

CENTER for JUDICIAL ACCOUNTABILITY, INC.*

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August 13, 2013

TO: Senator George Latimer
37th Senatorial District

Assemblyman David Buchwald
93rd Assembly District

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

RE: Constituent Request that You Introduce the Public Trust Act (Governor's Program Bill #3), Consistent with the Senate and Assembly Informational Guides: "*How a Bill Becomes a Law*" and "*The Legislative Process and YOU*"

As you know, the Center for Judicial Accountability, Inc. (CJA), based in White Plains, New York, is your constituent.

We thank you for the assistance your staff gave us in discovering what was apparently a discovery for you, too: that the reason you had been unable to represent us by voting in favor of Governor Cuomo's Public Trust Act – his Program Bill #3 – was because it had never been introduced, having had no sponsors in either the Senate or Assembly.

We have filed FOIL requests with the Governor, with the Senate, and with the Assembly to better understand how this could be. The responses have been most limited. However, it appears that after the Governor delivered the Public Trust Act to the Senate and Assembly – which he delayed for 2-1/2 weeks after his April 9, 2013 press conference announcing and particularizing it – Assembly Speaker Silver and Senate Majority Coalition Leaders Skelos and Klein aborted any cognizable legislative process. They neither sponsored it themselves nor circulated it so that it might be sponsored. As a consequence, the Public Trust Act had no sponsors in either the Senate or Assembly and no Senate and Assembly bill numbers were ever assigned to it.

One need only read the Public Trust Act, drafted by the Legislative Bill Drafting Commission and its accompanying sponsor's memorandum to know that had it been sponsored and introduced, there would have been no stopping it. It would have passed overwhelmingly, if not unanimously. No legislator, including Assembly Speaker Silver and Senate Majority Coalition Leaders Skelos and

* **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.

Klein, could have opposed it, certainly not publicly – as its purpose and provisions are very simple: strengthening existing laws and creating new laws to facilitate investigation and prosecution of public corruption. Certainly, to view the videos of the Governor’s April 9, 2013 press conference announcing the Public Trust Act and his June 11, 2013 press conference reiterating it and to see the support at both these conferences of this state’s district attorneys, all 62 of whom signed a letter addressed to Assembly Speaker Silver and Senate Majority Coalition Leaders Skelos and Klein, unanimously urging enactment of the Public Trust Act, is to know this further.

It would appear that the Governor is so accustomed to utilizing and perpetuating top-down, leader-dominated governance that tosses aside any legitimate legislative process that he does not get around to visiting rank-and-file legislators. Had he done so, he might have seen, in their offices, the brochures routinely on tables and shelves, bearing such titles as “*How a Bill Becomes a Law*” and “*The Legislative Process and YOU*” and explaining to constituents how anyone with an idea for legislation can suggest it to his or her legislator for introduction as a bill. The Senate brochure actually has a side panel to detach entitled “This is my idea for a law...” where the idea can be written and submitted. The Assembly has a free-standing card entitled “*There Ought To Be A Law*”, which doubles as an insert to the brochures, the back of which is for writing and submitting the suggestion.

Why the Governor did not approach his own Senator and Assembly member to request them to introduce his Public Trust Act – or other Senators and Assembly members – is one of many important questions yet to be asked and answered. Since, according to your staff, you would have supported the Public Trust Act, had it come before you for a vote, you surely would have sponsored it for the Governor, had he only asked you to. Indeed, the Governor, whose legal residence is Mt. Kisco, is your constituent, Assemblyman Buchwald – which, considering your law degree from Harvard Law School and your master’s degree in public policy from Harvard’s John F. Kennedy School of Government, is fortunate for him – and us.

Therefore, and consistent with the Senate and Assembly informational guides “*How a Bill Becomes a Law*”, “*The Legislative Process and YOU*”, and “*There Ought To Be A Law*”, your constituent, the Center for Judicial Accountability, Inc., formally requests, as its idea for legislation, that you immediately put your name on the Public Trust Act – the Governor’s Program Bill #3 – with its accompanying sponsor’s memorandum, so that Senate and Assembly numbers will be assigned to it and the bill NOW introduced.

