

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,

*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. HEASTIE, 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

RJI No.: 01-16-122174

**MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S  
APPLICATION FOR PARTIAL SUMMARY JUDGMENT, TO  
SUPPLEMENT THE COMPLAINT, AND A FOR PRELIMINARY  
INJUNCTION AND TEMPORARY RESTRAINING ORDER**

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## **PRELIMINARY STATEMENT**

Defendants, Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, John J. Flanagan, Carl E. Heastie, Eric T. Schneiderman, Thomas DiNapoli, and Janet M. DiFiore, respectfully submit this memorandum of law in opposition to the motion, brought via Order to Show Cause signed by the Court on March 29, 2017, by Plaintiff, *pro se*, Elena Ruth Sassower, for (i) summary judgment on her sixth cause of action; (ii) leave to file a proposed Verified Supplemental Complaint (“Supplemental Complaint”); and (iii) a preliminary injunction and temporary restraining order (“TRO”) seeking various forms of relief related exclusively to New York State’s Fiscal Year 2017-2018 budget.

Plaintiff’s application should be denied in all respects. Plaintiff’s motion for partial summary judgment should be denied because it is submitted without any legal or factual support. Plaintiff’s motion for summary judgment should not, in any event, be submitted to the Court via an expedited proceeding, as opposed to a properly submitted motion. Plaintiff’s motion to file her proposed Supplemental Complaint should be denied because all proposed new claims are either futile or duplicative of the claims in the Complaint filed on September 2, 2016 (the “Complaint” or “Compl.”). Plaintiff expressly duplicates the ten causes of action that were asserted in the Complaint for the Fiscal Year 2016-2017 budget, and seeks to re-assert those causes of action for the Fiscal Year 2017-2018 budget. All of the proposed causes of action are either meritless, based on the Court’s prior rulings, or duplicative.

Plaintiff’s application for a preliminary injunction and TRO should be denied at the outset because the relief sought – which relates solely to the 2017-2018 budget – is unrelated to the claims in the Complaint. In any event, Plaintiff fails to identify, much less provide proof of,

any irreparable harm. Plaintiff also fails to submit any evidence demonstrating likelihood of success on the merits, and she fails to show that the balance of equities tips at all in her favor.

Plaintiff's motion should be denied its entirety.

## **SUMMARY OF RELEVANT FACTS AND PROCEDURAL HISTORY**

### **A. Complaint Filed September 2, 2016, and Defendants' Motion to Dismiss**

In a Complaint filed September 2, 2016, Plaintiff Elena Ruth Sassower, along with originally named plaintiff the Center for Judicial Accountability (“CJA”), asserted ten causes of action, as citizen-taxpayers, related to the budget for Fiscal Year 2016-2017. *See* Compl., annexed as Exhibit 1 to Lynch Aff. Specifically, Plaintiff alleged that: (1) the Legislature’s proposed budget for Fiscal Year 2016-2017 is unconstitutional, Compl. ¶¶ 24-33; (2) the Judiciary’s proposed budget for 2016-2017 is unconstitutional, Compl. ¶¶ 35-39; (3) budget bill S.6401-a/A.9001-a is unconstitutional over and beyond the legislative and judiciary budgets it embodies, “without revision,” Compl. ¶¶ 41-47; (4) the process by which the State budget for Fiscal Year 2016-2017 was enacted violated its own rules, and “nothing lawful or constitutional” can emerge therefrom, Comp. ¶¶ 49-53; (5) the process by which the State budget for Fiscal Year 2016-2017 was enacted violated Article VII, §§ 4, 5, and 6 of the New York State Constitution, Compl. ¶¶ 55-58; (6) Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, as written, for five separate reasons, including an unconstitutional delegation of legislative powers to the Commission on Legislative, Judicial and Executive Compensation (the “Commission”), and an alleged violation of Article XIII, §7 of the New York State Constitution, Compl. ¶¶ 60-68; (7) Chapter 60, Part E of the Laws of 2015 is unconstitutional, as applied, Compl. ¶¶ 70-76; (8) the Commission’s violations of statutory requirements render its judicial salary recommendations null and void, Compl. ¶¶ 78-80; (9) the “three-men-in-a-room” budget

negotiation process is unconstitutional, Compl. ¶¶ 82-84; and (10) the appropriation to counties for district attorney salaries in bill S.6403-d/A.9003-d does not authorize disbursements for Fiscal Year 2016-2017 and is unconstitutional, Compl. ¶¶ 86-110. In the Complaint, Plaintiff seeks declaratory and injunctive relief.

