SUPREME COURT 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,

Plaintiffs,

-against-

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, JOHN J. FLANAGAN in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, CARL E. HASTIE, 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, THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York, and JANET M. DIFIORE, in her official capacity as Chief Judge of the State of New York and chief judicial officer of the Unified Court System,

Defendants.

Index No. 5122-16

MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF AND IN SUPPORT OF DEFENDANTS' CROSS-MOTION TO DISMISS THE COMPLAINT

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PRELIMINARY STATEMENT

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 September 2, 2016. See Kerwin aff. at Exhibit A. On the same date, plaintiffs presented an order to show cause seeking a temporary restraining order and preliminary injunction restraining the defendants from dispersing certain monies pursuant to the enacted 2016-17 State budget. See Kerwin aff. at Exhibit B. Honorable Roger D. McDonough denied the application for a temporary restraining order, signed the order to show cause and made the preliminary injunction application returnable September 16, 2016. See id.

This memorandum of law is submitted on behalf of defendants Andrew M. Cuomo, the New York State Senate, the New York State Assembly, John J. Flanagan, Carl E. Hastie, Eric T. Schneiderman, Thomas DiNapoli and Janet M. DiFiore in opposition to plaintiffs' order to show cause seeking preliminary injunctive relief and in support of defendants' cross-motion to dismiss pursuant to CPLR 3211(a)(7) and (8).

PRIOR PROCEEDINGS

Despite having four of their ten causes of action alleged in the instant complaint previously dismissed by this court in connection with the two prior state fiscal years, plaintiffs have alleged them again without bothering to update the allegations or attempt to apply the law as articulated by the court.

Plaintiffs' litigation relating to the New York State Legislative and Judiciary budgets began with the commencement of an action on or about March 28, 2014 in which plaintiffs challenged the legality of the 2014-15 proposed Legislative and Judiciary budgets (hereafter

"prior proceeding"). See Complaint[1] at Exh. B. Specifically, plaintiffs argued that that (1) the Legislature did not provide a certified estimate of its financial needs for the 2014-15 fiscal year as required by Article VII, section 1 of the New York State Constitution; (2) the certified estimates of financial needs submitted by the Legislature and Judiciary were not properly itemized pursuant to Article VII, section 1 of the New York State Constitution; (3) the Governor failed to present the certified estimates of the Legislature and Judiciary in his Executive Budget "without revision" as required by Article VII, section 1 of the New York State Constitution; and (4) the Legislature violated its own rules and Legislative Law 32-a. See id. Finding three of the four causes of action not justiciable, the court dismissed plaintiff's claims except as to whether the defendants violated Legislative Law 32-a. See Complaint at Exh. E.

With the permission of the court, see Kerwin aff. at ¶4, plaintiffs supplemented their complaint to add identical causes of action relating to the 2015-16 Legislative and Judiciary budgets. See Complaint at Exh. C. Defendants simultaneously moved to dismiss the supplemental complaint in its entirety, and for summary judgment on plaintiff's Legislative Law 32-a claim that survived defendants' motion to dismiss the original complaint.[2] See Kerwin aff. ¶6. While that motion was pending, plaintiffs filed a motion for leave to file a second supplemental complaint that related to the 2016-2017 Legislative and Judiciary budgets that contained claims identical to those contained in the original complaint relating to the 2014-2015 Legislative and Judiciary budgets, and in the supplemental complaint relating to the 2015-16 Legislative and Judiciary budgets. See Kerwin aff. at ¶7. However, the proposed second

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1 The complaint is annexed to the affirmation of Adrienne J. Kerwin at Exhibit A, and will be referenced herein as "Complaint".

2 Plaintiff opposed defendants' motion and cross-moved for summary judgment and other baseless relief. See Kerwin aff. at n.5.

amended complaint also challenged the constitutionality of Legislative/Judiciary Budget Bill S.6401/A.9001, and the alleged "behind-closed-doors, three-men-in-a-room budget deal making" of the Governor, Temporary Senate President and Assembly Speaker. See Complaint at Exh. A.

By decision and order dated July 14, 2016, amended August 1, 2016, the court granted defendants' motions and denied plaintiffs' motions – ending the prior proceeding. See Complaint at Exh. D. Plaintiffs now seek to bring the claims that were contained in their proposed second amended complaint, together with one additional claim challenging disbursements from the New York State Division of Criminal Justice Services (DCJS) budget. See Complaint.