That being said, we are not asking you to follow lock-step with the Governor. Should there be provisions of the Public Trust Act with which you disagree, we have no objection to your making such deletions or modifications as you deem appropriate – with these changes and the reasons therefore identified on the sponsor’s memorandum.

Nor are we asking you to run rough-shod over legitimate legislative process to achieve enactment of the Public Trust Act, either as proposed by the Governor or as introduced by you. As you know, the components of legitimate legislative process are spelled out in the landmark 2004, 2006, and 2008

Brennan Center reports:

- “*The New York State Legislative Process: An Evaluation and Blueprint for Reform*” (2004);
- “*Unfinished Business: New York State Legislative Reform*” (2006); and
- “*Still Broken: New York State Legislative Reform*” (2008).

We brought copies of these to your offices at the beginning of the year and discussed them with you so that you could take the lead in championing the legislative rules reforms they particularized as essential to achieving a functioning legislature. The components of legitimate legislative process – which the Brennan Center reports chronicled as absent in the New York legislature – are committee deliberations, public hearings, mark-ups for amendments, votes, all reflected in substantive committee reports, followed by Senate and Assembly floor debate, amendments, and votes, with conference committees to reconcile divergent versions of the bills passed by each house. These very components are purported to exist by the Senate and Assembly informational guides, “*How a Bill Becomes a Law*” and “*The Legislative Process and YOU*”.

As previously discussed with your staff – and as reflected by the e-mail we sent them more than three weeks ago entitled “*Securing Government Integrity – Starting with the ‘Public Trust Act’*” – we call on you to do everything in your power to ensure full and robust legislative debate and hearings on the provisions of the Public Trust Act so that the bill enacted, whether as the Governor proposed it, or as you have introduced it, or as it evolves through a deliberative and transparent process, is the best it can possibly be. In the words of Senator Bonacic who, in 2009, co-chaired with Senator Valesky the nine-member Temporary Senate Committee on Rules and Administration Reform: “good process results in good policy”¹.

We have no doubt that once you take the lead in sponsoring the Public Trust Act, many, if not most, of your Senate and Assembly colleagues will follow as co-sponsors. Even more will join in demanding “good process” – as, for instance, the eight members of the Temporary Senate Committee on Rules and Administration Reform who remain in the Senate – Senate Independent Democratic Conference Leader Klein and Senate Democratic Conference Leader Stewart-Cousins, in addition to Senators Griffo, Parker, Serrano², Squadron, and, of course, Senators Valesky and Bonacic.

We will ask these eight Senators to work with you to secure a legitimate legislative process for the Public Trust Act – and to take long overdue steps to achieve the unimplemented Senate rules reforms recommended by their April 21, 2009 majority and minority reports. This can easily be done: the Senate and Assembly can each vote, at any time, on their own rules – just as they can also oust

¹ See March 18, 2009 committee meeting (transcript, at p.3); also February 26, 2009 committee hearing “good process affects good policy” (video, 1:15:05 mins.). See, p. 5, *infra*.

² Senator Serrano is among the Senators already on record as supporting the Public Trust Act, issuing a press release on the very day of the Governor’s April 9, 2013 press conference to commend the Governor for what Senator Serrano mistakenly believed was his introduction of the Public Trust Act.

Senate and Assembly leaders who have betrayed the public trust and the trust of rank-and-file legislators with regard to the Public Trust Act and other essential legislation.

