

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

----- X
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.

**VERIFIED
SUPPLEMENTAL COMPLAINT**

Index #1788-2014

JURY TRIAL DEMANDED

-----X
Plaintiffs, as and for their Verified Supplemental Complaint, respectfully set forth and allege:

127. By this citizen-taxpayer action pursuant to State Finance Law §123, *et seq.* [Article 7-A], plaintiffs additionally seek declaratory judgment as to the unconstitutionality and unlawfulness of the Governor's Budget Bill #S.2001/A.3001. The expenditures of such Budget Bill – embodying the Legislature's proposed budget for fiscal year 2015-2016, the Judiciary's proposed budget for fiscal year 2015-2016, and millions of dollars in uncertified and nonconforming reappropriations – are unconstitutional and unlawful disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

128. Plaintiffs repeat, reallege, and reiterate the entirety of their March 28, 2014 verified complaint, which they incorporate by reference.

129. Virtually all the constitutional, statutory, and rule violations detailed by the verified complaint pertaining to the Governor’s Budget Bill #S.6351/A.8551 and the Legislature’s and Judiciary’s proposed budgets for fiscal year 2014-2015 are replicated by the Governor’s Budget Bill #S.2001/A.3001 and the Legislature’s and Judiciary’s proposed budgets for 2015-2016. It is, as the expression goes, “déjà vu all over again”.

130. For the convenience of the Court, a Table of Contents follows:

TABLE OF CONTENTS

FACTUAL ALLEGATIONS 3

The Legislature’s Proposed Budget for Fiscal Year 2015-2016..... 3

The Judiciary’s Proposed Budget for Fiscal Year 2015-2016.....4

The Governor’s Budget Bill #S.2001/A.3001 6

The Legislature’s Joint Budget Hearings Pursuant to Legislative Law §32-a 7

The Legislature’s Joint Budget Conference Committee “Process”..... 17

CAUSES OF ACTION..... 19

AS AND FOR A FIFTH CAUSE OF ACTION..... 19

The Legislature’s Proposed Budget for Fiscal Year 2015-2016,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

AS AND FOR A SIXTH CAUSE OF ACTION..... 22

The Judiciary’s Proposed Budget for 2015-2016,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

AS AND FOR A SEVENTH CAUSE OF ACTION..... 28

Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
“Without Revision”

✓ AS AND FOR A EIGHTH CAUSE OF ACTION..... 30

Nothing Lawful or Constitutional Can Emerge From a Legislative Process
that Violates its Own Statutory & Rule Safeguards

PRAYER FOR RELIEF.....39

202. Plaintiffs have filed a notice of appeal from the October 9, 2014 decision. Their accompanying pre-calendar statement highlights the state of the record on which plaintiffs rely in further support of this seventh cause of action and their entitlement to summary judgment thereon (Exhibit 11-a).

✓ **AS AND FOR A EIGHTH CAUSE OF ACTION**

**Nothing Lawful or Constitutional Can Emerge From a Legislative Process
that Violates its Own Statutory & Rule Safeguards**

203. Plaintiffs repeat, reiterate, and reallege ¶¶1-202, with the same force and effect as if more fully set forth herein.

204. Defendant SENATE and ASSEMBLY's violations of statutory and rule safeguards with respect to Budget Bill #S.2001/A.3001 replicate their violations last year with respect to Budget Bill #S.6351/A.8551 – the subject of the fourth cause of action of plaintiffs' verified complaint (¶¶113-126).

205. This eighth cause of action, therefore, replicates the fourth cause of action so as to apply it to Budget Bill #S.2001/A.3001.

206. As to plaintiffs' fourth cause of action, the October 9, 2014 decision held:

“Plaintiffs’ complaint adequately sets forth a viable cause of action alleging, *inter alia*, that defendants violated Legislative Law §32-a regarding public hearings for New York’s Budget. Defendants argue that the cause of action should be dismissed because plaintiffs lack standing to challenge internal legislative rules. The Court has not been persuaded that Legislative Law §32-a constitutes an internal legislative rule. Additionally defendants’ submissions did not include any documentary evidence establishing a defense to said cause of action. Accordingly, defendants’ motion to dismiss must be denied as to plaintiffs’ fourth cause of action.” (Exhibit 11-b, at p. 7)

207. Plainly, Legislative Law §32-a is not an “internal legislative rule”, but a statute – a fact pointed out by plaintiffs’ May 16, 2014 memorandum of law (at p. 13). No persuasion can change its mandatory directive to be other than it is, statutory.

