

STATE OF NEW YORK

SUPREME COURT

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,

Plaintiffs,
-against-

Index No.
5122-16

ANDREW M. CUOMO, et al,

Defendants.

BEFORE: HON. DENISE A. HARTMAN
Acting Supreme Court Justice

APPEARANCES:

For the Plaintiffs:

ELENA RUTH SASSOWER
10 Stewart Place, Apartment 2D-E
White Plains, New York 10603

For the Defendants:

HON. ERIC T. SCHNEIDERMAN
Attorney General of the State of New York
The Capitol
Albany, New York 12224-0341
BY: HELENA LYNCH, ESQUIRE
Assistant Attorney General

Transcript of ORAL ARGUMENT taken in the
above matter held at the Albany County Courthouse,
Albany, New York, on March 29, 2017.

CINDY AFFINATI, OFFICIAL COURT REPORTER

RS 5

1 (Proceedings commenced in open court on
2 March 29, 2017, as follows.)

3 THE COURT: Thank you all. Please be
4 seated.

5 All right. This is Center for Judicial
6 Accountability, Inc. versus Andrew M. Cuomo. It's
7 index number 5122-16. This Court issued a
8 decision I believe it was in December of this year
9 dismissing most of the causes of action but
10 allowing one to proceed.

11 Since that time, plaintiff has made one
12 motion filing by Order to Show Cause which is
13 pending, and today she has asked to present
14 another Order to Show Cause to bring on another
15 motion in this matter and I have -- our chambers
16 has granted her time to present her case today and
17 will allow you 10 minutes to explain the purpose
18 of this Order to Show Cause and, particularly, the
19 only issue today really is your request for
20 temporary relief and I'll give you 10 minutes to
21 present your case.

22 Before we do that, however, I'd like to
23 have counsel put their names on the record at this
24 point and, Miss Sassower, put your full name on

1 the record before we proceed with argument.

2 MS. SASSOWER: My name is Elena
3 Sassower. I am the unrepresented individual
4 plaintiff in this citizen taxpayer action and I am
5 not an attorney.

6 THE COURT: Thank you very much.

7 MS. LYNCH: Good afternoon your Honor.
8 Helena Lynch with the attorney general's office
9 for the defendants.

10 THE COURT: All right. Anything further
11 before we proceed with allowing Miss Sassower to
12 present her argument?

13 MS. LYNCH: No, your Honor.

14 THE COURT: Thank you. Again, please
15 confine your argument today to the issue of the
16 temporary relief you request in this Order to Show
17 Cause.

18 MS. SASSOWER: At the outset I'd like to
19 address this Court's jurisdiction with respect to
20 granting a Temporary Restraining Order and my
21 Order to Show Cause recites -- quotes State
22 Finance Law 123-e(2) which says in pertinent part:
23 A temporary restraining order may be granted
24 pending a hearing for a preliminary injunction

1 notwithstanding the requirements of Section 6313
2 of the Civil Practice Law and Rules where it
3 appears that immediate and irreparable injury,
4 loss, or damage will result unless defendant is
5 restrained before a hearing can be had, unquote.

6 I would like to draw to the Court's
7 attention that not only does that provision give
8 you the authority, the jurisdiction, to grant the
9 powerful relief of a TRO in recognition that
10 public monies have to be safeguarded and they have
11 to be protected, and so this kind of relief is
12 appropriate, and certainly at issue in this case
13 is a state budget of over \$150 billion, but I'd
14 like to additionally address CPLR 6313 with
15 respect the TRO issue and that is that its
16 restriction relates to enjoining a public officer
17 from performance of statutory duties. At issue
18 here on this Order to Show Cause are not statutory
19 duties. They're constitutional requirements.
20 Statutes have no bearing here. It's the
21 constitution that governs. And with respect to
22 the injunctive relief, it is based on violations
23 of Article 3, Section 10 as well as Article 7,
24 Sections 4, 5 and 6. So CPLR 6313 doesn't even

1 apply. We're not talking about discharge of
2 statutory duties but constitutional requirements.

