

Center for Judicial Accountability, Inc. (CJA)

From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Monday, April 13, 2020 3:20 PM
To: 'ryork@nydailynews.com'; 'jgreenman@nydailynews.com';
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'news@nydailynews.com'; 'nydntips@nydailynews.com'
Subject: Paying tribute to Richard Brodsky -- Your April 10, 2020 editorial "Good man gone:
Appreciating the life and legacy of Richard Brodsky"
Attachments: 3-18-20-ltr-to-gov-revised-fn1.pdf; 3-18-20-e-mail-to-albany-biz-journal.pdf; 3-26-20-
email-to-daily-news.pdf

TO: **New York Daily News**
Editor-in-Chief Robert York
Editorial Page Editor Josh Greenman
News Editor Edward Glazarev
City Editor Ginger Adams Otis

RE: "Good man gone: Appreciating the life and legacy of Richard Brodsky" (editorial, April 10, 2020)

Your editorial tribute to Richard Brodsky describes him as a "leading expert...on the state Constitution..." and recounts:

"Less than a month ago, he won a major court case defeating a terrible campaign finance scheme imposed by an unelected panel. Just last week, we got a call from him; he said, correctly, that the state budget should not be jammed with all kinds of non-fiscal policy issues."

What was the date of Mr. Brodsky's call? If "just last week" from the April 10th date of your editorial that would have been **AFTER** his receipt of my below March 31st e-mail to him, attaching my above March 18th letter to Governor Cuomo, laying out the UNCONSTITUTIONALITY of the Governor's policy-packed budget, based on analysis of the 2004 Court of Appeals decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75.

Your editorial does not disclose what prompted Mr. Brodsky's call. Was it because, notwithstanding your March 29th editorial "First things first: This year, the state budget should focus on the coronavirus emergency; other policy can wait", stating "the budget is definitely the wrong place to push through a badly deformed campaign finance plan that would strangle minor political parties", and your March 16th editorial "Commission impossible: A judge upends the recommendations of a misbegotten state campaign finance panel", stating "Gov. Cuomo should refrain from putting any of the lousy provisions into the state budget", the Governor had done what you said he should not do by his behind-closed-doors "three-men-in-a-room" budget deal-making with Temporary Senate President Stewart-Cousins and Assembly Speaker Heastie. Is this what Mr. Brodsky had called you about – and did he discuss with you the UNCONSTITUTIONALITY of what the Governor had done, using arguments from my March 18th letter? Did he mention the March 18th letter – or otherwise identify the UNCONSTITUTIONALITY of the Governor's inclusion of "all kinds of non-fiscal policy" in his budget? In any event, did you take the opportunity of Mr. Brodsky's call to ask his "expert" opinion about the letter, which I had sent you by a March 26th e-mail entitled "Will the Daily News Investigate & Report, STAT, on the UNCONSTITUTIONALITY of NY's Policy-Bloated State Budget? Response to your today's editorial 'Coronavirus cash crunch: State and city budgets must find savings'?" For your convenience, a copy is attached.

Had Mr. Brodsky not died, he would NOW be preparing a further lawsuit, on behalf of the Working Families Party -- if not also on behalf of other third parties – to strike down the budget-enacted recommendations of the Public

Campaign Financing and Election Commission – most importantly, raising requirements for parties to secure ballot lines. This would have required him to confront the Court of Appeals 2004 decision in *Silver v. Pataki*, of which he was a vehement critic, for years. As illustrative, his May 31, 2015 Albany Times Union column "*In praise of Albany's Big Ugly*", his December 6, 2018 City Limits column "*Fixing NY's Dictatorial Budget Process Is The Reform We Most Need*", and his participation in two public programs on that topic: a June 16, 2015 forum sponsored by the Rockefeller Institute of Government and Albany Law School entitled "Budgets and the Balance of Power: The Lasting Impact of *Silver v. Pataki* and How It Shapes the Future of Government in New York State" – https://www.youtube.com/watch?v=K_DqMfekqm8&list=PLhfbU5xy_knRmpTcEGTVwUoe462BLJeUW&index=4&t=0s – and a May 30, 2019 forum sponsored by the Empire Center for Public Policy entitled "*New York's Budget Process: Time for a Rebalance?*" -- <https://www.empirecenter.org/publications/new-yorks-budget-process-time-for-a-rebalance/>. From my March 18th letter, Mr. Brodsky would have readily seen that it furnished the "parsing" of the *Silver v. Pataki* decision that he needed to be **victorious**.