208. Nor does the fourth cause of action “challenge internal legislative rules”. Rather, it seeks to prevent violation of legislative rules that are designed to ensure legitimate legislative process and safeguard public monies.

209. Defendants SENATE and ASSEMBLY, being constitutionally enabled to make their own rules, are not free to violate the rules they have made. No caselaw holds they can and plaintiffs’ May 16, 2014 memorandum of law not only stated this (at p. 21), but quoted the Appellate Division, Third Department in *Seymour v. Cuomo*, 180 A.D.2d 215, 217 (1992):

“The rules established by the Senate and Assembly to govern the proceedings in each house (NY Const, art 3, §9) are the functional equivalent of a statute.”

210. Senate Rule VII, §6 could not be more explicit that Article VII budget bills are to be deemed “for all legislative purposes, a legislative bill”:

“When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill and upon receipt thereof by the Senate it shall be endorsed ‘Budget Bill’ and be given a number by the Secretary and shall be referred to the Finance Committee and be printed. ...” (underlining added)

211. Likewise, Assembly Rule III, §2(g):

“When a bill is submitted or proposed by the Governor by authority of Article VII of the Constitution, it shall become, for all legislative purposes, a legislative bill, and upon receipt thereof by the Assembly it shall be endorsed ‘Budget Bill’ and be given a number by the Index Clerk, and shall be referred to the Committee on Ways and Means and be printed. ...” (underlining added).

212. Nevertheless, and despite the requirements of fiscal notes, fiscal impact statements, and introducer's memoranda, mandated by Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – which, to no avail, plaintiffs repeatedly pointed out to defendants last year with respect to Budget Bill #S.6351/A.8551, culminating in their citizen-taxpayer action – defendants have willfully and deliberately violated same with respect to Budget Bill #S.2001/A.3001.

213. The information that fiscal notes, fiscal impact statements, and introducer's memoranda would necessarily have provided for Budget Bill #S.6351/A.8551 – and now for #S.2001/A.3001 – includes:

- (a) the cumulative dollar amount of the bill in its entirety;
- (b) the cumulative dollar amount of the legislative portion, inclusive of “General State Charges” and re-appropriations;
- (c) the cumulative dollar amount of the judiciary portion, inclusive of “General State Charges” and reappropriations;
- (d) the percentage increase of each cumulative dollar amount over the dollar amounts in last year's corresponding Budget Bill #S.6351/A.8551.

214. Defendants' violations of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) are compounded by the fact that Budget Bill #S.2001/A.3001, identically to Budget Bill #S.6351/A.8551, contains NO cumulative dollar amount for the bill and for its separate legislative and judiciary portions.

215. Defendant Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee did not respond to Plaintiff SASSOWER's February 23, 2015 letter expressly requesting such information about Budget Bill #S.2001/A.3001 – and there is no justification for their not furnishing what would be readily and publicly available had they complied with the mandate of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III,

§1(f) and §2(a) of fiscal notes, fiscal impact statements, and introducer's memoranda, which was their duty to do.

216. As stated by ¶118 of plaintiffs' fourth cause of action with respect to last year's violations of Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) and §2(a) – and equally true with respect to this year's identical violations:

“...defendant SENATE and ASSEMBLY have demonstrated their utter unconcern in imposing upon taxpayers the expense of two budgets – the Judiciary and Legislative budgets – whose dollar amount they do not know or will not reveal. Such is utterly unconstitutional.”

217. Upon information and belief, the reason the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee made no “effort” to allow plaintiff SASSOWER to testify in opposition to the Legislature's proposed budget, the Judiciary's proposed budget, and Budget Bill #S.2001/A.3001 – in violation of Legislative Law 32-a – was to prevent the public from hearing the dispositive grounds upon which each is unconstitutional, unlawful, and fraudulent – not the least reason being their concealment of relevant dollar costs, both cumulative and by itemizations defying meaningful review.