ARGUMENT

For the reasons that plaintiffs' claims were dismissed in two prior decisions of this court in the prior proceeding, plaintiffs' First, Second, Third and Fourth Causes of Action should be dismissed here. See Complaint at Exhs. D, E. For the reasons discussed below, plaintiffs' Fifth, Sixth, Seventh. Eighth, Ninth and Tenth Causes of Action should also be dismissed. Additionally, since plaintiffs have not alleged any cognizable claims that can survive defendants' cross-motion to dismiss, and have failed to submit any admissible evidence sufficient to meet their high burden of establishing that they are likely to succeed on the merits of any of their claims, plaintiffs' application for preliminary injunctive relief should be denied in its entirety.

POINT I

DEFENDANTS' CROSS-MOTION TO DISMISS THE COMPLAINT SHOULD BE GRANTED IN ITS ENTIRETY

Plaintiffs have commenced a frivolous and baseless action using a complaint that is virtually incomprehensible in form and content. By continuously referencing a proposed second amended complaint from the prior proceeding (for which leave to file was rejected by the court, and which never served as the operative pleading) and other irrelevant documents, the plaintiffs have made it nearly impossible to discern just what they are claiming in this case. The complaint completely fails to succinctly and clearly articulate any factual or legal claims and, instead, leaves it to the court and to the defendants to decipher whether the complaint contains any non-frivolous claims.

What is clear, however, is that plaintiffs lack the ability to differentiate between actual admissible evidence that supports legally-cognizant arguments, and their own baseless thoughts and opinions. In refusing to accept legal rulings, the plaintiffs resort to making disparaging comments and claims about the court, see e.g. Complaint at ¶24, ¶25, Exh. G, the parties, see e.g. id. at ¶14(b), and defense counsel. See e.g. id. at Exh. G. It is within this context that the complaint herein must be analyzed and, ultimately, dismissed in its entirety.

A. Plaintiffs Have Failed to Obtain Personal Jurisdiction Over Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, The New York State Senate, and Chief Judge Janet M. DiFiore

On the record at the appearance on plaintiffs' order to show cause, AAG Kerwin advised both the court and plaintiff Sassower that the Office of the Attorney General was authorized to accept service of the order to show cause and supporting papers, which included the summons and complaint, for named defendants Eric T. Schneiderman, Thomas DiNapoli, and the New

York State Assembly[3] only. Therefore, pursuant to the order to show cause, plaintiffs were required to serve Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate and Chief Judge Janet M. DiFiore "by personal service" on or before September 6, 2016. See Kerwin aff. at Exh. B.

Upon information and belief, service was attempted on Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate and Chief Judge Janet M. DiFiore on September 2, 2016 by plaintiff Elena Sassower, herself. CPLR 2103(a) states as follows:

> (a) Who can serve. Except where otherwise prescribed by law or order of court, papers may be served by any person **not a party** of the age eighteen years or older.

See CPLR 2103(a) (emphasis added). Since plaintiff Sassower is a party to this proceeding, any attempt by her to serve any defendants in this case with either the complaint, or other papers in support of plaintiffs' order to show cause, failed to properly obtain jurisdiction over said defendants. Therefore, plaintiffs' claims against Governor Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate and Chief Judge Janet M. DiFiore should be dismissed pursuant to CPLR 3211(a)(8).

B. The Complaint Fails to Allege Facts Sufficient to State a Claim as to Plaintiff's Fifth, Sixth, Seventh, Eighth, Ninth or Tenth Causes of Action

1. Fifth and Ninth Causes of Action

The Fifth Cause of Action alleges that, by virtue of plaintiff submitting a proposed second supplemental complaint in March 2016 in the prior proceeding, the defendants were on notice that the 2016-17 budget was being enacted in violation of article VII, sections 4, 5 and 6 of the New York State Constitution, and failed to take "remedial steps." See Complaint at ¶¶54-

3 AAG Kerwin also accepted service on behalf of Assembly Speaker Carl E. Hastie.

58. Specifically, plaintiff alleges that (1) the legislature failed to "amend and pass the Governor's appropriation bills and . . .reconcile them so that they might 'become law immediately without further action by the governor;'" (2) "'one house budget proposals' [] emerg[ed] from closed-door political conferences" of the Legislature's "majority/party coalitions" and "the Senate and Assembly Joint Budget Conference Committee and its subcommittees," and (3) the Governor, Temporary Senate President and Assembly Speaker engaged in "budget deal-making" "behind closed doors."[4] See Complaint at ¶57.