3 Now, recognizing how serious the
4 granting of a TRO is, I actually came prepared for
5 an evidentiary hearing because the entitlement
6 here is one of summary judgment. As I stated at
7 the outset of the verified supplemental complaint,
8 all that is necessary to establish the violations
9 of Article 7, Sections 4, 5, 6 relating to how the
10 Legislature may -- well, it may not alter, it may
11 not alter the governor's budget bills,
12 appropriation bills, except in certain specific
13 ways, and that is laid out in those provisions.
14 It can reduce, it can strike. It cannot add to
15 the bill. And the interpretation of the Court of
16 Appeals in the case that your Honor actually cited
17 in the December 21, 2016 decision in the citizen
18 taxpayer action of Pataki against Assembly, which
19 is a consolidation of the two cases, Pataki
20 against Assembly and Silver against Pataki, the
21 Court of Appeals was unequivocal that Article 7,
22 Section 4 means what it clearly means. It cannot
23 alter in ways that are not permitted and made
24 clear that the non-alteration provisions here

1 relate not only to appropriation bills but
2 non-appropriation bills and relate to not just the
3 money sum, the dollar sum, but the language. You
4 have only to compare the amended bills, the Senate
5 and Assembly amended bills with the governor's
6 bill and you see that the Senate and Assembly,
7 even were those legitimate bills, their content
8 constitutionally is defiant of the constitution,
9 must be so declared.

10 So, for example, they have added sums
11 directly to the bills, not separately stated, and
12 they have changed language, removed language,
13 added language in appropriation bills and I
14 believe non-appropriation bills, but what is
15 clearly understood in the constitutional provision
16 is that appropriation bills are not to be altered
17 except in specific ways.

18 Now, why is that? The reason is because
19 the governor sets the budget, and once he sets the
20 budget and provides the bills and they strike out
21 and reduce, the Senate and Assembly reconcile
22 their different bills and it never goes back to
23 the governor. It takes effect immediately. It
24 has the force of law immediately.

1 So the budget, what has happened is that
2 the budget is entirely off the constitutional
3 rails. The Senate and Assembly do whatever they
4 want to do in complete disregard of Article 7,
5 Section 4, 5 and 6, and have gotten away with it.

6 In addition, the constitutional
7 provisions of Article 7, 1 through 7, lay out a
8 process that is open and transparent. Hearings,
9 legislative hearings where if the Senate and
10 Assembly have questions or take exception to
11 certain aspects of the bill, they can call -- they
12 can request the governor to appear or the governor
13 can on his own appear and they can confront
14 publicly, in public view, the differences, the
15 problems, the issues. They can be worked out
16 publicly. It is an open process. And what has
17 happened is that the Legislature in collusion with
18 the governor and others have driven the budget
19 process off the constitutional rails wholesale.

20 THE COURT: Miss Sassower, I just want
21 to suggest to you that your 10 minutes is almost
22 up and I would like you to address specifically
23 what temporary relief you are asking for today.

24 MS. SASSOWER: Well, okay. Firstly, I

1 would like to say that there is a second issue
2 because you have content of the bills and I have
3 brought here today because I hoped that we might
4 have an evidentiary hearing. That's why I said to
5 the attorney general's office, I gave notice --

6 THE COURT: Miss Sassower, in my letter
7 to you, I indicated that there would be -- I would
8 allow you time to present your Order to Show Cause
9 and that is exactly what I am doing today.

10 MS. SASSOWER: Okay.

11 THE COURT: And only that.

12 MS. SASSOWER: All right. But obviously
13 it's such a serious relief that you want to see
14 the -- I would think that you would want to see
15 the proof, perhaps, and so I arranged to bring
16 three sets of the bills, Senate amended bills,
17 Assembly amended bills, so they could be compared
18 with the governor's bill.

19 THE COURT: Are those -- no, no. Are
20 those bills exhibits to your documents that you've
21 submitted with your Orders to Show Cause?

22 MS. SASSOWER: They are free-standing
23 exhibits. I have them, of course. I brought
24 them.

1 THE COURT: Have you indicated they are
2 exhibits in the materials that you've given me
3 today or are you bringing these separately as
4 exhibits?