218. Plaintiff SASSOWER's February 23, 2015 letter to the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee is true and correct in its analysis that these two committees have effectively subverted Legislative Law §32-a by combining the public hearings on the budget required by Legislative Law 32-a with the very different budget hearings of Article VII, §3 of the New York State Constitution and Legislative Law §31 for the testimony of the Governor, Executive branch agency heads, and the like. As stated,

“Your combined budget hearings – which you organize by ‘programmatic areas’ – are filled with testimony from officials and recipients of budgetary appropriations. The public's testimony is shoved to the end – or, if dispositive of the unlawfulness and

unconstitutionality of the budget, shut out entirely on the pretext that the hearing is full.

Exacerbating this subversion of Legislative Law §32-a is your failure to hold the public budget hearings ‘regionally’, as the statute contemplates, and your assigning the Judiciary’s budget to the ‘programmatic area’ of ‘public protection’, as if the Judiciary were an Executive branch agency. Apparently you are now also assigning the Legislature’s budget to that same Executive branch ‘programmatic area’ – at least for purposes of denying my request to testify in opposition to it.” (Exhibit 8, underlining in the original).

219. In fact, the Chairs and Ranking Members of the Senate Finance Committee and Assembly Ways and Means Committee never intended to examine the Legislature’s budget for fiscal year 2015-2016 at the February 26, 2015 budget hearing on “public protection”, did not examine it at that budget hearing, and, in violation of Legislative Law §32-a, held no hearing at which plaintiff SASSOWER or any other member of the public could be heard with respect to the Legislature’s budget for fiscal year 2015-2016.

220. Underlying this violation of Legislative Law §32-a with respect to holding a hearing on the Legislature’s budget – and the budget bill encompassing it – is the Legislature’s direct conflict of interest in exposing the constitutional, statutory, and rule violations with respect to its own budget, creating a “slush fund” from which leadership, including its appointed committee chairs and ranking members, monopolize power at the expense of rank-and-file members and functioning committees.

221. The non-function and dysfunction of defendant SENATE and ASSEMBLY committees – and of defendant SENATE and ASSEMBLY as a whole – described and documented by plaintiffs’ verified complaint – is manifested, now again, in this budget cycle.

222. Upon the conclusion of the February 26, 2015 “public protection” budget hearing, the course of Budget Bill #S.2001/A.3001 should have followed the procedures for committee action,

including as to hearings and public forums, set forth by Senate Rule VIII, §§3, 4, 5 and Assembly Rule IV, §§2, 4, 6, which mandate open meetings, recorded votes, committee reports.

223. Likewise, Budget Bill #S.2001/A.3001 should have been amended so that, *inter alia*, the Judiciary's budget would be actually limited to the 2% increase misleadingly represented by Chief Administrative Judge Prudenti at the February 26, 2015 "public protection" budget hearing and as to which defendant CUOMO had stated in his "Commentary":

"For the past four years my Administration and the Legislature have kept spending increases below 2 percent...

I believe, and based on conversations with the Office of Court Administration and its leadership the Judiciary believes, that it can...not breach the 2 percent spending cap to which my Administration and the Legislature have adhered. To that end, I have been assured by the Judiciary that it will work closely with my Administration to find the additional savings that will allow it to fulfil its mission, achieve its goals and still stay within that cap. I urge the Judiciary to continue its discussions with my Administration and the Legislature and thank them for their cooperation." (Exhibit 5-a).

224. The procedures for such amendment are set forth, *inter alia*, by Senate Rule VII, §4(b); and Assembly Rule III, §§1(f) and 6.

225. Based on last year's amending of Budget Bill #S.6351/A.8551 on March 28, 2014, this year's Budget Bill #S.2001/A.3001 may yet be amended the same way: completely anonymously and without compliance with such safeguarding procedural requirements as underscoring new matter and bracketing all matter eliminated; indicating the proposed changes on "detail sheets", including with "page and line numbers"; and furnishing an amended "introducer's memorandum".

