

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

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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,

Index #1788-14

Plaintiffs,

**Affidavit in Opposition to  
Defendants' Dismissal/Summary  
Judgment Motion & in Support  
of Plaintiffs' Cross-Motion**

-against-

**Oral Argument Requested**

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.

-----X  
STATE OF NEW YORK                    )  
WESTCHESTER COUNTY                ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for a declaratory judgment, and am fully familiar with all the facts, papers, and proceedings heretofore had.

2. I submit this affidavit in opposition to AAG Kerwin's July 28, 2015 dismissal/summary judgment motion and in support of plaintiffs' September 22, 2015 cross-motion for summary judgment and other relief.

3. I have written plaintiffs' accompanying memorandum of law, which I incorporate by reference, swearing to its truth. Annexed are further pertinent facts and relevant exhibits.

4. **With respect to AAG Kerwin's verified answer to plaintiffs' verified complaint:**

To facilitate the Court's evaluation of AAG Kerwin's verified answer – whose sham, deceitful nature is set forth at pages 7-8, 39-40 of plaintiffs' accompanying memorandum of law – annexed is a “marked pleading”, placing her answers besides the paragraphs to which they respond (Exhibit 12)<sup>1</sup>.

5. **With respect to plaintiffs' fourth and eighth causes of action (¶¶113-126; ¶¶203-236) – “Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards”:**

a. Plaintiffs are now able to documentarily substantiate defendant Senate and Assembly's violations of Legislative Law §54-a(2)(d) and Senate and Assembly Joint Rule III, §2 with respect to the reports that the Joint Budget Conference Committees for fiscal years 2014-2015 and 2015-2016 were required to render. This is the subject of ¶234, stated “upon information and belief”. Annexed hereto are pages 10-11 of defendant Comptroller DiNapoli's April 2015 Report on the State Fiscal Year 2015-16 Enacted Budget (Exhibit 13). Under the heading “Transparency and Accountability”, it identifies, with respect to the “Joint Budget Conference subcommittee process” that “final reports were never delivered”<sup>2</sup>. It would appear that no final reports, or any reports, were ever rendered by

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<sup>1</sup> This continues the sequence of exhibits begun by plaintiffs' verified supplemental complaint, which annexed Exhibits 1-11.

<sup>2</sup> Such section of the Comptroller's Report seems to reflect a further statutory violation, this pertaining to lump-sum appropriations. The pertinent text is as follows:

“Extensive use of lump-sum appropriations for Executive and Legislative initiatives. There appears to be an increase in both the amount of lump sum appropriations and in the scope for which they are used to fund yet-to-be-determined projects.

the Joint Budget Conference Committee or its subcommittee on “public protection”— and not just for fiscal year 2015-2016, but fiscal years 2014-2015 and 2013-2014, as may be seen from the response of the Assembly Records Access Officer to plaintiffs’ April 7-April 8, 2015 records request (Exhibit 14-a, 14-b, 14-c) and both her response and that of the Secretary of the Senate to plaintiffs’ March 28, 2013 records request (Exhibit 15-a, 15-b, 15-c).

b. Plaintiffs are now able to documentarily substantiate defendant Senate and Assembly’s violation of legislative rules governing amendments, Senate Rule VII, §4(b) and Assembly Rule III, §1(f) and §6, -- and that the amending of Legislative/Judiciary Budget Bill #.S.2001/A.3001 for fiscal year 2015-2016 was identical to the amending of Legislative/Judiciary Budget Bill #S.6351/A.8551 for fiscal year 2014-2015 in that it was done, at the 11th hour, “completely anonymously and without compliance with such safeguarding procedural requirements as

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In an effort to improve transparency and accountability in the State’s spending, the Budget Reform Act of 2007 prohibited the use of lump-sum appropriations by the Legislature.<sup>fn2</sup> Because the 2007 reforms are statutory, the use of ‘notwithstanding’ provisions overrides such restrictions. In addition, because the 2007 statutory prohibition does not apply to appropriations advanced by the Executive, a loophole exists since final Enacted Budgets in recent years have been Executive resubmissions to the Legislature made in the final days and hours of budget negotiations.<sup>fn3</sup> As a result, this prohibition does not apply to most of the Enacted Budget. Recent years’ Enacted Budgets have used notwithstanding provisions to include lump-sum appropriations for allocation in accordance with a plan approved by the Director of the Budget and one legislative leader, and approved by roll call of one house of the Legislature.” (underlining added)

The indicated footnote 2 states:

“The Act defined a lump-sum appropriation as ‘an item of appropriation with a single related object or purpose, the purpose of which is to fund more than one grantee by a means other than a statutorily prescribed formula, a competitive process, or an allocation pursuant to subdivision five of section 24 of this chapter.’ Subdivision five relates to any appropriation added by the Legislature without designating a grantee. Such provision requires that such funds shall be allocated ‘only pursuant to a plan setting forth an itemized list of grantees with the amount to be received by each, or the methodology for allocating such appropriation. Such plan shall be subject to the approval of the chair of the senate finance committee, the chair of the assembly ways and means committee, and the director of the budget, and thereafter shall be included in a concurrent resolution calling for the expenditure of such monies, which resolution must be approved by a majority vote of all members elected to each house upon a roll call vote.’ (underlining added).

underscoring new matter and bracketing all matter eliminated; indicating the proposed changes on ‘detail sheets’, including with ‘page and line numbers’”, as set forth by ¶225.

First, AAG Kerwin’s Exhibits L and H, which she refers to as the “enacted budget bills” for these two fiscal years are, in fact, the amended bills – and the suffix –A appended to each, reflects this. Notwithstanding each bill contains the “EXPLANATION” at the bottom of the first page: “Matter in **italics** (underscored) is new; matter in brackets [-] is old law to be omitted”, consistent with Senate Rule VII, §4(b), there is nothing italicized, underscored, or bracketed that would permit ready identification of what the amendments to each bill consist of.

Second, the response of the Assembly Records Access Officer to plaintiffs’ April 8, 2015 records request pertaining to the amendment of Legislative/Judiciary Budget Bill #S.2001/A.3001 (Exhibits 16-a, 16-b) have not revealed any sheets identifying the changes; the basis upon which they were made, when they were introduced and by whom, their fiscal impact; the cumulative dollar total of the amended bill as compared with the unamended bill; any Senate or Assembly committee meetings at which the amendments were discussed and voted on; or any votes of the committee members with respect to the amendments (as opposed to the bill itself). Moreover, her production of an undated “Memorandum in Support of Legislation...submitted in accordance with Assembly Rule III, Sec 1(f)”, purportedly for A.3001-A – in other words, for the amended bill – is utterly sham, giving no indication how the amended bill differs from the original bill. It remains to be seen whether, if there is a comparable memo for the unamended A.3001, it is identical.

Third, as the only way to discern the amendments to each budget bill is by the time-consuming process of comparing, line-by-line, the amended budget bills with the original budget bills, annexed are my mark-ups of pages of the amended bills, annotated to denote the changes I found. (Exhibits 17, 18). My mark-up of Legislative/Judiciary Budget Bill #S.6351-A/A.8551-A

(Exhibit 17) substantiates ¶ 226 that no reduction was made to the Judiciary budget and that the only changes were “exclusively to reappropriations in the legislative portion – with approximately 70 reappropriations increased, decreased, or, in at least two instances, added.” It also substantiates ¶ 227 that:

“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.”

My mark-up of Legislative/Judiciary Bill #2001-A/S.3001-A (Exhibit 18) likewise reflects millions of dollars in changes to legislative reappropriations, approximately 80, mostly decreased, sometimes dramatically – clearly also evidencing that there was no certification of the original amounts, quite apart from their suitability as appropriations. However, it also reflects an approximate \$9 million cut in the Judiciary budget, seemingly taken from the allocation for “nonpersonal service” of courts of original jurisdiction. In the absence of any documentation, there is no indication as to the source of those cuts and how they were determined.

6. **With respect to plaintiffs’ fifth cause of action (¶¶169-178): “The Legislature’s Proposed Budget for Fiscal Year 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful”**: Perhaps to better conceal that the Legislature’s proposed budget for fiscal year 2015-2016 is missing “separately” submitted “General State Charges” – identically to its proposed budget for fiscal year 2014-2015 (¶136), AAG Kerwin’s motion annexes only one part of the Judiciary’s two-part proposed budget for fiscal year 2015-2016, as likewise for fiscal year 2014-2015: the part pertaining to operating expenses. These are her Exhibits J and F, respectively. Her motion does not furnish the second part pertaining to the Judiciary’s “General State Charges” for

either of these fiscal years. They are annexed hereto (Exhibits 19, 20), each with their transmittal letters identically reading:

“...the Judiciary is again submitting itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary. This presentation follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds.” (underlining added).