In a Decision and Order dated December 21, 2016 (the “Decision and Order”), the Court dismissed all claims asserted in the Complaint except subparts one and three of the sixth cause of action. *See* Decision and Order (Dec. 21, 2016), annexed as Exhibit 2 to Lynch Aff. The first four causes of action in the Complaint were duplicative of causes of action in the 2014 Action that were dismissed, as devoid of merit, in Plaintiff’s previous citizen-taxpayer suit, commenced in 2014 (the “2014 Action”). Ex. 2 at 5. The fifth cause of action was dismissed because it merely re-stated arguments that were rejected by the court in the 2014 Action. Ex. 2 at 5.

The seventh and eighth causes of action were dismissed because they challenged actions by the Commission, which is not a party to this litigation. Ex. 2 at 5. The ninth cause of action, which challenged the “three-men-in-a-room” budget negotiation process, was dismissed for failure to state a cognizable claim. Ex. 2 at 5-6. The tenth cause of action was dismissed as non-justiciable. Ex. 2 at 6.

The Court held that the sixth cause of action states a cognizable claim insofar as it alleges an unconstitutional delegation of legislative power, and a violation of Article XIII, § 7 of the New York State Constitution, which limits increases in compensation for public officers. Ex. 2 at 7.

The Court also dismissed CJA as a party because it is a corporation, and corporations are required, by C.P.L.R. 321(a), to appear by an attorney. Plaintiff Sassower is not an attorney. Ex. 2 at 4.

Defendants submitted their Verified Answer on January 30, 2017.

**B. Plaintiff's Motion for Disqualification, and For Reconsideration and Reargument**

Plaintiff then moved, via Order to Show Cause signed by the Court on February 21, 2017, for the disqualification of Judge Hartman from adjudicating this case, and for reconsideration and reargument of the Decision & Order, and to vacate the Decision & Order for lack of jurisdiction. *See* Order to Show Cause, signed February 21, 2017, annexed as Exhibit 3 to Lynch Aff. That motion is currently pending.

**C. Plaintiff's Current Motion, via Order to Show Cause, for Summary Judgment, to File a Supplemental Complaint, and for a Temporary Restraining Order and Preliminary Injunction**

By Order to Show Cause, which was signed by the Court on March 29, 2017 (annexed as Exhibit 4 to Lynch Aff.), Plaintiff moved for partial summary judgment, for leave to file the proposed Supplemental Complaint, and for a preliminary injunction and temporary restraining order seeking various forms of relief related exclusively to the Fiscal Year 2017-2018 budget. Specifically, Plaintiff asks the Court to:

1. Grant summary judgment in Plaintiff's favor on all sub-parts of the sixth cause of action in the Complaint;
2. Grant leave to Plaintiff to file the proposed Supplemental Complaint, which alleges causes of action "pertaining to fiscal year 2017-2018";
3. Declare null and void, pursuant to Article III, § 10 of the New York State Constitution, eight budget bills for Fiscal Year 2017-2018:
  - a. Senate Bill 2000/Assembly Bill 3000 (State Operations);
  - b. Senate Bill 2003/Assembly Bill 3003 (Aid to Localities);
  - c. Senate Bill 2004/Assembly Bill 3004 (Capital Projects);
  - d. Senate Bill 2005/Assembly Bill 3005 (Public Protection and General Government);
  - e. Senate Bill 2006/Assembly Bill 3006 (Education, Labor & Family Assistance);
  - f. Senate Bill 2007/Assembly Bill 3007 (Health and Mental Hygiene);
  - g. Senate Bill 2008/Assembly Bill 3008 (Transportation, Economic Development, and Environmental Conservation); and
  - h. Senate Bill 2009/Assembly Bill 3009 (Revenue);
4. Declare null and void, pursuant to Article III, § 10 of the New York State Constitution, Debt Service Budget Bill S2003-A/A3003-A for Fiscal Year 2017-2018;



