

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, March 31, 2020 8:10 AM
To: 'ross.barkan@gmail.com'
Subject: Your article 'Cuomo Helped Get New York Into This Mess' (The Nation, 3/30/20) is MISSING the Role of the Legislature & the NY Court of Appeals, among others -- & MISREPRESENTS the State Budget
Attachments: 3-18-20-ltr-to-gov-revised-fn1.pdf; 3-18-20-e-mail-to-albany-biz-journal.pdf

TO: Ross Barkan, Esq.

I read with interest your yesterday's article in The Nation, "Cuomo Helped New York Get Into This Mess", referencing the 2006 commission headed by Stephen Berger that recommended hospital closures and downsizing – and furnishing a link to a November 29, 2006 New York Times article whose pertinent paragraph reads:

“Unless they are rejected by Gov. George E. Pataki or by the Legislature next month, the commission's recommendations will have the force of law, and most must be carried out by the end of next year. The law does not allow the governor or the Legislature to accept some recommendations and not others; they must accept or reject the plan as a whole. State officials said they would study the plan, and leaders in the Senate and the Assembly said they would hold hearings on the proposals before deciding what to do.”
(underlining added).

Your article, which quotes the Senate Health Committee's current chair, Senator Gustavo Rivera, does not identify what oversight that committee (<https://www.nysenate.gov/committees/health>) discharged over the Berger Commission's "force of law" recommendations or over other major health care policy decisions in the 13 years since – nor the oversight discharged by the Assembly's Health Committee, currently chaired by Assemblyman Richard Gottfried: <https://nyassembly.gov/comm/?id=19>. Don't you think the many members of those two legislative health committees bear ANY culpability for getting New York "into this mess"? How about the statutory Legislative Commission/Council on Health Care Financing, <https://nyassembly.gov/comm/?id=45>, which has NO members?

And what about the other legislative committees that have more general oversight responsibilities? -- the statutory Legislative Commission on Government Administration, which is supposed to have 10 members, but only has one, its chair, Assemblyman David Buchwald, Esq.: <https://nyassembly.gov/comm/?id=49>, the Assembly Committee on Governmental Operations, currently chaired by Assemblyman Kenneth Zebrowsky, Esq.: <https://nyassembly.gov/comm/?id=18>, the Assembly Committee on Oversight, Analysis and Investigation, currently chaired by Assemblyman John McDonald: <https://nyassembly.gov/comm/?id=30>, and the Senate Committee on Investigations and Government Operations, currently chaired by Senator James Skoufis (<https://www.nysenate.gov/committees/investigations-and-government-operations>).

And what about ALL Senate and Assembly Members who – notwithstanding the 2004, 2006, and 2008 Brennan Center reports attributing the Legislature's "dysfunction" to Senate and Assembly rules: <http://www.judgewatch.org/web-pages/judicial-compensation/rules-reform-resource-page.htm> – have collusively perpetuated them, disabling the Legislature from functioning at ANY constitutional level, including with respect to the state budget.

As you know, the verified pleadings in CJA's two citizen-taxpayer actions – *CJA v. Cuomo, et al* – suing all three government branches for their collusion against the People involving the entirety of the state budget and the "force of law" commission-based judicial pay raises it embeds: <http://www.judgewatch.org/web-pages/searching->

[nys/budget/menu-budget-reform.htm](http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm), chronicles the unconstitutionality and unlawfulness of what has been going on. Particularly relevant to your mention of the 2006 Berger Commission is my March 26, 2019 letter to the Court of Appeals in support of an appeal of right in the second citizen-taxpayer action. Its pages 9-15 (including fn. 4) pertain to the two lawsuits that went up to the Court of Appeals in 2007, contesting the constitutionality of the Berger Commission and its “force of law” recommendations. Here’s the link to CJA’s webpage for the letter so that you can read the amazing story of the Court’s flagrant betrayal of its constitutional duties – motivated by its desire for judicial pay raises utilizing a comparable “force of law” commission scheme: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2nd/ct-appeals/3-26-19-ltr.htm>.

More immediately relevant to your article, however – and, specifically, to your assertion:

“These days, the best hope for the health care providers and advocates who want to save hospitals from further gutting is for Cuomo to simply change his mind. As governor, he holds inordinate power over the state budget, where he wants his cuts enshrined. Lawmakers may have to choose between rejecting his cuts or shooting down the state budget altogether in a time of singular catastrophe” (underlining/link in your article),

is my above-attached March 18, 2020 letter to Governor Cuomo – sent simultaneously to him and to Senate and Assembly Legislative Leaders. Clear from its quotation of Article VII, §4 of the New York State Constitution – and so-stated by my letter (at p. 2) -- is that “New York has a rolling budget”, with the Governor’s appropriation bills, other than for the Legislature and Judiciary, becoming law “immediately”, once the Senate and Assembly reconcile their separate amendments of each, limited to strike-outs and reductions of items. In other words, constitutionally, there is NO such thing as “Lawmakers..shooting down the state budget altogether”. Indeed, the link your article furnishes pertaining to the Governor’s so-called “inordinate power”, to wit, your own April 26, 2019 article in the Gothamist: “*Enough is enough’: Lawmakers seek to break Cuomo’s grip on NY’s budget*”, conceals the unconstitutionality of the Legislature’s one-house budget resolutions and the global, deal-making between the Governor, Temporary Senate President, and Assembly Speaker – “the three men in a room” – over the state budget, likewise concealing the significance of the Court of Appeals’ 2004 decision in *Pataki v. Assembly/Silver v. Pataki* case, as to which you furnish NO analysis, including because of your reliance on former legislator Assemblyman Richard Brodsky, Blair Horner of NYPIRG, Alex Camarda of Reinvent Albany, and E.J. McMahon of the Empire Center.