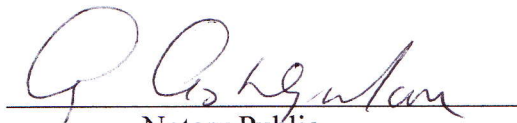
7. **With respect to plaintiffs’ sixth cause of action (¶¶179-193): “The Judiciary’s Proposed Budget for [Fiscal Year] 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful”:** Exhibits 19 and 20 also substantiate ¶140 that “no certification appeared to encompass [the Judiciary’s] ‘single-budget bill’” either for fiscal year 2015-2016 or fiscal year 2014-2015. This, because the last sentence of their transmittal letters identically states “The Judiciary will submit a single budget bill...” – suggesting the single budget bill was not part of the Judiciary’s separate budget for operating expenses and not encompassed by its certification. And clear from examination of each single budget bill is that the reappropriations it contains are not derived from either part of the Judiciary’s certified two-part budget presentation.

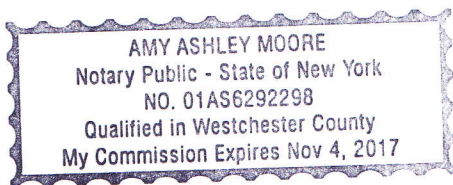
8. **With respect to AAG Kerwin’s fraud in connection with plaintiffs’ order to show cause with TRO, signed by the Court on June 16, 2014; Attorney General Schneiderman’s conflict of interest; and the fraudulence, unconstitutionality, and unlawfulness of the judicial salary raises, encompassed by plaintiffs’ sixth cause of action:** The most important documents I handed up in testifying at the Legislature’s February 6, 2013 “public protection” budget hearing in opposition to the Judiciary’s budget and the second phase of the judicial salary increase are plaintiffs’ October 27, 2011 Opposition Report to the Commission on Judicial Compensation’s August 29, 2011 Report and plaintiffs’ March 30, 2012 verified complaint in *CJA v. Cuomo I* based

thereon. A copy of those documents is herewith furnished, in a free-standing file folder, due to their volume. Chapter 567 of the Law of 2010, which established the Commission on Judicial Compensation, and Part E of Budget Bill S.4610-A/A.6721-A, which repealed it and established a Commission on Legislative, Judicial, and Executive Compensation are annexed (Exhibits 21-a, 21-b).

  
ELENA RUTH SASSOWER

Sworn to before me this  
22<sup>nd</sup> day of September 2015

  
Notary Public



## TABLE OF EXHIBITS

- Exhibit 12: “Marked Pleading” – AAG Kerwin’s verified answers to the allegations of plaintiffs’ verified complaint
- Exhibit 13: Comptroller DiNapoli’s April 2015 Report on the State Fiscal Year 2015-15 Enacted Budget, pp. 10-11, 52-53
- Exhibit 14-a: Plaintiffs’ April 7, 2015 records request to Secretary of Senate and Assembly Records Access Officer pertaining to Joint Budget Conference Committee, etc.
- 14-b: Plaintiffs’ April 8, 2015 record request to Secretary of Senate and Assembly Records Access Officer pertaining to Joint Budget Conference Committees
- 14-c: Assembly Record Access Officer’s April 14, 2015 letter
- Exhibit 15-a: Plaintiffs’ March 28, 2013 records request to Secretary of Senate and Assembly Records Access Officer pertaining to Joint Budget Conference Committee, etc.
- 15-b: Assembly Record Access Officer’s April 5, 2013 letter
- 15-c: Secretary of the Senate’s April 4, 2013 e-mail
- Exhibit 16-a: Plaintiffs’ April 8, 2015 records request to Secretary of Senate and Assembly Records Access Officer pertaining to amendments of Legislative/Judiciary Budget Bill #S.2001/A.3001
- 16-b: Assembly Record Access Officer’s April 14, 2015 letter, with enclosures
- Exhibit 17: Plaintiffs’ “mark up” of S.6351-A/A.8551-A, highlighting the amendments
- Exhibit 18: Plaintiffs’ “mark-up” of S.2001-A/A.3001-A, highlighting the amendments
- Exhibit 19: Judiciary’s budget for “General State Charges” for fiscal year 2014-2015
- Exhibit 20: Judiciary’s budget for “General State Charges” for fiscal year 2015-2016
- Exhibit 21-a: Chapter 567 of the Laws of 2010: Commission on Judicial Compensation
- 21-b: Part E of Budget Bill S.4610-A/A.6721-A: Commission on Legislative, Judicial and Executive Compensation



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**PLAINTIFF SASSOWER'S AFFIDAVIT**  
**in Opposition to Defendants' Dismissal/Summary Judgment Motion &**  
**in Support of Plaintiffs' Cross-Motion for Summary Judgment & Other Relief**

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ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually  
& as Director of the Center for Judicial Accountability, Inc.,  
and on behalf of the People of the State of New York &  
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