5 MS. SASSOWER: Well, I said in my papers
6 that all that is necessary is comparison of the
7 governor's bills and the Senate and Assembly bills
8 to establish prima facie the violations of Article
9 7, Section 4, 5 and 6.

10 THE COURT: All right. So what are you
11 asking me to do today?

12 MS. SASSOWER: So what I am saying is
13 that I came prepared for an evidentiary hearing.
14 Okay? Now, I can establish and have -- okay. I
15 have --

16 THE COURT: I am denying your request
17 for an evidentiary hearing today.

18 MS. SASSOWER: Okay.

19 THE COURT: What relief do you want
20 based on the papers?

21 MS. SASSOWER: Well, we have a second
22 issue and that is the evidence that the bills
23 never went through any process --

24 THE COURT: Miss Sassower --

1 MS. SASSOWER: They were fraudulently
2 amended. There was no meeting, no vote --

3 THE COURT: Miss Sassower --

4 MS. SASSOWER: -- by a single
5 legislator.

6 THE COURT: What temporary relief do you
7 want? What do you want me to enjoin?

8 MS. SASSOWER: Okay. As I indicated in
9 the Order to Show Cause, and it is numbers three,
10 four, five and six, the relief being sought and
11 specifically to enjoin any further actions, budget
12 actions, on the constitutionally violative,
13 fraudulently amended, no evidence that they were
14 ever amended, there was ever a vote by a single
15 legislator. There is no information as to who
16 introduced the amended bills. It was never on any
17 agenda. There was never any notice to members.
18 There was never any meeting at which members of
19 the Senate Finance Committee or the Assembly Ways
20 and Means Committee or any other committee
21 deliberated on the motion to amend the governor's
22 bill, voted on it. All of these are
23 constitutionally required because, again, Article
24 10 -- Article 3, Section 10 says the doors of the

1 Legislature shall remain open.

2 THE COURT: I have listened to your
3 arguments on the merits of your claims.

4 MS. SASSOWER: Okay.

5 THE COURT: I'm going to give you 30
6 seconds to sum up at this point because I've given
7 you significantly more than 10 minutes, and then
8 I'm going to give the attorney general a chance to
9 respond.

10 MS. SASSOWER: Okay. As I said in my
11 papers, this is prima facie summary judgment and
12 evidentiary, and I came today with the evidence
13 prepared to proceed with an evidentiary hearing so
14 the Court could discharge its responsibilities in
15 view of the facts and the law and the evidence
16 before it. And I went out of my way, and the
17 Court is aware, to make sure that appropriate
18 personnel at the attorney general's office was
19 here, fully knowledgeable, ready to argue.
20 Remember, they could have brought Speaker Heastie,
21 Temporary Senate President Flanagan or any other
22 legislator to say that these bills were amended
23 with -- actually amended. That there were votes.
24 There's not a single vote. How can we have

1 further proceedings on something that is
2 fraudulent and violative of the constitution.

3 THE COURT: Thank you, Miss Sassower.

4 MS. SASSOWER: Thank you, your Honor.

5 THE COURT: Thank you very much. All
6 right. Miss Lynch.

7 MS. LYNCH: Thank you, your Honor. Just
8 two things. First general and then specific. So
9 generally I did not hear from Miss Sassower any
10 argument as to what the irreparable harm would be
11 and also any argument as to likelihood of success
12 on the merits or any argument as to the balance of
13 the equities.

14 As the Court is well aware, and we agree
15 with Miss Sassower that the Court has jurisdiction
16 generally to grant a TRO, but the movant must show
17 a likelihood of success on the merits, must show
18 irreparable injury, and must address the balance
19 of the equities, and from what I can gather, we
20 are talking about a request to essentially shut
21 down the government. And then -- and
22 Miss Sassower has not made any showing.

23 Now, specifically in the Order to Show
24 Cause there appear to be six specific items. Now,

1 the first two I didn't hear addressed today, but
2 numbers three through six appear to relate
3 primarily to the many amendments. So what I'd
4 like to say to the Court is that I realize that at
5 this juncture, this is merely a representation
6 from counsel for assigning it the appropriate
7 weight. My understanding is that what
8 Miss Sassower is referring to as amendments are
9 not actually amendments, that they are markups for
10 internal discussion so -- which raises two issues.