We will also call upon the Governor Cuomo to actively endorse our efforts, on his behalf, to achieve passage of his Public Trust Act. To begin with, why shouldn't the Governor ask Senator Ball, his own Senator, to join you, Senator Latimer, as a co-sponsor of the Public Trust Act? Senator Ball would surely be glad to do so. Not only does he furnish the "*How a Bill Becomes a Law*" guide to constituents, he advocates for "reform of the legislature from top to bottom" and introduced a "'Cut the Crap' reform package" "to root out public corruption and rebuild public trust". His April 22, 2013 press release, candidly quipping that "maybe it should more aptly be named the 'Dead on Arrival' package," reflects a reality that can change through a coalition of legislators committed to legitimate legislative process – and legislative rules reform. Such would restore life to the four separate bills comprising Senator Ball's package: S5305A ("Nonpartisan Election Act"); S2654 ("Public Corruption Prevention and Enforcement Act of 2013"); S2667 (term limits); and S2663 ("Pension Forfeiture for Public Misconduct Act").

You, as all your fellow legislators, have "bully pulpits" and can rally the public and garner press. But, of course, the state's biggest "bully pulpit" belongs to Governor Cuomo. Why should he not use it to achieve legitimate legislative process for the Public Trust Act – and for other legislation such as Senator Ball's "Cut the Crap" reform package? Why shouldn't there be open debate and discussion in the legislature about the specifics of all these bills, with public hearings and amendments based thereon, reaching consensus through majority votes?

Certainly, the public would have reasonably expected that Governor Cuomo would have made legitimate legislative process a hallmark of his administration, as likewise legislative rules reform. Why else appoint Jeremy Creeland, principal author of the Brennan Center's 2004 report, *The New York State Legislative Process: An Evaluation and Blueprint for Reform*, and a witness testifying in 2009 before the Senate Temporary Committee on Rules and Administration Reform to be his "Special Counsel for Public Integrity and Ethics Reform"? Governor Cuomo made that appointment in December 2010, even before he took office.

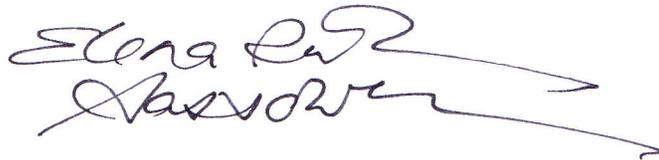
It was Mr. Creeland who, sitting beside the Governor at the June 11, 2013 press conference, recapitulated the provisions of the Public Trust Act and then detailed the further legislation being announced as the Governor's corruption-fighting package – his Program Bill #4 (creating enforcement counsel at board of elections; repeal of Wilson-Pakula; party enrollment deadline change), his Program Bill #5 (voter registration; ballot access; ballot simplification), and his Program #12 ("Campaign Finance Reform Act of 2013"). Yet each of these three bills – like the Governor's Program Bill #3, the Public Trust Act – were withheld from rank-and-file legislators by Assembly Speaker Silver and Majority Coalition Leaders Skelos and Klein, with the consequence that they, too, had no Assembly and Senate sponsors and were never introduced.

Please confirm, as soon as possible, that you will be introducing the Public Trust Act – and when. As we advised your staff last week, we have been invited by a significant media outlet to come to

Albany to be interviewed about our discovery that the Public Trust Act was never introduced. We have postponed the interview from this week to next so as to be able to announce not only that we have requested you to introduce it, but that you have already done so.

Meantime, enclosed are the informational guides obtained from your offices: "*How a Bill Becomes a Law*", "*The Legislative Process and YOU*", and "*There Ought To Be A Law*". These are additionally posted beneath this letter on a new webpage we have specially created entitled: "The People Lead: Securing Introduction & Passage of the Public Trust Act & a Constitutionally-Functioning Legislature". It is where we have also posted the Public Trust Act and the substantiating memorandum, videos, press releases, letters, reports, etc. hereinabove referred to. The webpage is accessible *via* the "Latest News" top panel of our website, www.judgewatch.org.

Thank you.

A handwritten signature in black ink, appearing to read "Elena R. Buchwald". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Enclosures

cc: The Public & the Press