Plaintiffs claim that their Fifth Cause of Action was "laid out" in the Twelfth Cause of Action in plaintiff's supplemental complaint in the prior proceeding. See id. at ¶56. For the reasons that plaintiffs' Twelfth Cause of Action were dismissed in the prior proceeding, plaintiffs' Fifth Cause of Action here should also be dismissed. See Complaint at Exh. D. Plaintiffs also allege that the allegations supporting their Fifth Cause of Action are set forth in the Sixteenth Cause of Action of plaintiffs' proposed second supplemental complaint, a pleading that was never accepted for filing in the prior action. See Complaint at ¶¶56, Exh. A, ¶¶458-470. Plaintiffs also allege that their Ninth Cause of Action in the present Complaint is based upon the allegations in the Sixteenth Cause of Action in the proposed second amended complaint. See Complaint at ¶¶ 81-84, Exh. A, ¶¶458-470. Accordingly, for the reasons that plaintiffs' Ninth Cause of Action should be dismissed, as discussed immediately below, plaintiffs' Fifth Cause of Action should also be dismissed.

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4 To the extent that the complaint alleges that the Legislature violated its own internal rules, such claims are not justiciable. Heimbach v. State, 59 N.Y.2d 891, 893 (1983), app. dismissed 464 U.S. 956 (1983)(determining whether a legislative roll call was incorrectly registered is a legislative matter beyond judicial review); Urban Justice Ctr. v. Pataki, 38 A.D.3d 20, 27 (1st Dept 2006), lv. denied 8 N.Y.3d 958 (2007) (not the province of the courts to direct the Legislature on how to do its work, particularly where the internal practices of the Legislature are involved); Matter of Gottlieb v. Duryea, 38 A.D.2d 634, 635 (1971), aff'd 30 N.Y.2d 807 (1972), cert. denied 409 U.S. 1008 (1972); see People ex rel. Burby v. Howland, 155 N.Y. 270, 282 (1898); Smith v. Espada, Index No. 4912-09 (Sup. Ct., Albany Co., June 16, 2009).

The Ninth Cause of Action in the complaint alleges that "Three-Men-in-a-Room, Budget Dealing-Making is Unconstitutional *As Unwritten* and *As Applied*." See Complaint at Ninth Cause of Action (emphasis in original). Plaintiffs' Ninth Cause of Action alleges that the procedures used by the Legislature and the Governor in negotiating the 2016-17 budget violated article IV, §7 and article VII, §§3 and 4 of the New York State Constitution. See Complaint at Exh. A., ¶¶459-466.

Any claims as to how the 2016-17 budget was negotiated are moot, since the budget was subsequently enacted. New York Public Interest Group, Inc. v. Regan, 91 A.D.2d 774, 775 (3d Dept 1982). Further, the manner in which the Legislature and Executive negotiate a budget[5] is not governed by the holding of the Court of Appeals in King v. Cuomo, as plaintiffs suggest. See Complaint at Exh. A, ¶¶462-464. In a desperate attempt to support their unsupportable theory, and to argue that the Governor meeting with the leaders of the Legislature about terms of the State budget is unconstitutional, the plaintiffs resort to changing the words of a significant Court of Appeals case. See id. at ¶463. Such an effort cannot be credited.

5 Public Officers Law §103 requires that every meeting of a public body, which is defined as "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state," see Pub. Off. Law §102(2), be open to the public. Moreover, case law has determined that in absence of a quorum, one cannot establish a violation of the Open Meetings Law. See e.g., Matter of Halperin v. City of New Rochelle, 24 AD3d 768, 777 (2d Dept 2005) (and cases cited). There are no allegations in the complaint, however, that a meeting between the Governor and two Legislative leaders constituted a "quorum" of any sort sufficient to conduct public business. Accordingly, if, *arguendo*, the court reads plaintiffs' Fifth or Ninth Cause of Action as alleging a violation of the Open Meetings Law, the complaint fails to allege such a claim as a matter of law.