Therefore, why doesn't the Daily News pay a meaningful tribute to Mr. Brodsky by investigating and reporting on the accuracy of my March 18th letter? This is EASY to do. The starting point would be calling up E.J. McMahon of the Empire Center for Public Policy and the so-called "good-government" groups, to whom I sent the same March 31st e-mail as I sent Mr. Brodsky – NYPIRG, Reinvent Albany, Common Cause, Citizens Union, and League of Women Voters. Surely, they would give you the benefit of their findings of fact and conclusions of law pertaining to the March 18th letter, if you asked them. And what about calling up Governor Cuomo – and the other recipients of the letter, such as the 15 stipend-benefitting legislative leaders, virtually all of whom are running for re-election in November, Temporary Senate President Stewart-Cousins and Assembly-Speaker Heastie, among them.

Then, too, apart from the now-deceased Mr. Brodsky, why not call up the other "experts" of the New York State Constitution – and of the New York Court of Appeals – on whom you rely. What is their opinions of the March 18th letter – and whether, *as is obvious*, it will bring **victory** to lawsuits challenging the constitutionality of statutory enactment of the Public Campaign Financing and Election Commission recommendations, *via* the FY2020-21 budget.

I look forward to your response – and would welcome a telephone call to discuss the *prima facie*, evidentiary proof as to the unconstitutionality, unlawfulness, and fraud by which New York's FY2020-21 budget was enacted, posted on CJA's website for the 2020 legislative session: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/2020-session-menu.htm> – including under the heading "IT'S NOT OVER..." Likewise, to discuss the budget's brazen larceny of taxpayer monies.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
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From: Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>
Sent: Tuesday, March 31, 2020 10:55 AM
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Subject: Securing honest diagnosis of the state of the NYS Budget -- & of the Court of Appeals' 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75

TO: **Former New York State Assemblyman Richard Brodsky, Esq.**

E.J. McMahon/Empire Center for Public Policy

Blair Horner/New York Public Interest Group

Reinvent Albany

Common Cause/New York State

Citizens Union

League of Women Voters of the State of New York

Below, with the above substantiating attachments, is my self-explanatory e-mail of today's date to journalist/lawyer Ross Barkan, entitled "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". Reinforcing its importance is Mr. Brodsky's opinion piece, published two days ago in the *Albany Times Union*, entitled "*Cuomo deserves praise -- and some words of caution*", asking -- with respect to the Governor -- "Will he try to jam extraneous matter into the budget using his dictatorial powers under *Silver v. Pataki*?"

Do you deny or dispute the accuracy of my attached March 18, 2020 letter to Governor Cuomo? And who are the scholars of the New York State Constitution and of the New York State Court of Appeals, on whom Mr. Barkan and other journalists can rely for honest diagnosis of the state of the state budget -- & of the Court of Appeals' 2004 decision in *Pataki v. Assembly/Silver v. Pataki*, 4 NY3d 75? Do you agree that my March 18, 2020 letter to the Governor is "the FIRST scholarship deconstructing its plurality, concurring, and dissenting opinions", prefigured by my March 26, 2019 letter to the Court of Appeals, in support of an appeal of right, which had stated (at pp. 21-22) and reinforced by footnotes (#11, 12):

"What is before the Court, on this appeal of right, is catastrophic. Gone is the constitutional design of separation of executive and legislative powers -- replaced by collusion of powers that has undone our State Constitution. And more than the budget is at issue. It is the very governance of this State, as the budget has become a pass-through for policy having nothing to do with the budget -- the 'proposed legislation, if any' of Article VII, §3 having become separated from its meaning in Article VII, §2: 'proposed legislation, if any, which the governor may deem necessary to provide moneys and revenues sufficient to meet such proposed expenditures [of the budget]',^{fn11} further foisted by constitutionally unauthorized "non-appropriation" Article VII budget bills.^{fn12} (underlining in the original).

CJA's webpage for the March 18, 2020 letter, on which its referred-to evidentiary substantiation is posted and/or accessible, is here: <http://www.judgewatch.org/web-pages/searching-nys/2020-legislative/3-18-20-ltr-to-gov.htm>. CJA's webpage for my prior outreach to you for scholarship pertaining to the state budget, the "force of law" commission-based judicial pay raises it embeds, and for *amicus curiae* and other assistance, spanning back to 2013 -- and continuing with the March 26, 2019 letter -- is accessible from CJA's menu page for our two citizen-taxpayer actions, *CJA v. Cuomo, et al*, here: <http://www.judgewatch.org/web-pages/searching-nys/budget/menu-budget-reform.htm>.

In view of the flagrant unconstitutionality what is now unfolding with respect to the state budget, your reply is required, STAT.

Thank you.

Elena Sassower, Director
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' <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

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
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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.

Elena Sassower, Director
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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.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
www.judgewatch.org
914-421-1200