11 First, the amendments are not amendments
12 so they don't implicate Sections 4, 5 and 6 of
13 Article 7, and they're also markups for internal
14 discussion which render them a nonjusticiable
15 issue.

16 At this juncture the defendants don't
17 have anything else to say aside from that.

18 THE COURT: All right. Thank you very
19 much.

20 MS. SASSOWER: May I reply?

21 THE COURT: You may have one minute.

22 MS. SASSOWER: Success on the merits? I
23 have summary judgment and I can prove it here and
24 now because I've produced the bills, the Senate

1 and Assembly amended bills. I have the originals
2 of the governor. And if the assistant attorney
3 general here is representing that these amended
4 bills are internal documents, wow. I'd like her
5 legal authority for that.

6 No, I'm not seeking to shut down the
7 government and the postscript addresses that. The
8 remedy is clear. The government, the Senate and
9 Assembly, will take the governor's bills and amend
10 them as Article 7, Sections 4, 5, 6 dictate and
11 those amended bills that they will reconcile will
12 take effect immediately. They never go back to
13 the governor. We have a rolling budget. As I
14 said in my postscript, historically and in the not
15 far distant past, we had budgets that went to
16 August. The government doesn't shut down. What
17 it will do is force the Senate and Assembly to
18 respect their duties under the constitution, and
19 the Court of Appeals unequivocal decision,
20 unequivocal, as well as in the Banker's case which
21 also reiterates --

22 THE COURT: Thank you, Miss Sassower.

23 MS. SASSOWER: -- that even with
24 agreement by the governor --

1 THE COURT: Thank you, Miss Sassower --

2 MS. SASSOWER: -- fraud viciates

3 everything it touches.

4 THE COURT: Thank you, Miss Sassower.

5 Thank you. I'm going to take this request for an

6 Order to Show Cause under advisement. I will

7 release any Order to Show Cause within the next

8 half hour or so.

9 MS. SASSOWER: Thank you. I am

10 prepared --

11 THE COURT: If I grant -- if I provide a

12 time schedule for a response to the motion that is

13 being brought on by Order to Show Cause, will 30

14 days be sufficient for the State to --

15 MS. LYNCH: Thirty days should be

16 sufficient, your Honor.

17 MS. SASSOWER: Thirty days? Excuse me.

18 This is a citizen taxpayer action. It must

19 proceed --

20 THE COURT: Miss Sassower, you may speak

21 when you are asked to speak.

22 Is there an earlier date, earlier than

23 30 days, by which the State can reasonably

24 respond? I understand that there are at least six

1 different requests for relief here so it is not a
2 simple response.

3 MS. LYNCH: I believe three weeks should
4 be sufficient. Anything shorter than that might
5 be too --

6 THE COURT: Let's take a look at this
7 calendar.

8 MS. LYNCH: -- putting too much pressure
9 on the part of the defendants.

10 MS. SASSOWER: May I just alert the
11 Court that the defendants have been aware of all
12 these issues with respect to the budget for fiscal
13 year 2016 and '17, okay? This was all presented
14 largely in the March 23rd --

15 THE COURT: Miss Sassower.

16 MS. SASSOWER: -- 2016 second
17 supplemental complaint, the prior --

18 THE COURT: Miss Sassower, I've
19 dismissed most of the causes of action in your
20 original complaint here.

21 MS. SASSOWER: Yes. And I have
22 demonstrated that --

23 THE COURT: And I am not revisiting
24 those at this moment on this TRO. All right? So

1 I am going to give the State until the 21st of
2 April to file and serve a response and I will also
3 then establish -- may I ask, Miss Lynch, how you
4 have been serving your papers on Miss Sassower so
5 I know if I need to build in time for mail?

6 MS. LYNCH: I believe we've been mailing
7 them, your Honor.

8 THE COURT: Then I will --

9 MS. SASSOWER: And e-mailing it, and so
10 the e-mail makes it very efficient.

11 THE COURT: I'm going to suggest that
12 you e-mail your responsive papers to Miss Sassower
13 by the 21st and I will give Miss Sassower until
14 the 27th to file a reply.

