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December 18, 2012

New York State Senate
State Capitol
Albany, New York

ATT: Francis W. Patience, Secretary of the Senate

RE: (1) Senate Violation of its Rule XIV, §1(a)
(2) FOIL Request: Evolution of Senate Rules: 1993-2013

Dear Secretary Patience:

This follows up CJA's December 3, 2012 letter to you, stating:

“Please note there are a myriad of respects in which the Senate’s website is non-compliant with Senate Rule XIV, entitled ‘Freedom of Information’, whose §1(a) states:

‘Publication of records relating to Senate legislative and administrative records. Recognizing that legislative records available by request under the ‘freedom of information law’ are of important public interest, the Senate shall make available through a searchable and sortable database on the Senate website: records of committees, agendas, votes, minutes, reports, attendance, fiscal notes, and records of the chamber including, active lists, votes, transcripts, calendars, the Senate payroll report and expenditure reports.’”

As I am unable to find ANY of the Senate’s past rules from the Senate’s website, I request your assistance. Pursuant to Senate Rule XIV, §1(a) and FOIL, I request copies of all past Senate rules since 1993 – and, especially since October 2002, when Senator Liz Krueger issued a report

* **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.

entitled “*Waking Up the Senate: 34 Proposals for Reinvigorating Democracy in Albany through Rules Reform*”¹.

In conjunction therewith, please also furnish ALL related documents. These would include transcripts of debates relating to adoption of Senate rules, as well as resolutions to amend or revise Senate rules that were not adopted, together with transcripts of those debates. Among the resolutions not adopted: Resolution 357, introduced in January 2011 by Senator Krueger and co-sponsored by Senator Daniel Squadron.

By way of further prioritizing, please furnish ALL documents pertaining to Senate action, debate, deliberation, and votes on the April 21, 2009 “Draft Report” and Minority Report of the Temporary Committee on Rules and Administration Reform – particularly with respect to the recommendation of both the “Draft Report” and Minority Report that the Temporary Committee on Rules and Administration Reform be continued.

According to the enclosed Albany Times Union’s January 26, 2011 “Capitol Confidential” blog “*Sampson to Skelos: Bring back rules reform panel*”, then Senator Minority Leader John Sampson wrote a letter to Senate Majority Leader Dean Skelos, stating:

“...I respectfully request you re-institute the Temporary Committee on Rules and Administration Reform. There should be a public, transparent, and bipartisan process led by Members of both Conferences, who will be charged with drafting permanent rules all 62 Members can support. In 2009, the Temporary Committee had six Majority Members and three Minority Members. Accordingly, should you agree to honor recent practice and precedent by reinstating the Temporary Committee, I will appoint Senator Jose M. Serrano, Senator Daniel L. Squadron, and Senator Andrea Stewart-Cousins to serve as the Minority Members of the Committee.

Provided adequate and public notice is given, these Members are ready to meet with representatives of your conference at any time and location of your choosing.

It is my hope we can build on the progress made in the 2009 Rules Reforms, and give New Yorkers greater confidence their voices will be heard in the Senate that is run in the serious and bipartisan manner these difficult times demand.”

We request a copy of Senator Sampson’s letter.

As for Senate Majority Leader Skelos’ response, he apparently agreed to establish a “committee” or “working group”. Thus, at the January 31, 2011 meeting of the Senate Rules Committee – at which Senator Krueger presented Resolution 357 – Deputy Senate Majority Leader Thomas Libous, who was presiding, stated:

¹ See Senator Krueger’s website, www.lizkrueger.com/wakingup.html.

“Senator Skelos has announced that, in consultation with Senator Sampson, that there will be a committee set up as we continue, a working group, if you will, to continue to look at the changes in your resolution along with the changes that some of our members still wish to propose...

I would hope that we can take these items and present them to the working group so that we will be able to hopefully at another meeting implement many of your suggestions.”

Please furnish all documents pertaining to such “committee” or “working group” as Senate Majority Leader Skelos set up, as well as all documents pertaining to Senate action, debate, deliberation, and votes with respect thereto.

As the 2009 Senate “coup”, spanning from June 8, 2009 to July 8, 2009, was, in pertinent part, about Senate rules, we request that you make relevant documents from that period also a priority – and, specifically,

- the “new senate rules”, summarized by Senator James Seward’s June 8, 2009 posting, “*Seward Hails New Senate Leadership Coalition*”;
- the “long-term, bipartisan, Senate operating plan”, summarized by Senator William J. Larkin’s July 7, 2009 posting, “*Letter On Bipartisan Senate Operating Agreement Sent To All Senators*”.

