

**Plaintiffs' MARKED PLEADING –**  
**Assistant Attorney General Adrienne Kerwin's November 5, 2014 "Verified Answer"**  
**to Plaintiffs' March 28, 2014 Verified Complaint**

...

**AS AND FOR A FOURTH CAUSE OF ACTION**

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

113. Plaintiffs repeat, reiterate, and reallege ¶¶1-112, with the same force and effect as if more fully set forth herein.

**[AG #13: "As to the allegations contained in ¶113 of the complaint, repeat and restate all previous responses herein."]**

114. Even were defendant CUOMO's Budget Bill #S.6351/A.8551 and the proposed Legislative and Judiciary budgets not – as they are – fraudulent and fraught with constitutional violations and infirmities – the Legislature's wilful and deliberate violation of express statutory and rule provisions render them further unlawful and unconstitutional.

**[AG #5: "Deny the allegations"]**

115. In mandatory terms, Legislative Law §32-a states:

"The committees shall make every effort to hear all those who wish to present statements at such public hearings."

**[AG #7: "refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit."]**

116. As hereinabove demonstrated, the ONLY "effort" made by defendants SENATE and ASSEMBLY was in ignoring, without response, plaintiff SASSOWER's repeated phone calls and written requests to testify at public hearings in opposition – which they did with full knowledge that her testimony was not only serious and substantial, but dispositive.

**[AG #5: "Deny the allegations"]**

117. There is not the slightest excuse for what these defendants did in violating not only plaintiffs' right to be heard, but the public's right to hear the particularized facts and law that plaintiffs had, in abundance, with respect to the Judiciary and Legislative budgets – and with respect to the Commission to Investigate Public Corruption.

**[AG #5: "Deny the allegations"]**

118. Nor is there the slightest excuse for their wilful and deliberate violation of their own rules – as, for instance, Senate Rule VIII, §7, Senate Rule VII, §1, and Assembly Rule III, §1(f) pertaining to fiscal notes and introducer’s memoranda, whose purpose is to ensure that legislators – and the public – are alerted to relevant costs. Even beyond the concealed, unitemized third phase of the judicial salary increase, defendants 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.

**[AG #5: “Deny the allegations”]**

119. Indeed, apart from the absence of the mandatory fiscal notes and introducer’s memoranda, it would appear that such rules as Senate Rule VII, §4 “Title and body of bill” would, if complied with, have prevented Budget Bill #S.6351/A.8551 from funding the third phase of the judicial salary increase and superseding Judiciary Law Article 7-B, without identifying that fact.

**[AG #5: “Deny the allegations”]**

120. Defendants SENATE and ASSEMBLY have thrown aside all the substantive and procedural Senate and Assembly rules designed to ensure a legitimate legislative process in tossing Budget Bill #S.6351/A.8551 into Senate and Assembly resolutions to commence the Legislature’s joint budget conference “process” – even something as basic as committee votes, set forth in Senate Rule VIII, §5 as follows:

“No committee shall vote to report a bill or other matter unless a majority of all the members thereof vote in favor of such report. Each report of a committee upon a bill shall have the vote of each Senator attached thereto and such report and vote shall be available for public inspection. A member's vote on any matter before the committee shall be entered by the member on a signed official voting sheet delivered to the Committee Chair.”

**[AG #5: “Deny the allegations”]**

121. That these Senate and Assembly resolutions are wrapped in rhetoric to make it appear that there has been some deliberative process and participation only compounds the assault on the public’s rights. Thus, on March 12, 2013, on the Assembly floor, in introducing defendant SILVER’s Resolution #914, the Chair of the Assembly Ways and Means Committee stated:

“Today we will consider an assembly resolution in response to the state fiscal year 2014-15 Executive Budget. The Assembly budget is the product of deliberation among our members, with input from community groups, stakeholders, and, most importantly, the constituents we represent. Adoption of this resolution is necessary to allow us to move forward to the conference committee process....” (video, at 03:15 mins.).

**[AG #5: “Deny the allegations”]**

122. This fiction of deliberation, participation, transparency, and process infuses the language of Resolution #914:

“...WHEREAS, Upon submission [of the Governor’s Executive budget], pursuant to Joint Rule III, the Senate finance committee and the Assembly ways and means committee undertake an analysis and public review of all the provisions of such budget; and

WHEREAS, After study and deliberation, each committee makes recommendations in the form of bills and resolutions as to the contents thereof and such other items of appropriation deemed necessary and desirable for the operation of the government in the ensuing fiscal year; and

WHEREAS, All such fiscal committees’ recommendations, when arrived at, are then to be placed before the members of the Legislature, individually and collectively, in their respective houses for their consideration and approval; and

WHEREAS, Each house thereupon considers and adopts legislation in bill format expressing its positions on the budget for the ensuing fiscal year; and

WHEREAS, Upon adoption thereof, a Conference Committee on the Budget, authorized by concurrent resolution of the Senate and Assembly pursuant to Joint Rule III, and such subcommittees thereof as may be deemed necessary are appointed by the Speaker of the Assembly and the Temporary President of the Senate, respectively, will engage in negotiations designed to reach an accord on the contents of the budget for the ensuing fiscal year...” (underlining added).