15 MS. SASSOWER: Excuse me, your Honor.

16 THE COURT: You may make a request as
17 long as it is, as you're thinking about it,
18 reasonable.

19 MS. SASSOWER: Well, since your Honor
20 has come out of the attorney general's office, you
21 know that the attorney general's office has about
22 500 attorneys perhaps. I am a nonlawyer that have
23 sought the representation of the attorney general
24 in this citizen taxpayer action pursuant to the

1 citizen taxpayer action statute as well as
2 Executive Law 63.1.

3 THE COURT: I'll give you until the
4 28th. This is a reply. You have already put in
5 your papers and now the State has a response.

6 MS. SASSOWER: But they have polluted --
7 their record is to pollute the judicial process
8 with lies and frauds just as --

9 THE COURT: Miss Sassower --

10 MS. SASSOWER: -- Miss Lynch here for
11 her to report --

12 THE COURT: Miss Sassower, do not speak
13 over me, please.

14 MS. SASSOWER: All right.

15 THE COURT: I will read your papers
16 thoroughly and I will read the State's papers
17 thoroughly and I'll give you a reasoned decision.
18 All right?

19 MS. SASSOWER: And what has become of
20 the TRO?

21 THE COURT: You will find out after I
22 take it under advisement for a few minutes in my
23 chambers and look over your papers a little more
24 carefully. And if you will wait outside of my

1 courtroom, you may pick it up at 4:00, 4:15.

2 MS. SASSOWER: This is prima facie
3 summary judgment both procedurally and --

4 THE COURT: This is a TRO.

5 Miss Sassower, this is a TRO application. This is
6 not a merits determination. It is -- you're
7 speaking -- you're asking for temporary relief
8 while I consider the merits of your application.
9 That's what's going on here and that is -- and
10 that's why we are so limited today in what kind of
11 arguments and evidence that you can --

12 MS. SASSOWER: But she's purported that
13 I haven't shown the likelihood of success on the
14 merits. I've shown summary judgment.

15 THE COURT: If that is shown on your
16 papers, I'll take that under consideration.

17 MS. SASSOWER: Thank you. I believe
18 it's laid out adequately by my affidavit in
19 support with its cross referencing --

20 THE COURT: Miss Sassower.

21 MS. SASSOWER: -- to the supplemental
22 complaint.

23 THE COURT: Miss Sassower, this is not
24 the time for conversation on this. All right? I

1 will read your papers. Do you understand?

2 MS. SASSOWER: Mm-hmm.

3 THE COURT: And I will read the State's
4 papers when they come in and I will give you time
5 to get further papers in and I will read those as
6 well.

7 MS. SASSOWER: Okay.

8 THE COURT: All right? And I would like
9 you to e-mail those papers to me also on the 28th.
10 I'll put those dates in the Order to Show Cause.

11 MS. SASSOWER: What I am simply
12 indicating, your Honor, is that if this Court does
13 not grant the TRO, it should proceed expeditiously
14 with the preliminary injunction as to which I
15 believe I'm entitled to a hearing, and I am
16 requesting that if the TRO is denied, that we put
17 this on for a hearing on the preliminary
18 injunction Friday. Friday. I have a copy of the
19 bills. We can examine the alterations made and
20 establish the constitutional violations. You have
21 the FOIL requests.

22 THE COURT: I have your request. I will
23 consider it.

24 MS. SASSOWER: Thank you.

1 THE COURT: I assume when you say
2 Friday, you mean this week?

3 MS. SASSOWER: Absolutely, your Honor.
4 There's plenty of time for the Senate and Assembly
5 to redo their bills.

6 THE COURT: Anything further?

7 MS. LYNCH: No, your Honor.

8 THE COURT: All right. At this point we
9 stand adjourned. Thank you.

10 (Proceedings concluded at 3:36 p.m.)

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C E R T I F I C A T I O N

I, Cindy Affinati, Official Court Reporter for the Unified Court System, Third Judicial District of the State of New York, do hereby certify that I attended and reported the foregoing proceedings; that it is a true and accurate transcript of the proceedings had therein to the best of my knowledge and ability.

Cindy Affinati
Cindy Affinati
Official Court Reporter?

April 4, 2017