5. Declare null and void, pursuant to Article VII, §§ 4, 5, 6 of the New York State Constitution and *Pataki v. New York State Assembly*, 4 N.Y.3d 75 (2004), unspecified bills amended on March 13, 2017;
6. Enjoin Defendants from enacting the unamended Legislative/Judiciary Bill S2001/A3001 and from disbursing monies pursuant thereto, or alternatively: for the legislative portion, enjoining enactment of § 1 appropriations and § 4 reappropriations and disbursements because they are not certified; and for the judiciary portion, enjoining enactment of § 3 reappropriations and disbursements, because they are not certified.

Ex. 4 at 2-3. Plaintiff also seeks motion costs pursuant to C.P.L.R. 8202. *Id.* at 3.

The Court denied Plaintiff's request for an evidentiary hearing. Ex. 4 at 4.

## **ARGUMENT**

### **POINT I**

#### **PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT ON HER SIXTH CAUSE OF ACTION**

Plaintiff seeks summary judgment on “each of the fives sections” of her sixth cause of action. Ex. 4 at 2. Plaintiff has made no showing of entitlement to summary judgment.

Plaintiff's sixth cause of action challenges Chapter 60, Part E, of the Laws of 2015, which created the Commission. The Court ruled that Plaintiff's sixth cause of action states a claim insofar as it alleges that the statute creates an unconstitutional delegation of legislative powers by according certain actions of the Commission the “force of law” and insofar as it alleges that the legislation violates Article XIII, § 7, of the New York State Constitution, which states that the compensation of public officers “shall not be increased or diminished during the term for which he or she shall have been elected or appointed.” *See* Ex. 2 (Decision and Order) at 7. Therefore, only the first and third sections of Plaintiff's sixth cause of action survived the motion to dismiss. *See* Ex. 2 at 7. To the extent Plaintiff seeks summary judgment on any other subpart of her sixth cause of action, it must be denied at the outset.

Plaintiff's motion should be denied also as to her claims that survived the motion to dismiss. Where, as here, a plaintiff challenges the constitutionality of a statute, courts are mindful that enactments of the Legislature – a coequal branch of government – may not casually be set aside. Statutes are entitled to 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). A facial constitutional challenge to a statute will fail unless the party can “establish that no set of circumstances exists under which” the statute would be valid. *Moran Towing Corp. v. Urbach*, 99 N.Y.2d 443, 448 (2003) (“A party mounting a facial constitutional challenge bears the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment.” (internal quotation marks omitted)); *see also Matter of Acevedo v. N.Y. State Dep’t of Motor Vehicles*, No. 2393/2013, 2014 N.Y. Misc. LEXIS 680, at \*37 (Sup. Ct. Albany Cnty. Feb. 18, 2014) (applying this standard to facial challenge to regulation alleged to be impaired by unconstitutional delegation of legislative powers). The plaintiff bears the heavy burden of establishing the statute’s unconstitutionality beyond a reasonable doubt. *Moran Towing*, 99 N.Y. 2d at 448 (“In order to prevail, [the plaintiff] must surmount the presumption of constitutionality accorded to legislative enactments by proof beyond a reasonable doubt.” (internal quotation marks omitted)).

Plaintiff has established only that, under the liberal construction of pleadings afforded *pro se* plaintiffs, parts of her sixth cause of action state a cognizable claim. Plaintiff makes no legal or factual showing, much less a showing beyond a reasonable doubt, that Chapter 60, Part E of the Laws of 2015 violates the separation of powers doctrine or Article XIII, section 7 of the New York State Constitution.