**[AG #8: “Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein.”]**

123. Similarly, Senate Resolution #4036, introduced by defendant SKELOS (and Klein) on March 13, 2014:

“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; and

WHEREAS, The Senate Finance Committee has conducted an extensive study and review of the Governor’s 2014-2015 Executive Budget submission...” (underlining added).

**[AG #7: “refer the court to the law, document or exhibit cited as the best evidence of what is stated or contained therein, and deny the allegations to the extent that they are inconsistent with said law, document or exhibit.”]**

124. The comments on the Senate floor in the wee hours of March 14, 2014 more accurately stated where matters stood:

“...the hour is late. I wish this wasn’t 12:30 at night and that we had had more time than starting at 5:30 this afternoon to review this one-house resolution. There’s an amazing amount of unknown information, there’s an amazing number of lines in the document that are concerns or modifications with no dollar figures or no even language explanation of what we might guess is meant... But, I have to say the numbers don’t add up on my own colleagues’ charts.... And, in fact, I believe if we had budget bills, and, by the way, we don’t have budget bills to back up any of these 55 pages of often one-sentence description, if we had budget bills before us, maybe we could have a healthier debate about what’s being proposed, but, disturbingly, we don’t have those on our desks and disturbingly, I don’t even believe they’ve gone into the computers yet.... (Senate Finance Committee Ranking Member Liz Krueger, video, at 1:24:00 hours)

“I looked for bill S.6355-B, which is referenced here [in the resolution], but it doesn’t seem to exist as of the point that we are being asked to debate this resolution...

...That is simply not what this process is supposed to be about. This process is supposed to be about bringing just a little bit of sunlight, a little bit of public knowledge and straight-forwardness about where each of the entities that have to negotiate a budget are at this point in the process...That is a fundamental problem with this resolution....” (Senator Daniel Squadron, video, 1:31:00 hours)

“Where to begin? Well, let’s start with the fact that we started this debate at 12:19 am. I think that when we’re talking about this budget resolution we got to talk about the fact that there is a broken process that has led to a broken product. The first thing, we started, as again I said at 12:19 am and we have only had a couple of hours to look at an incredibly complicated resolution at this point in reference to a whole bunch of bills that might or might not exist. Our good friend, Senator DeFrancisco, earlier referred to a bill that might be written, might not be written, etc. That tells you plenty about how the process has been broken. The fact that anybody on this side of the aisle was not even, didn’t even have a real sense of what was going to be on it until a few hours ago, tells you how much the process is broken and the product itself is broken as well...

There is a no real details on mostly everything in this resolution and I’m sure when we get the bills, they will be detailed and then we can have an opportunity to really have a conversation, but again, no real opportunity for many of the folks in this body to even see the details, therefore be able to look at them, to discuss them. This is supposed to be a deliberative body. This process is supposed to be a better one, unfortunately, it is broken...

This process is broken, the product was broken. And I would implore our colleagues to, as we move forward in this that we look how we can actually have a discussion about how do we put a budget resolution together and a series of budget bills that actually address the concern of folks in this body and

don't exclude so much of the conversations that we are supposed to be having..." (Senator Gustavo Rivera, video at 1:48:00 hours)

"We're still looking for those bills that don't exist, apparently... We don't have budget bills, we have vague language in a 55 page resolution that we got way too recently. My colleagues say that this spending plan adds up, but it doesn't... ....There are so many things that are wrong here, or that are unknown here. There's a slew of items with no explanation, no amount of money...

At best this a shopping list with no badge of legitimacy. More realistically, it's a classic Albany scam designed to make everyone think they should be happy while not answering any of the important questions, like how am I going to pay for this... When a complex, but detail-free proposal comes out late in the day and you're told that you are going to come to the floor and vote on it late at night or 2 in the morning when the public and the press are asleep, you know you are being fed something fake and filled with poison pills.

Now the good news is just a one house gimmick, not the actual budget...

...I hope that when an actual set of budget bills come to the floor of this house in the next couple of weeks, we and the people of New York have an opportunity to review those budget bills, real bills with real numbers attached with adequate time to understand what's in them because that is not what has happened here tonight. (video, at 2:30:00 - 2:42:00 hours).

**[AG #8: "Deny the allegations contained..., except to refer the court to the exhibit or document cited as the best evidence of what is stated and contained therein."]**

125. Nothing that comes out of such perverted charade is – or can be – constitutional, least of all the completely unscrutinized Legislative and Judiciary budgets.

**[AG #5: "Deny the allegations"]**

126. Certainly, too, 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, SILVER, SENATE, and ASSEMBLY, is an utter anathema and unconstitutional – and that an citizen-taxpayer action could successfully be brought against the whole of the Executive budget.

**[AG #5: "Deny the allegations"]**