212-812-8365 ATT: Jay Safer, Chair/Council on Judicial Administration

New York County Lawyers' Association
Fax: 212-859-4000 ATT: Ann B. Lesk, President
Fax: 212-406-9252 ATT: Sophia J. Gianacoplos, Executive Director
Marilyn J. Flood, Counsel

Fund for Modern Courts
Fax: 212-489-8340 ATT: Victor Kovner, Chair
Fax: 212-541-7301 ATT: Dennis Hawkins, Executive Director

Citizens Union
Fax: 212-227-0345 ATT: Dick Dadey, Executive Director

League of Women Voters/New York
Fax: 518-465-0812 ATT: Laura Ladd Bierman, Executive Director

Common Cause/New York
Fax: 212-807-1809 ATT: Susan Lerner, Executive Director

Institute of Judicial Administration
Fax: 212-995-4036 ATT: Torrey L. Whitman, Executive Director

Michael Cardozo, Esq.
Fax: 212-227-5641

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: Building Dialogue & Scholarship: "Merit Selection" to the New York Court of Appeals

On September 21, 2009, CJA filed comment to the Commission on Judicial Nomination's proposed

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revised rules, a copy of which we provided you under a September 24, 2009 covermemo entitled "Building Dialogue & Scholarship: 'Merit Selection' to the New York Court of Appeals." In pertinent part it stated:

"We invite your response for the benefit of the Commission [on Judicial Nomination], the Senate Judiciary Committee – and Assembly Judiciary Committee member Rory Lancman, whose bill [A-3866-A] to repeal Judiciary Law §63.2 so as to require the Commission to furnish the Governor with all "well qualified" candidates – consistent with the constitutional amendment – we seek to have re-introduced and approved in this legislative session."

To date, we have received no response from you.

By covermemo to Assemblyman Lancman, dated October 2, 2009 and entitled "'Reforming [the] Court of Appeals Nominating System' by Re-introducing A-3866-A & Other Legislation", we provided him with a copy of our September 24, 2009 covermemo and September 21, 2009 comment. In so doing, we highlighted that:

"CJA's comment expressly calls upon the Commission [on Judicial Nomination] to substantively respond, especially as to the unconstitutionality of Judiciary Law §63.2 in restricting the number of 'well qualified' candidates the Commission furnishes the Governor, which your bill corrects. It also calls upon the recipients of our coverletter to substantively respond in furtherance of 'building dialogue and scholarship' so that re-introduction of your bill and other essential legislation may be guided by accurate history and fidelity to the Constitution.

Should the Commission and other recipients not respond, such must be deemed a concession of the truth and accuracy of CJA's comment, propelling the critical statutory, if not constitutional, changes discussed therein."

A copy of our October 2, 2009 covermemo to Assemblyman Lancman– to which you are indicated recipients – is enclosed, as is an additional copy of our September 24, 2009 covermemo to you.

Should you disagree with the proposition that your failure to respond "must be deemed a concession of the truth and accuracy of CJA's comment", please advise Assemblyman Lancman and the Senate Judiciary Committee, providing the basis therefor.

Thank you.



Enclosures (2)

cc: Assembly Judiciary Committee Member Rory Lancman
Senate Judiciary Committee Chairman John Sampson
Senate Judiciary Committee Ranking Member George Maziarz
Commission on Judicial Nomination

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October 2, 2009

TO: Assembly Judiciary Committee Member Rory I. Lancman

FROM: Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)

RE: “Reforming [the] Court of Appeals Nominating System”
by Re-introducing Bill A-3866-A & Other Legislation

This follows up my recent phone conversations with your Deputy Chief of Staff, Jane Carey.

The Center for Judicial Accountability, Inc. (CJA) supports your bill, A-3866-A, to repeal Judiciary Law §63.2 so as to require the Commission on Judicial Nomination to furnish the Governor with all “well qualified” candidates, and urges its re-introduction in this session as part of a legislative package “reforming [the] Court of Appeals nominating system”¹.

Unlike Judiciary Law §63.2, which materially altered the 1977 constitutional amendment establishing the Commission, your bill is faithful to the amendment and to the will of the voters reflected therein. This important fact is highlighted by CJA’s September 21, 2009 comment to the Commission’s proposed revised rules and by our September 24, 2009 coverletter transmitting the comment to supporters of the 1977 amendment, including several who opposed your bill.²

CJA’s comment expressly calls upon the Commission to substantively respond, especially as to the unconstitutionality of Judiciary Law §63.2 in restricting the number of “well qualified” candidates the Commission furnishes the Governor, which your bill corrects. It also calls upon the recipients of our coverletter to substantively respond in furtherance of “building dialogue and scholarship” so that re-introduction of your bill and other essential legislation may be guided by accurate history and

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¹ Your February 4, 2009 press release “State Lawmakers Unveil Legislation Reforming Court Of Appeals Nomination System” – referring to, quoting, and including a photograph of Senate Judiciary Committee Chairman John L. Sampson and Assembly Judiciary Committee member Peter M. Rivera, in addition to yourself.

² These opponents include the New York State Bar Association and the New York County Lawyers’ Association, whose written opposition I have secured. Please let me know if you have other written opposition. I understand from the Fund for Modern Courts’ Executive Director Dennis Hawkins that its opposition to your bill was expressed orally.

fidelity to the Constitution.

Should the Commission and other recipients not respond, such must be deemed a concession of the truth and accuracy of CJA's comment, propelling the critical statutory, if not constitutional, changes discussed therein.

I would be pleased to meet with you and answer any questions you may have about CJA's comment so as to assist you in "reforming [the] Court of Appeals nominating system" to ensure its fidelity to the People's will, expressed in their 1977 vote.

Thank you.

A handwritten signature in black ink, appearing to read "Rory I. Lancman". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Enclosures: CJA's comment & coverletter

cc: Commission on Judicial Nomination
Senate Judiciary Committee
Recipients of CJA's September 24, 2009 coverletter