Further, Plaintiff is not entitled to summary judgment in such an expedited manner, *i.e.*, via Order to Show Cause. Dispositive relief should be considered only after full briefing on a properly submitted motion for summary judgment. Plaintiff's motion for summary judgment on her sixth cause of action should be denied.

## POINT II

### **PLAINTIFF IS NOT ENTITLED TO FILE A SUPPLEMENTAL COMPLAINT BECAUSE THE PROPOSED NEW CLAIMS ARE EITHER PATENTLY MERITLESS OR REDUNDANT**

Plaintiff seeks to file her Supplemental Complaint, which would add ten claims that exactly replicate those in the original Complaint, but are “pertaining to fiscal year 2017-2018.” Ex. 4 at 2; proposed Supplemental Complaint ¶¶ 370, 375 (annexed as Exhibit 5 to Lynch Aff.). The vast majority of the proposed new claims have already been found by the Court to be legally insufficient. Adding duplicates of those claims, therefore, would be futile. The remaining proposed claims – exact reproductions of the two sub-parts of the sixth cause of action that survived Defendants' motion to dismiss – are duplicative. Accordingly, Plaintiff's motion to file a supplemental complaint should be denied.

Plaintiff's proposed Supplemental Complaint seeks to assert the following claims:

1. The Legislature's proposed budget for Fiscal Year 2017-2018 is unconstitutional because it is not adequately itemized;
2. The Judiciary's proposed budget for 2017-2018 is unconstitutional because it is not adequately itemized;
3. The budget bills setting forth the FY 2017-2018 budget for the judiciary and legislature is unconstitutional over and beyond the legislative and judiciary budgets it embodies, “without revision”;
4. The process by which the State budget for Fiscal Year 2017-2018 was enacted violated its own rules, and “nothing lawful or constitutional” can emerge therefrom;
5. The process by which the State budget for Fiscal Year 2017-2018 was enacted violated Article VII, §§ 4, 5, and 6 of the New York State Constitution;
6. Chapter 60, Part E, of the Laws of 2015 is unconstitutional, as written, for five separate reasons, including an unconstitutional delegation of legislative powers to

- the Commission on Legislative, Judicial and Executive Compensation (the “Commission”), and that it violates Article XIII, § 7 of the New York State Constitution regarding to changes in compensation for public officers;
7. Chapter 60, Part E of the Laws of 2015 is unconstitutional, as applied, because of the Commission’s alleged biases and concealment of corruption;
  8. The Commission’s violations of statutory requirements render its judicial salary recommendations for Fiscal Year 2017-2018 null and void;
  9. The “three-men-in-a-room” budget negotiation process is unconstitutional; and
  10. The appropriation to counties for district attorney salaries in bill S6403-d/A9003-d does not authorize disbursements for Fiscal Year 2017-2018 and is unconstitutional.

*See* Ex. 5 ¶¶ 370, 375; Ex. 1 (Complaint) ¶¶ 24-33, 35-39, 41-47, 49-53, 55-58, 60-68, 70-76, 78-80, 82-84, 86-110.

Plaintiff’s motion should be denied. With the exception of the allegation that Chapter 60, Part E, of the Laws of 2015 – the statute granting powers to the Commission – violates the separation of powers doctrine and Article VIII, section 7 of the New York State Constitution, the proposed new claims are premised entirely on claims that have been dismissed. *See* Ex. 2 (Decision and Order) at 5-6. The Court held that the first four causes of action must be dismissed because they were found to be patently devoid of merit in Plaintiff’s 2014 Action, and the fifth cause of action was also rejected by the Court in the 2014 Action. *Id.* at 5. The Court further held that the seventh and eighth causes of action must be dismissed because they allege conduct by the Commission, which is not a party to this action, the ninth cause of action fails to state a cognizable claim, and the tenth cause of action is non-justiciable. *Id.* at 5-6. Those claims, which were found to lack merit, to assert claims against a non-party, or to be non-justiciable, *see id.*, are no more meritorious in the context of the Fiscal Year 2017-2018 budget.