In King, the plaintiffs alleged that the Legislature recalling a bill, which it had passed and submitted to the Governor for consideration, violated article IV, §7 of the New York State Constitution. See 88 NY2d at 250. In the present case, the plaintiffs allege that Governor Cuomo meeting with the Temporary Senate President and Assembly Speaker violates article IV, §7 and article VII §§3, 4 of the New York State Constitution. See Complaint at ¶¶54-58, 81-84. Section 7 of article IV relates to actions that may be taken by the Governor after the Legislature has passed a bill. There are no allegations in the complaint that the alleged meetings occurred after the passage of budget bills by the Legislature. Instead, the plaintiffs describe the alleged unconstitutional conduct as the Governor, Temporary Senate President and Assembly Speaker "hudd[ling] together for budget negotiations and the amending of budget bills." See id. at Exh. A, ¶461. Accordingly, article IV, section 7 and the holding in King are inapplicable to plaintiffs' claims.

Additionally, the complaint fails to allege any facts sufficient to state a claim under article VII sections 3 or 4 of the New York State Constitution. Those provisions are as follows:

> §3. At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.
>
> The governor may at any time within thirty days and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.
>
> The governor and the heads of departments shall have the right, and it shall be the duty of the heads of the departments when requested by either house of the legislature or an appropriate committee thereof, to appear and be heard in respect to the budget during the consideration thereof, and to answer inquiries relevant thereto. The procedure for such appearances and inquiries shall be provided by law.

> §4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.
>
> Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.

See N.Y. Const. art. VII, §§ 3, 4. Despite plaintiffs imagings to the contrary, nothing in either of these constitutional provisions prohibits the Governor and leaders of the Legislature from meeting to discuss any aspect of the budget.[6] Therefore, plaintiffs' Ninth Cause of Action should be dismissed.

2. Sixth and Seventh and Eighth Causes of Action

Plaintiff's Sixth, Seventh and Eighth Causes of Action allege that Chapter 60, Part E of the Laws of 2015 is unconstitutional both as written and as applied. See Complaint at ¶¶59-76. Specifically, plaintiffs' Sixth and Seventh Causes of Action challenge the legitimacy of the Commission on Legislative, Judicial, and Executive Compensation. See id. However, the legitimacy of a commission such as the Commission on Legislative, Judicial, and Executive Compensation – which replaced the Commission on Judicial Compensation -- and was modeled on the Berger Commission (Commission on Health Care Facilities in the 21st century) -- was upheld in McKinney v. Commissioner of New York State Department of Health, 15 Misc. 3d 743 (Bronx County), aff'd., 41 A.D.3d 252 (1st Dep't.), appeal dismissed, 9 N.Y.3d 891 (2007).

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6 Plaintiffs' claims in their, *inter alia*, Fourth, Fifth and Ninth Causes of Action, and any information related thereto, would be barred/protected by the Speech or Debate Clause of the New York State Constitution. See N.Y. Const. Art. III § 11.

In addition, the Supreme Court, Nassau County, recently dismissed a challenge to the present Commission on Legislative, Judicial and Executive Compensation. See, Coll v NYS Commission on Legislative; Judicial and Executive Compensation; NYS Legislature; NYS Governor, Index No. 2598-2016 (Nassau County September 1, 2016) (copy attached).

Accordingly, plaintiffs' Sixth, Seventh and Eighth Causes of Action should be dismissed.

3. Tenth Cause of Action

Plaintiffs' Tenth Cause of Action alleges that the disbursement of funds to reimburse counties for District Attorney salaries is not authorized by law and violates statutes and the state and federal constitutions. First, plaintiffs rely on a typographical error in the enacted budget in support of their claim that disbursements made pursuant to budget bill S.6403-d/A.9003-d (which became Chapter 53 of the Laws of 2016) during the 2016-17 fiscal year are not "authorized." See Complaint at ¶¶89-91. Chapter 53 of the Laws of 2016 states that "...for state fiscal year 2014-15 the state reimbursement to counties for district attorney salaries shall be equal to the amount received by a county for such purpose in 2013-14..." See Complaint at Exh. H. This is obviously and clearly a drafting error, since the budget for fiscal year 2016-17 would not intentionally contain a provision for payment of monies for the 2014-15 fiscal year. See e.g. In re City of New York, 95 A.D. 552, 559 (1st Dept 1904) (inadvertent inclusion of wrong fraction in legislation did not invalidate the statute). To permit such an immaterial error to invalidate enacted budget legislation would result in a loss of expected money that counties relied upon, contrary to the clear intent of the Legislature and the Governor.

