

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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,

AFFIRMATION

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 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.

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, Temporary President of the New York State Senate, New York State Assembly Speaker, Eric T. Schneiderman and Thomas DiNapoli in the above-captioned action.

2. This action was commenced by the filing of a Summons and Complaint, by plaintiffs Center for Judicial Accountability, Inc. (“CJA”) and Elena Ruth Sassower, on or about March 28, 2014. A copy of the original summons and complaint (without exhibits) is annexed hereto at **Exhibit A**.

3. In the Complaint, plaintiffs challenge the negotiation of the 2014-2015 Legislative and Judiciary budgets. See id.

4. A motion to dismiss made on behalf of defendants Governor Andrew M. Cuomo, Dean Skelos, the New York State Senate, Sheldon Silver, the New York State Assembly, Attorney General Eric T. Schneiderman and Comptroller Thomas DiNapoli was granted in part, and denied in part, by a decision and order of the court dated October 9, 2014. A copy of the October 9, 2014 decision and order is annexed hereto at **Exhibit B**.

5. The court’s decision and order (1) dismissed all claims against Attorney General Schneiderman and Comptroller DiNapoli, and (2) dismissed plaintiff’s First, Second and Third Causes of Action as failing to state a claim. See id.

6. Defendants Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, the New York State Senate and the New York State Assembly answered the complaint on or about November 6, 2014. A copy of the November 6, 2014 answer is annexed hereto at **Exhibit C**.

7. On or about March 31, 2015, plaintiffs sought leave to supplement their complaint. Leave was granted by decision and order dated June 24, 2015, and a supplemental complaint was served. A copy of the June 24, 2015 decision and order is annexed hereto at

Exhibit D. Annexed hereto at **Exhibit E** is a copy of the first supplemental complaint (without exhibits).

8. Defendants simultaneously moved to dismiss Causes of Action Five, Six, Seven and Eight contained in supplemental complaint pursuant to CPLR 3211, and for summary judgment on plaintiff's Fourth Cause of Action contained in the original complaint. Those motions remain pending.

9. I submit this affirmation in response to plaintiffs' order to show cause dated March 23, 2016 seeking an order

(1) pursuant to CPLR 3025(b), granting leave to plaintiffs to supplement their March 28, 2014 verified complaint (pertaining to fiscal year 201-2015) and their March 31, 2015 verified supplemental complaint (pertaining to fiscal year 2015-2016) by their March 23, 2016 verified second supplemental complaint (pertaining to fiscal year 2015-2016) by their March 23, 2016 verified second supplemental complaint (pertaining to fiscal year 2016-2017);

(2) enjoining defendants from enacting Legislative/Judiciary Budget Bill #S.6401/A.9001 and/or disbursing monies pursuant thereto; or, alternatively, (i) as to the legislative portion, enjoining enactment of its 1 appropriations and 4 reappropriations (pp. 1-9; 25-48) and disbursement of monies therefrom; and (ii) as to the judiciary portion, enjoining enactment of its 3 reappropriations (pp. 22-24) and disbursement of monies therefrom, particularly for purposes of funding the "force of law" judiciary salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation for fiscal year 2016-2017;

(3) enjoining defendants from enacting any bill appropriating monies to fund the "force of law" judicial salary increases recommended by the December 24, 2015 Report of the Commission on Legislative, Judicial and Executive Compensation – or otherwise disbursing monies for such purpose;

(4) enjoining defendants Senate and Assembly's General Budget Conference Committee and its subcommittees from proceeding further in resolving differences between eight of their respective budget bills:

- (i) State Operations: Budget Bill #S.6400-B/A.9000-B;
- (ii) Aid to Localities: Budget Bill #S.6403-B/A.9003-B;
- (iii) Capitol Projects: Budget Bill #S.6404-B/A.9004-B;
- (iv) Public Protection and General Government: Budget Bill #S.64-5-B/A.9005-B;
- (v) Education, Labor and Family Assistance: Budget Bill #S.6406-B/A.9006-B;
- (vi) Health and Mental Hygiene: Budget Bill #S.6407-B/A.9007-B;
- (vii) Transportation, Economic Development & Environmental Conservation: Budget Bill #S.6408-B/A.9008-B; and
- (viii) Revenue: Budget Bill #S.6409-B/A.9009-B,

absent a showing of how the amendments giving rise to the differences could have been passed on dates the Legislature was not in session (March 11/12, 2016), who introduced the amendments, where they were introduced, and the debate and voices thereon, if any;

(5) enjoining Governor Cuomo, Temporary Senate President Flanagan, and Assembly Speaker Heastie from engaging in their behind-closed doors, three-men-in-a-room budget dealing-making with respect to Judiciary/Legislative Budget Bill #S.6401/A.9001 and the whole of the Executive Budget; or, alternatively, requiring that such budget negotiations be publicly conducted . . .

See Plaintiffs' Emergency Order to Show Cause.

10. First, plaintiff's application for leave to file and serve a second supplemental complaint should be denied. A copy of plaintiffs' proposed second supplemental complaint was submitted with plaintiffs' order to show cause and is incorporated herein by reference.

11. Plaintiffs' proposed Ninth, Tenth and Eleventh Causes of Action would be dismissed, just as Plaintiffs' First, Second and Third Causes of Action were, and therefore plaintiffs' application to supplement the complaint with these claims should be denied as futile.

12. Permitting plaintiffs to add their proposed Twelfth Cause of Action would also be futile because Legislative Law 32-a was not violated in 2016 as alleged by the plaintiffs. A copy of the press release and schedule of the 2016-17 budget hearings is annexed hereto at **Exhibit F**.

A copy of the agenda for the February 4, 2016 Public Protection hearing is annexed hereto at **Exhibit G**. A copy of the transcript from the February 4, 2016 Public Protection hearing is annexed hereto at **Exhibit H**.

13. Second, plaintiffs' application for preliminary injunctive relief should be denied in its entirety.

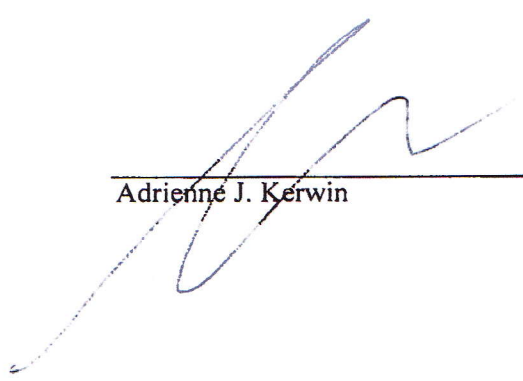
14. In support of their order to show cause, the plaintiffs submitted only their proposed second supplemental complaint with thirty exhibits, and a twelve paragraph affidavit of plaintiff Elena Ruth Sassower with two exhibits. The exhibits attached to plaintiff Sassower's affidavit are (1) an email between plaintiff Sassower and me relating to the second supplemental complaint and (2) this court's June 24, 2015 and October 9, 2014 decisions.

15. Plaintiffs have entirely failed to submit any evidence to support a finding that they are likely to succeed on the merits of any of the allegations contained in the proposed second supplemental complaint, or that they will be irreparably harmed if the preliminary injunctive relief sought is not granted.

16. Additionally, to the extent that plaintiffs seek to enjoin the defendants and/or committees/subcommittees of the Legislature from "proceeding on" or "enacting" any bill, such relief is unavailable as moot since the 2016-17 budget has been enacted.

WHEREFORE, the defendants respectfully request that the court issue an order denying plaintiffs' order to show cause in its entirety, and granting the defendants any further relief that the court deems just, proper and equitable.

Dated: Albany, New York
April 8, 2016



Adrienne J. Kerwin