

# CENTER for JUDICIAL ACCOUNTABILITY, INC.

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## BY E-MAIL & PRIORITY MAIL

August 13, 2018

TO: Empire Center for Public Policy – ATT: E.J. McMahon, Tim Hoefler  
Brennan Center for Justice – ATT: Lawrence Norden, Esq.  
Fiscal Policy Institute – ATT: Ron Deutsch  
Citizens Budget Commission – ATT: David Friedfel  
New York State League of Women Voters – ATT: Laura Bierman  
New York Public Interest Research Group – ATT: Blair Horner, Russ Haven, Esq.  
Common Cause-New York – ATT: Susan Lerner, Esq.  
Citizens Union – ATT: Ethan Geringer-Sameth, Rachel Bloom  
Reinvent Albany – ATT: John Kaehny  
Citizen Action of New York – ATT: Bob Cohen, Esq.  
Reclaim New York – ATT: Brandon Muir

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

RE: Achieving Our Shared Goal of an Accountable & Transparent State Budget Process & Budget: Request for *Amicus Curiae* Participation & Other Assistance in the Appeal of the Citizen-Taxpayer Action *Center for Judicial Accountability, Inc., et al. v. Cuomo, et al.* (Albany Co. #5122-16; Appellate Division, 3<sup>rd</sup> Dept #527081)

Each of you shares the goal of an accountable and transparent state budget process and budget. This goal – which is the constitutional entitlement of the People of the State of New York – you have advocated for, unceasingly, for years, even decades, in press statements, articles, interviews, testimony, and proposed legislation, decrying the *status quo*.

Our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA) thanks you and applauds all you have done. Our approach has been different. Since March 2014, we have brought suit in Supreme Court/Albany County by two citizen-taxpayer actions, each, expressly, “on behalf of the People of the State of New York & the Public Interest”. The second citizen-taxpayer action, commenced in September 2016, encompasses and builds upon the first – and lays out, in ten causes of action, the unconstitutionality and unlawfulness of the state budget and of the commission-based judicial salary increases it embeds and upon which district attorney salary increases rest.

This second citizen-taxpayer action is now before the Appellate Division, Third Department on an appeal brief demonstrating, *prima facie* and *as a matter of law*, the People's entitlement to summary judgment on each of the ten causes of action. This includes on the ninth cause of action addressed to

the unconstitutionality of behind-closed-doors “three men in a room” budget deal-making and the fifth cause of action embracing the unconstitutionality of the Legislature’s behind-closed-doors party conferences substituting for open debate, deliberation, and amending of bills by legislative committees.

Obviously these two causes of action – and the other eight – would be even more powerful if broadened by the wealth of your insight, expertise, and argument. So, too, the threshold integrity issues pertaining to the conflicts-of-interest of the attorney general and judge and their demonstrated collusion with each other to corrupt the judicial process. That is why, last week, I telephoned each of you to entreat you to contribute to the success of the citizen-taxpayer action by filing an *amicus curiae* brief. As with much of your budget advocacy, you can do this collectively, rather than individually.

Although CJA’s website, [www.judgewatch.org](http://www.judgewatch.org), posts our appellants’ brief and three-volume reproduced record on appeal, accessible from the prominent homepage link ‘CJA’s Citizen-Taxpayer Actions to End NYS’ Corrupt Budget Process & Unconstitutional ‘Three Men in a Room’ Governance”, it will be more convenient for you – and for those within your organizations empowered to authorize *amicus curiae* participation – to have a hard copy, especially of the substantiating three-volume reproduced record. For this reason, I have gone to the substantial effort and considerable expense of copying and binding them for you. They will be sent to you today, by priority mail, with this letter, excepting NYPIRG, to whose Albany office I made hand-delivery on August 2<sup>nd</sup>.

The timetable at the Appellate Division, Third Department is as follows: the attorney general’s respondents’ brief is due on September 21<sup>st</sup> and our appellants’ reply brief is due on October 5<sup>th</sup>. Argument is set down for the November 2018 term, which runs from November 13<sup>th</sup> – 20<sup>th</sup>. According to the Appellate Division’s chief motion attorney, Edward Carey, the Appellate Division, Third Department has no specific procedures for *amicus curiae* briefs. However, the motion(s) to file an *amicus curiae* brief should be made as soon as possible, with or without the proposed brief.

Needless to say, your proposed *amicus curiae* brief will get “double mileage” as the constitutional questions directly involved, both procedurally and substantively, will, in short order, bring this case to the New York Court of Appeals – with decisions directly impacting on the first of the budget bills for fiscal year 2019-2020, those of the Legislature and Judiciary, whose “certified” “itemized estimates” of their “financial needs” are constitutionally mandated to be furnished to the governor by December 1<sup>st</sup>.

Your review of each of the ten causes of action – and of their posture on appeal, which is the subject of our dispositive appellants’ brief – will rapidly convince you that this is a game-changing, historic case – and a HUGE opportunity for each organization to “raise its flag” and add to the record its own pertinent work product. As illustrative, shouldn’t Citizens Union’s superlative “*Spending in the Shadows*” reports be exhibits to an *amicus* presentation? And how about the Brennan Center’s devastating reports on the dysfunction of New York’s Legislature born of its rules – cited by our verified pleadings, including in the first cause of action pertaining to the Legislature’s budget, in the paragraph reading:

“In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center’s 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’.” [R.102 (¶33); R.161-2 (¶315); R.259 (¶94); R.673-4 (¶115)].

I am available to answer your questions and to assist you, to the max, in participating as *amicus curiae* and in helping to secure other *amici*. In addition to yourselves, I will be reaching out for *amicus* support from scholars of the New York State Constitution, particularly of its Article VII pertaining to the budget. Who do you believe those scholars to be? And who do you believe are the scholars of this state’s three government branches – including of the constitutionally-ordained office of attorney general? Can you help me locate and enlist them? And can you help me enlist *amicus curiae* from among this state’s many bar associations and 15 law schools, so that they can address what presumably you would prefer not to: the obliteration of all cognizable litigation and adjudicative standards by the attorney general and Supreme Court/Albany County – and its repeat, at the Appellate Division, Third Department, in connection with the order to show cause, with preliminary injunction and TRO that I filed on July 25<sup>th</sup>, simultaneous with the filing of our appellants’ brief and reproduced record on appeal.<sup>1</sup>

And can you help in securing *amicus curie* participation from the candidates running for attorney general, all of whom are pledging to uphold the law and one of whom will be elected by the voters of New York on November 6<sup>th</sup>. Come January 1, 2019, assuming the appeal is “thrown” by a fraudulent decision of the Appellate Division, Third Department, concealing all the facts and law particularized by appellants’ brief – which is the ONLY way the *status quo* will not be blown apart – the case will be at the Court of Appeals. What will our newly-elected attorney general do? Defend it there, as below, with litigation fraud, because, as is clear from appellants’ brief, there is NO legitimate defense? Or will he/she take over the case and prosecute it, both civilly and criminally, as Executive Law §63.1 requires, this alone being the “interest of the state”.

Finally, as individually and collectively, you not only have so many press connections, but your own media and outlets, can we count on you to alert the press to this monumental case and to yourselves write and speak about it?

With gratitude – and looking forward to our success, together,



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<sup>1</sup> CJA’s webpage for the appeal posts appellants’ order to show cause, with preliminary injunction & TRO – and the proceedings thereon – including the VIDEO of the August 2<sup>nd</sup> oral argument on the TRO – and the Appellate Division’s August 7<sup>th</sup> decision. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/record-app-div.htm>.