Additionally, although the complaint alleges that these disbursements are "otherwise unlawful and unconstitutional," see Complaint at Tenth Cause of Action, it fails to identify any constitutional provision that is allegedly violated by the disbursements. See id. Plaintiffs do,

however, allege that the disbursements violate County Law ¶700.10 and ¶700.11 and Judiciary Law ¶183-a. See id. However, the complaint itself states that S.6403-d/A.9003-d (Chapter 53 of the Laws of 2016) specifically provides that the disbursements are to be made "[n]otwithstanding the provisions of subdivisions 10 and 11 of section 700 of the county law or any other law to the contrary..." See Complaint at ¶89, Exh. H. Therefore, when S.6403-d/A.9003-d was enacted into law as Chapter 53 of the Laws of 2016, the provisions contained in that Chapter which provided for disbursement of funds to reimburse counties for District Attorney salaries superseded anything to the contrary contained in any other law.[7]

For all of the reasons discussed above, defendants' cross-motion to dismiss the complaint should be granted in its entirety with prejudice.

POINT II

ALL CLAIMS BROUGHT BY PLAINTIFF CENTER FOR JUDICIAL ACCOUNTABILITY, INC. MUST BE DISMISSED

7 To the extent that plaintiffs are dissatisfied with responses they received to FOIL requests, see Complaint at ¶94, 95, such must be challenged in an Article 78 proceeding.

As a non-attorney, plaintiff Sassower cannot represent the interests of the corporate plaintiff in this action. CPLR 321(a) prohibits the appearance of a "corporation or voluntary association" in this judicial proceeding other than by an attorney. See CPLR 321(a). The complaint describes plaintiff CJA as "a national non-partisan, non-profit citizens' organization" whose "patriotic purpose is to safeguard the judicial process by insuring the integrity of its judges." See Complaint at ¶7. The complaint alleges that plaintiff CJA appears through its Director, plaintiff Sassower. See id. at ¶¶7-8. Upon information and belief, plaintiff Sassower is not an attorney admitted to practice law in the State of New York. See Kerwin aff. at n.1. Therefore, pursuant to CPLR 321(a), any claims alleged in the complaint on behalf of plaintiff CJA must be dismissed. Naroor v. Gondal, 5 N.Y.3d 757, 757 (2005); Cinderella Holding Corp. v. Calvert Ins. Co., 265 A.D.2d 444, 444 (2d Dept 1999).

POINT III

PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTIVE RELIEF SHOULD BE DENIED IN ITS ENTIRETY[8]

Preliminary injunctive relief is a "drastic remedy" which is not routinely granted. Marietta Corp. v. Fairhurst, 301 A.D.2d 734, 736 (3d Dept. 2003). Indeed, in "order to obtain the extraordinary relief of a preliminary injunction, the moving party must demonstrate, by clear and convincing evidence, that: (1) there exists a likelihood of ultimate success on the merits of the underlying action; (2) the movant will suffer irreparable injury absent the granting of the

8 Plaintiffs' allegations in their order to show cause that (1) Judge McDonough should be disqualified from presiding over this proceeding because he has "demonstrated actual bias," and (2) Judge McDonough's August 1, 2016 should be vacated are so wholly without merit and are not supported by any proof whatsoever.

preliminary injunction; and (3) a balancing of the equities favors the moving party." Concerned Home Care Providers, Inc. v. New York State Department of Health, 41 Misc.d 278, 289 (Sup. Co. Suffolk Co. 2013) (citing Doe v. Axelrod, 73 N.Y.2d 748, 750 (1988)). See also Reuschenberg v. Town of Huntington, 16 A.D.3d 568, 569 (2d Dept. 2005); Pantel v. Workmen's Circle, 289 A.D.2d 917, 918 (3d Dept. 2001). A plaintiff bears the ultimate burden of proof as to each and every element of the claim for injunctive relief. W. T. Grant Co. v. Srogi, 52 N.Y.2d 496, 517 (1981). Plaintiffs have failed to submit any evidence to establish that (1) they are likely to succeed on the merits of the causes of action contained in their complaint, (2) they will be irreparably harmed in the absence of the preliminary injunctive relief sought or (3) the balance of equities tips in their favor.

The papers submitted by plaintiffs in support of their order to show cause seeking preliminary injunctive relief are completely devoid of any factual support to meet plaintiffs' burden that preliminary injunctive relief is appropriate in this proceeding. In support of their order to show cause, the plaintiffs submitted only their complaint with eleven exhibits and a five paragraph affidavit of plaintiff Elena Ruth Sassower. The exhibits attached to the complaint affidavit are (1) papers and decisions in plaintiffs' prior proceeding (index number 1788-2014), see Complaint at Exhs. A – G; (2) portions of Aid to Localities Budget Bill #S.6403-d/A.9003-9, see id. at Exh. H; (3) three FOIL requests made by the plaintiffs, see id. at I-1, J-1, K and (4) responses to those FOIL requests. See id. at Exhs. I-2, I-3, J-2, J-3, J-4. This alleged "evidentiary proof" is entirely insufficient to satisfy plaintiffs' substantial burden of demonstrating their entitlement to relief by clear and convincing evidence.