Copies of these two postings are enclosed for your convenience.

I do not know whether the “bipartisan operating plan” identified by Senator Larkin’s posting is different from what is referred-to in the video of the June 30, 2009 Senate floor proceeding, wherein, with Senator Stewart-Cousins presiding, Senator Malcolm Smith stated: “We do have a privileged resolution at the desk with regard to an operating agreement that we would like to move for adoption” – as to which Senator Jeffrey Klein rose “in support”, before moving for adjournment at the instance of Senator Skelos who had stated:

“I would also urge Senator Smith and I know that Senator Espada feels the same way, that we should immediately – Senator Smith, Senator Sampson, Senator Espada, and myself – conduct open, public meetings, as was mentioned by Senator Sampson – to discuss, open, public, starting at noon today, open, public meetings so that we can show how a long-term agreement to 2010 is necessary in terms of a number of issues concerning resources, concerning how this chamber operates so that we do not continue in this type of a gridlock situation.”. (underlining added).

Needless to say, we request a copy of the “privileged resolution at the desk” on June 30, 2009 and all documents pertaining to such “open public meetings” as were conducted with respect to the “long-term agreement to 2010” and the Senate’s adoption of same.

Please identify why NONE of the videos for the Senate floor proceedings during the “coup”, other than for June 30, 2009, are posted on the Senate’s website. The missing videos, as reflected by the Senate’s website, are as follows:

Monday, June 8th, 2009, 3:00 pm - 5:00 pm
NYS Legislature in Session

Tuesday, June 9th, 2009, 3:00 pm - 6:00 pm
NYS Legislature in Session

Wednesday, June 10th, 2009, 3:00 pm - 6:00 pm
NYS Legislature in Session

Thursday, June 11th, 2009, 11:00 am - 3:00 pm
NYS Legislature in Session

Monday, June 15th, 2009, 3:00 pm - 6:00 pm
NYS Legislature in Session

Tuesday, June 16th, 2009, 3:00 pm - 6:00 pm
NYS Legislature in Session

Wednesday, June 17th, 2009, 3:00 pm - 7:00 pm
NYS Legislature in Session

Thursday, June 18th, 2009, 11:00 am - 3:00 pm
NYS Legislature in Session

Monday, June 22nd, 2009, 11:00 am - 3:00 pm
NYS Legislature in Session

Tuesday, June 23rd, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 1

Wednesday, July 1st, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 3

Thursday, July 2nd, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 4

Friday, July 3rd, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 5

Saturday, July 4th, 2009, 11:00 am - 11:10 am
Extraordinary Session - Day 6

Sunday, July 5th, 2009, 6:00 pm - 6:05 pm
Extraordinary Session - Day 7

Monday, July 6th, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 8

Tuesday, July 7th, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 9

Wednesday, July 8th, 2009, 3:00 pm - 3:05 pm
Extraordinary Session - Day 10

Please also identify where the transcripts of these Senate floor proceedings are posted, as I am unable to find them using the “search” feature. Indeed, the search feature does not seem to appropriately respond to “search” requests.

Finally, with respect to the current Senate rules, Rule VI, entitled “Introduction of Bills and Resolutions”, states, in pertinent part:

§1: “...Upon introduction, each bill...shall be...immediately referred to the appropriate standing committee...in accordance with a set of guidelines to be published annually by the Temporary President setting forth the respective statutes over which each of the standing committees shall have subject matter jurisdiction for purposes of referral...” (underlining added).

As I cannot find such guidelines on the Senate’s website – and the webpages for Senate committees fail to identify their subject matter jurisdiction – please furnish the guidelines published by Senator Skelos for 2011 and 2012. Additionally, as it appears that Senate resolutions are NOT accessible from the Senate’s website – and Senate rules are the product of resolutions – please identify why they are not posted or otherwise obtainable through the Senate’s website, consistent with Senate Rule XIV, §1(a).

As you know, FOIL requires your response “within five business days” of your receipt of this request (Public Officers Law §89.3). I would appreciate if you e-mailed it to me at elena@judgewatch.org.

Thank you.

Enclosures (3)