226. The result, last year, was to conceal that notwithstanding defendant CUOMO's "Commentary" that the Judiciary's budget increase of 2.7% over the previous year needed to be brought down to 2%, the judiciary portion of Budget Bill #S.6351/A.8551 was not reduced. Rather, last year's amendment to Budget Bill #S.6351/A.8551 was exclusively to reappropriations in the

legislative portion – with approximately 70 reappropriations increased, decreased, or, in at least two instances, added.

227. Such amendment, made without indication of its sponsor and the reason therefor, involved millions of dollars – and further reflected that the inclusion of legislative reappropriations in Budget Bill #S.6351/A.8551 was without their having been certified, either as to their dollar amounts or as to their suitability as reappropriations – the situation replicated with Budget Bill #S.2001/S.3001.

228. Identically to last year, defendants SENATE and ASSEMBLY dispensed with any committee deliberation and vote on Budget Bill #S.2001/A.3001, in favor of resolutions commencing the Joint Budget Conference “process”. With words identical to those in last year’s Senate Resolution #4036, this year’s Senate Resolution #950 states:

“WHEREAS, It is the intent of the Legislature to engage in the Budget Conference Committee process, which promotes increased participation by the members of the Legislature and the public”

229. Senate Resolution #950 was introduced and adopted on the same day, March 12, 2015, notwithstanding Senate Rule VII, §9. Assembly Resolution #203 was introduced on March 9, 2015 and adopted on March 12, 2105.

230. Identically to last year, and notwithstanding defendants’ rhetorical support of “Sunshine Week” – including in Assembly Resolution #203 itself: “WHEREAS, Transparency and sunlight are important to public confidence in the integrity of government” – the public has been shut out from observing any “process” with respect to the Joint Budget Conference Committee – and its subcommittees – as, for instance, deliberations and votes.

231. Upon information and belief, defendants SENATE and ASSEMBLY have perverted the intent behind Legislative Law §54-a. This statute is entitled “Scheduling of legislative consideration of budget bills” and its §1 provides for:

“establishing a joint budget conference committee or joint budget conference committees within ten days following the submission of the budget by the governor pursuant to article seven of the constitution, to consider and reconcile such budget resolution or budget bills as may be passed by each house...”

232. Obviously, the requirement of establishing one or more joint budget committees “within ten days following the submission of the budget by the governor” is so that they can promptly become operational and do what conference committees are supposed to do: reconcile different versions of bills passed by the two legislative houses.

233. However, because none of the Senate or Assembly committees are deliberating upon, amending, and voting out of committee any of defendant CUOMO’s budget bills – which, consequently, are not being brought before defendant SENATE and ASSEMBLY for deliberation, amendment, and votes – the Joint Budget Conference Committee has become part of the legislative window-dressing for non-existent process.

234. Upon information and belief, the reports that the Joint Budget Conference Committee were required to render, pursuant Legislative Law§54-a, 2(d) and Senate and Assembly Joint Rule III, §2, are perfunctory and superficial with respect to the Governor’s combined legislative/judiciary budget bills. Both this year and last year, these last-minute reports, to the extent they exist, have not met the schedule promulgated pursuant to Legislative Law §54-a, 2(d) and Senate and Assembly Joint Rule III, §2.

235. Of course, identically to last year, the “real action” is taking place behind closed doors by “three men in a room” deal-making by defendant CUOMO, defendant SKELOS, and defendant HEASTIE – expanded to a fourth man by inclusion of defendant KLEIN.

236. Plaintiffs repeat the last paragraph of their verified complaint, ¶126, altering it only to substitute defendant HEASTIE’s name for defendant SILVER:

“...one need only examine the Constitutional, statutory, and Senate and Assembly rule provisions relating to openness – such as Article III, §10 of New York’s Constitution ‘...The doors of each house shall be kept open...’ ; Public Officers Law, Article VI ‘The legislature therefore declares that government is the public’s business...’; Senate Rule XI, §1 ‘The doors of the Senate shall be kept open’; Assembly Rule II, §1 ‘A daily stenographic record of the proceedings of the House shall be made and copies thereof shall be available to the public’ – to see that government by behind-closed-doors deal-making, such as employed by defendants CUOMO, SKELOS, HEASTIE, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that a citizen-taxpayer action could successfully be brought against the whole of the Executive budget.”