

SUPREME COURT
COUNTY OF ALBANY

STATE OF NEW YORK

CENTER FOR JUDICIAL ACCOUNTABILITY, INC., and
ELENA RUTH SASSOWER, individually and as Director
of the Center for Judicial Accountability, Inc., acting on their
own behalf and on behalf of the People of the State of New
York & the Public Interest,

Index No 1788-14

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, DEAN SKELOS in his official
capacity as Temporary Senate President, THE NEW YORK
STATE SENATE, SHELDON, in his official capacity as
Assembly Speaker, THE NEW YORK STATE
ASSEMBLY, ERIC T. SCHNEIDERMAN, in his official
capacity as Attorney General of the State of New York, and
THOMAS DiNAPOLI, in his official capacity as
Comptroller of the State of New York,

Defendants.

**MEMORANDUM OF LAW IN REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
THE SUPPLEMENTAL COMPLAINT AND FOR
SUMMARY JUDGMENT AND IN OPPOSITION TO
PLAINTIFFS' CROSS-MOTION**

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PRELIMINARY STATEMENT

This memorandum of law is submitted on behalf of defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Senate Temporary President Dean Skelos, Speaker Sheldon Silver, Attorney General Eric T. Schneiderman and Comptroller Thomas DiNapoli (1) in reply to plaintiffs' opposition to defendants' motion to dismiss plaintiffs' Fifth, Sixth, Seventh and Eighth Causes of Action and for summary judgment on plaintiffs' Fourth Cause of Action and (2) in opposition to plaintiffs' cross-motions for summary judgment and sanctions.

ARGUMENT

DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT SHOULD BE GRANTED, AND PLAINTIFFS' CROSS-MOTION¹ SHOULD BE DENIED

For the same reasons that defendants' motion to dismiss the supplemental complaint and motion for summary judgment on plaintiffs' Fourth Cause of Action should be granted, plaintiffs' cross-motion for summary judgment should also be denied. Therefore, the arguments made on behalf of the defendants in their July 28, 2015, moving papers are incorporated as if fully re-stated herein.

Though difficult to decipher, plaintiffs' frivolous and offensive fifty-five page memorandum of law seems to assert that plaintiffs believe that the supplemental complaint

¹ In an effort to re-argue all of the points that rejected by the court in connection with defendants' motion to dismiss the original complaint in this case, plaintiffs seek an order vacating this court's October 9, 2014 Decision and Order pursuant to CPLR 015(a)(3). See Plaintiffs' September 22, 2015 Memorandum of Law at pp. 53-54. CPLR 5015(a)(3) permits the court to relieve a party from a judgment or order of the court based on "fraud, misrepresentation, or other misconduct of an adverse party." However, for all of the reasons discussed in support of defendants' motion and in opposition to plaintiffs' cross-motion, defendants have not engaged in any fraud, misrepresentation or misconduct. Therefore, plaintiffs' frivolous cross-motion pursuant to CPLR 5015(a)(3) should be denied.

contains constitutional and statutory claims not previously addressed by defendants. Specifically, plaintiffs allege that the supplemental complaint alleges violations of article VII, section 7 of the New York State Constitution, see Plaintiffs' Memorandum of Law at p. 18; article III, sections 10 and 16 of the New York State Constitution, see *id.*; and sections 31 and 54-a(2)(d) of the Legislative Law. See *id.* at pp. 30, 38. In an effort to address any conceivable claim that is alleged to be contained in the complaints in this case, defendants will address these alleged claims.

Article VII, section 7 of the New York State Constitution states that

No money shall ever be paid out of the state treasury or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an application shall distinctly specify the sum appropriated, and the object or purpose to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

See N.Y. Const. art. VII, §7. To the extent plaintiffs' alleged claim pursuant to this provision relates to the enacted 2014-15 and 2015-16 Legislative and Judiciary Budgets, the exhibits annexed to the July 28, 2015 Kerwin affirmation establish that these budgets were properly considered and enacted. To the extent that plaintiffs allege that money paid out of the state treasury pursuant to these enacted budgets was unconstitutional, there are no facts in the original or supplemental complaint about anything allegedly done by the defendants beyond the enacting of the budgets. Therefore, any claim in the complaints alleging a violation of article VII, section 7 should be dismissed.

Article III, section 10 of the New York State Constitution states that

[e]ach house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall

be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

See N.Y. Const. art. III, §10. Article III, section 16 of the New York State Constitution states that “[n]o act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act. See N.Y. Const. art. III, §16. Plaintiffs offer no facts to support a claim that defendants violated either of these constitutional provisions. To the extent that plaintiffs allege that the Assembly and/or Senate failed to follow their own internal rules, violations of such rules are not reviewable by the court. Urban Justice Ctr. v. Pataki, 38 A.D.3d 20, 27 (1st Dept 2006), lv. denied 8 N.Y.3d 958 (2007). Any attempt by plaintiffs to cloak these claims as constitutional violations must be seen as such, and plaintiffs’ claims under sections of article III should be dismissed.

Section 31 of the Legislative Law provides that that the “governor and the heads of departments, divisions and offices” may voluntarily be heard by the committees of the Legislature, and that the committees of the Legislature may request that “the head of any department, division or office, other than the governor,” appear before it to “answer relevant inquiries in respect to the budget.” See N.Y. Leg. Law §31. Since the plaintiffs are not the governor, the head of a department, division or office, or a member of a Legislative committee, they have no standing to challenge any alleged violation of this statute. Furthermore, there is no allegation in the complaints, or proof in the record, that the governor or any head of departments, divisions and offices was precluded from appearing before Legislative committees to be heard, or refused to appear pursuant to a committee’s request.

Finally, section 54-a of the Legislative Law requires that the Senate and Assembly have a procedure for establishing joint budget conference committees, and set a schedule to consider and act upon the Governor's proposed budget. See N.Y. Leg. Law §54-a. As demonstrated by the exhibits annexed to the July 28, 2015 affirmation of Adrienne J. Kerwin, the Legislature did, in fact, establish joint budget committees for consideration of the Governor's proposed Legislative and Judiciary budgets – the only budgets at issue in this case -- for 2014-15 and 2015-16, see July 28, 2105 Kerwin aff. at Exhs. M, N, P, Q, the committees held hearings, see id. at Exhs. O, R, and the houses voted on both budgets. See id. at Exhs. H, L. Additionally, in both 2014 and 2015 the General Conference Committee on the Reconciliation of Budgetary Variations was established by Joint Certificates, see October 23, 2015 Kerwin affirmation at Exh. B, and the Legislature promulgated schedules for the issuance of Joint Committee Reports. See id. at Exh. A. Therefore, to the extent that the complaints in this action are read to state a claim under Legislative Law §54-a, such claim should be dismissed.

Based on defendants' moving papers, and those submitted on behalf of the defendants here, defendants' motions to dismiss and for summary judgment should be granted, and plaintiffs' motion for summary judgment should be denied.

CONCLUSION

For the reasons discussed above and in defendants' moving papers, the court should issue an order (1) dismissing the supplemental complaint its entirety with prejudice; (2) granting defendants' motion for summary judgment on plaintiffs' Fourth Cause of Action and (3) denying plaintiffs' cross-motion in its entirety.

Dated: Albany, New York
October 23, 2015

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