Why don’t you ask these sources – whose misrepresentations and guile about the state budget process and *Silver v. Pataki* have infected countless articles and editorials – what, if anything, they deny or dispute about my March 18, 2020 letter. I have already furnished the letter to all except Brodsky – and below is my March 23, 2020 e-mail to NYPIRG, Reinvent Albany, and, additionally, Common Cause, League of Women Voters, and Citizens Union, wherein I further requested their “forwarding the letter to scholars of the New York State Constitution and of the New York State Court of Appeals for their evaluation, as well.” For completeness, attached is the March 18, 2020 e-mail I sent to McMahon. So that all these “experts” can be prepared for your inquiries – including as to the scholars they have enlisted to verify the facts – I will forward this e-mail to them – and cc you on the transmittal.

I am available to assist you, to the max, on this major story – and would welcome your call, especially as you are not only a journalist, but a lawyer.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: elena@judgewatch.org <elena@judgewatch.org>

Sent: Monday, March 23, 2020 11:17 AM

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Subject: NYS Budget: GOOD NEWS During the Coronavirus Emergency About Eliminating its Policy, Non-Budgetary Content

TO: Common Cause/New York State
League of Women Voters/New York State
New York Public Interest Research Group (NYPIRG)
Citizens Union
Reinvent Albany

A propos of your March 16, 2020 press release "Good Gov't Groups to NYS Lawmakers: 'Keep Policy Out of the Budget'" – reported by the Legislative Gazette on March 18, 2020 in a story entitled "Watchdog groups, Republican lawmakers make plea for a transparent and policy-free budget this year" – this is to reiterate what I have previously alerted you to: that the inclusion of policy and non-budgetary items in the state budget is UNCONSTITUTIONAL.

The details are set forth in the Center for Judicial Accountability's above-attached March 18, 2020 letter to Governor Cuomo, sent to him and Legislative Leaders by the below e-mails. Entitled "GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 'Article VII Bills' Because They are Unconstitutional. Here's why...", it analyzes the Governor's "Article VII Bills" for FY2020-21 and does so in the context of the Court of Appeals' seminal 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75, providing what appears to be the FIRST scholarship deconstructing its plurality, concurring, and dissenting opinions.

CJA's webpage for the March 18, 2020 letter – from which its referred-to substantiating evidentiary proof is accessible – is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm> .

Please advise as to whether you agree or disagree with the analysis in CJA's March 18, 2020 letter – and confirm that you will be forwarding the letter to scholars of the New York State Constitution and of the New York State Court of Appeals for their evaluation, as well.

Thank you.

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From: elena@judgewatch.org <elena@judgewatch.org>
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Subject: Executive Budget ... CJA's March 18, 2020 letter to Gov. Cuomo: "GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 'Article VII Bills' Because They are Unconstitutional. Here's why..."

MORE GOOD NEWS DURING THE CORONAVIRUS EMERGENCY –

CJA's March 18, 2020 letter to Governor Cuomo "...GOOD NEWS DURING THE CORONAVIRUS EMERGENCY", sent to you by the below March 18, 2020 e-mail, is now posted on CJA's website – on a webpage now reflecting the March 18, 2020 date. The direct link is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm>. According to the U.S. priority mail delivery receipt (there posted), the letter was delivered to the Governor's office this morning.

The letter, with a revised footnote 1 updating the link for the webpage, is attached. Additionally attached is the letter's single enclosure – CJA's August 21, 2013 letter to the Governor on "Achieving...a Properly Functioning Legislature..."

Thank you.

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Sent: Wednesday, March 18, 2020 11:52 AM

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Subject: ...Executive Budget...GOOD NEWS DURING THE CORONAVIRUS EMERGENCY: You Can Chuck 6 of the 7 "Article VII BILLS" Because They are Unconstitutional. Here's why....

TO: Governor Andrew Cuomo, Esq.
Budget Director Robert Mujica, Esq.
Legislative Bill Drafting Commission
15 Stipend-Benefitting Legislative Leaders

Senate Majority Leader Andrea Stewart-Cousins
Assembly Speaker Carl Heastie
Senate Minority Leader John Flanagan, Esq.
Assembly Minority Leader William Barclay, Esq.
Deputy Senate Majority Leader Michael Gianaris, Esq.
Deputy Senate Minority Leader Joseph Griffo
Assembly Majority Leader Crystal Peoples-Stokes
Assembly Speaker *Pro Tempore* Jeffrion Aubry
Assembly Minority Leader *Pro Tempore* Andrew Goodell, Esq.
Senate Finance Committee Chair Liz Krueger
Senate Finance Committee Ranking Member James Seward
Assembly Ways and Means Committee Chair Helene Weinstein, Esq.
Assembly Ways and Means Ranking Member Edward Ra, Esq.
Assembly Codes Committee Chair Joseph Lentol, Esq.
Assembly Codes Committee Ranking Member Angelo Morinello, Esq.

Attached is my above-entitled letter of today's date to Governor Cuomo, the original of which will be mailed to him. All others are indicated recipients, for the reasons stated in the last paragraph (at p. 13).

Due to a catastrophic computer breakdown, on this end, I am presently unable to post the letter on CJA's website, www.judgewatch.org and to update the site. The webpage for the letter – which had been prepared two days ago, before the breakdown – is here – reflecting the letter's then March 16, 2020 date: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-16-20-ltr-to-gov.htm>. From the webpage you can access the letter's referred to-documentary proof – and its sole enclosure: my August 21, 2013 letter to the Governor, entitled "Achieving BOTH a Properly Functioning Legislature & Your Public Trust Act

(Program Bill #3) – the *Sine Qua Non* for ‘Government Working’ & ‘Working for the People’”, to which I received no response.

Thank you.

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