

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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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,

*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 SILVER, 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.*

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**AFFIRMATION**

Index No. 1788-14

October 30, 2015

Adrienne J. Kerwin, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Dean Skelos, Sheldon Silver, Eric T. Schneiderman and Thomas DiNapoli in the above-captioned action.

2. I submit this affirmation in reply to plaintiffs' opposition to defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(1), (a)(2) and (a)(7), and

for summary judgment on plaintiffs' fourth cause of action pursuant to CPLR 3212; and (2) in opposition to plaintiffs' cross-motion for summary judgment and for sanctions.

3. Notwithstanding attempts to decipher any legal argument, in plaintiffs' defamatory, rambling submissions, defendants have failed to locate (1) any admissible relevant evidence or (2) any reasoned argument sufficient to defeat defendants' pending motions or support plaintiffs' cross-motion for summary judgment.

4. As a result, defendants incorporate herein the July 28, 2015, affirmation of Adrienne J. Kerwin with exhibits and defendants' moving memorandum of law as if fully repeated here.

5. Focusing on only the causes of action alleged in the complaint and supplemental complaint, the legal issues are straightforward and, as to plaintiffs' First, Second, Third, Fifth, Sixth and Seventh Causes of Action, already decided. See July 28, 2015, Kerwin aff. at Exh. B.

6. As a result, defendants rely on their submissions in support of their motions to dismiss and for summary judgment, as well as in opposition to plaintiffs' motion for summary judgment, as they fully, completely and accurately address all relevant factual and legal issues relating to the merits of this case.

7. Defendants also rely on their previous submissions in opposition to plaintiffs' prior cross-motion for various forms of relief in opposition to that same relief sought by plaintiffs' present cross-motion. Specifically, plaintiffs contend that (1) the Attorney General has a conflict of interest, and therefore cannot defend this action, because he does not agree with plaintiffs' allegations and (2) they are entitled to the representation of the Attorney General in this case pursuant to Executive Law §63.1, or some kind of order "compelling the Attorney

General to identify who is evaluating ‘the interest of the state’ and their entitlement to his intervention/representation pursuant to Executive Law §63.1 and State Finance Law article 7-A.” See Plaintiffs’ September 22, 2015, memorandum of law at p. 45-48.

8. To the extent that the complaint or supplemental complaint are read to include claims of 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, defendants are entitled to judgment on these claims for the reasons discussed in the accompanying memorandum of law. Annexed hereto at **Exhibit A** are copies of the publicly available Joint Legislative Budget Schedules for 2014 and 2015 issued in compliance with Legislative Law 54-a. Annexed hereto at **Exhibit B** are the 2014 and 2015 Joint Certificates establishing the General Conference Committee on the Reconciliation of Budgetary Variations and governing the process.

9. As previously argued, there is no law to support plaintiffs’ claims that the Attorney General has a conflict of interest or has any duty to inform the plaintiff of the Attorney General’s statutorily granted decision making relating to how to carry out his duties under the Executive Law. Accordingly, plaintiffs’ motion for an order disqualifying the Attorney General and documenting how the Attorney General evaluates and represents the “interests of the state” must be denied.

10. As defendants previously stated in opposing plaintiffs’ last motion for sanctions, plaintiffs’ application for sanctions is based on their apparent objection to defense counsel’s writing style and method of advocacy, and a complete misunderstanding of the law, litigation and the power of the court.



11. The basis for plaintiffs' allegations again seeking criminal, monetary and professional sanctions against defense counsel and her alleged "collusive" and "complicitous" supervisors, see Plaintiffs' September 22, 2015 Memorandum of Law at pp. 49-50, is the fact that defense counsel is representing her clients and does not agree with plaintiffs' misguided view of reality. While plaintiffs may not agree with defendants' legal positions, all of defendants' arguments are both legally sound and undeniably appropriate responses to the allegations contained in the complaint and supplemental complaint submitted by plaintiffs.

12. Since plaintiffs have failed to show any basis, whatsoever, for the imposition of sanctions, plaintiffs' motion for such relief should be denied. Additionally, plaintiffs continue to publicly malign and defame defense counsel and her supervisors professionally and personally through their submissions to the court, and repeatedly criticize and belittle this court's prior rulings. It is the position of the defendants that such malicious, insulting and offensive conduct by the plaintiffs should not be rewarded.

WHEREFORE, the defendants respectfully request that the court 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; (3) denying plaintiffs' cross-motion in its entirety; and (4) granting defendants any further relief that the court deems just, proper and equitable.

Dated: Albany, New York  
October 23, 2015



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Adrienne J. Kerwin

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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AFFIRMATION OF ADRIENNE J. KERWIN

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