Likelihood of Success on the Merits[9]

9 Since "a preliminary injunction may not issue where the underlying action is dismissed...," County of Orange v.

To the extent that plaintiffs seek to enjoin the defendants from taking action on a "proposed budget" for fiscal Year 2016-2017, see First and Second Causes of Action, such relief is unavailable as moot since the 2016-2017 state budget has been enacted. New York Public Interest Group, Inc. v. Regan, 91 A.D.2d at 775. Accordingly, since the plaintiffs seek preliminary injunctive relief related to moot claims, their application for relief should be denied.

For the reasons discussed above, plaintiffs cannot establish a likelihood that they will succeed on the merits of any of their claims, and they have failed to present the court with any admissible evidence to support such a finding. Most of plaintiffs' claims challenge the constitutionality of an enacted statute, which enjoys a strong presumption of constitutionality, grounded in part on "an awareness of the respect due the legislative branch." Dunlea v Anderson, 66 N.Y.2d 265, 267 (1985). On the merits, a plaintiff bears the heavy burden of establishing the statute's unconstitutionality "beyond a reasonable doubt." Matter of E.S. v. P.D., 8 N.Y.3d 150, 158 (2007).

Plaintiffs' submissions in support of their application for a preliminary injunction are wholly devoid of evidence sufficient to support a finding of unconstitutionality beyond a reasonable doubt, or any statutory violation. Plaintiffs have submitted the complaint, documents from the prior proceeding, FOIL requests and responses and portions of Chapter 53 of the Laws of 2016. Despite their apparent belief to the contrary, plaintiffs' own documents do not constitute "evidence" sufficient to establish the alleged unconstitutionality of an enacted statute. As a result, plaintiffs have failed to meet their burden of establishing that they are likely to succeed on the merits of any of their proposed claims. Accordingly, plaintiffs' application for a preliminary injunction must fail as a matter of law.

MTA, 71 Misc2d 691, 693 (Sup Ct. Orange Co. 1971), plaintiffs are not entitled to preliminary injunctive relief since defendants' cross-motion to dismiss the complaint should be granted.

A. Irreparable Harm

The plaintiffs have failed to allege or support any claim that they will be irreparably harmed if preliminary injunctive relief is not granted. For this reason alone, plaintiffs' application for preliminary injunctive relief should be denied. W.T. Grant Co., 52 N.Y.2d at 517 (plaintiff bears the ultimate burden of proof as to each and every element of the claim for injunctive relief).

B. Balancing of the Equities

For all of the reasons discussed above, equitable considerations weigh in favor of denying plaintiffs' request for preliminary injunctive relief.

CONCLUSION

For the reasons discussed above, plaintiffs' application for preliminary injunctive relief should be denied, and defendants' cross-motion to dismiss the complaint should be granted in its entirety.

Dated: Albany, New York
September 15, 2016

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Appendix

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEORGE R. PECK
Supreme Court Justice

X TRIAL/IAS, PART 21
NASSAU COUNTY

JAMES COLL,

Plaintiff,

INDEX NO. 2598-2016
MOTION SEQ. 001
MOTION DATE 8-25-16

-against-

NYS COMMISSION ON LEGISLATIVE; JUDICIAL AND EXECUTIVE COMPENSATION; NYS LEGISLATURE; NYS GOVERNOR,

Defendants.

X

The plaintiff, James Coll, by means of Summons and Complaint brings this action against The New York State Commission on Legislative, Judicial and Executive Compensation, The New York State Legislature and The New York State Governor to declare that the Commission on Legislative, Judicial and Compensation acted in an unconstitutional manner.

The court has examined the opposition papers of the Attorney General and credits the factual assertions and legal conclusions contained therein accordingly, the motion to dismiss is GRANTED.

Although this court has a financial interest in the outcome of this case, recusal is not necessary because every New York State Supreme Court Justice would have the same interest.

Dated: September 1, 2016
Mineola, New York

HONORABLE GEORGE R. PECK, J.S.C.