Accordingly, filing the proposed Supplemental Complaint, insofar as it alleges duplicates of causes of action one through five, seven through nine, and subparts two, four, and five of the sixth cause of action in the original Complaint, would be futile. *See Cusack v. Greenberg*

*Traurig, LLP*, 109 A.D.3d 747, 749 (1st Dep’t 2013) (holding motion to amend would be futile where plaintiff failed to identify how he would address defects in his original complaint); *Desarrolladora Farallon S. de R.L. de C.V. v Mexvalo, S. de R.L. de C.V.*, 146 A.D.3d 442, 442 (1st Dep’t 2017) (affirming dismissal and denial of motion to amend where original complaint was dismissed for failure to state a claim).

As to subparts one and three of Plaintiff’s sixth cause of action – that Chapter 60, Part E of the laws of 2015 violates the separation of powers doctrine and Article XIII, section 7 of the New York State Constitution – those claims reasserted in the proposed Supplemental Complaint would be entirely duplicative. There is no need to re-assert the identical facial challenge to the same statute. Accordingly, Plaintiff’s motion, insofar as it seeks to add a cause of action challenging the facial constitutionality of Chapter 60, Part E of the Laws of 2015, should be denied because that cause of action would be duplicative. *See Laruccia v. Forchelli, Curto, Schwartz, Mineo, Carlino & Cohn, LLP*, 295 A.D.2d 321, 321 (2d Dep’t 2002) (affirming denial of motion to amend to add duplicative claim).

Accordingly, Plaintiff’s motion for leave to file her proposed Supplemental Complaint should be denied because the claims she seeks to assert are futile or redundant. *Cusack*, 109 A.D.3d at 749; *Laruccia*, 295 A.D.2d at 321.

### **POINT III**

#### **PLAINTIFF DOES NOT SATISFY ANY CRITERIA FOR A PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER**

A plaintiff seeking a TRO or a preliminary injunction must demonstrate: “(1) irreparable injury absent the grant of the TRO [or preliminary injunction]; (2) likelihood of success on the merits; and (3) that the balance of equities lies in plaintiffs’ favor and outweighs the public

interest.” *Grumet v. Cuomo*, 162 Misc. 2d 913, 929 (N.Y. Sup. Ct. 1994) (citing *Kuttner v. Cuomo*, 147 A.D.2d 215, 218 (3d Dep’t 1989) (stating standard for a preliminary injunction)).

The purpose of such preliminary relief is to maintain the status quo pending the outcome of the litigation. *See, e.g., Scialdone v Stepping Stones Assoc., L.P.*, No. 2012-02765, 2017 N.Y. App. Div. LEXIS 1818, at \*3 (2d Dep’t Mar. 15, 2017); C.P.L.R. 6301, 6313. Preliminary injunctions and TROs are “drastic remed[ies], which should be used sparingly.” *Kuttner v. Cuomo*, 147 A.D.2d 215, 218 (3d Dep’t 1989). This is especially true when the preliminary relief sought is identical to the ultimate relief sought in the litigation: “It is well settled that temporary injunctions which in effect give the same relief which is expected to be obtained by final judgment, if granted at all, are granted with great caution and only when required by urgent situations or grave necessity, and then only on the clearest of evidence.” *Grumet*, 162 Misc. at 929-30. (quoting *Russian Church of Our Lady of Kazan v Dunkel*, 34 A.D.2d 799, 801 (2d Dep’t 1970)).

A plaintiff seeking preliminary relief must demonstrate an injury that is “immediate, specific, nonspeculative and nonconclusory.” *Id.* at 930 (citing *N.Y. State Inspection, Sec. & Law Enforcement Emps., Dist. Council 82 v. Cuomo*, 64 N.Y.2d 233, 240 (1984)).

A request for preliminary relief must be premised on alleged conduct “respecting the subject of the action.” C.P.L.R. 6301. And, critically, it is the plaintiff seeking such relief who “bears the burden of establishing his undisputed entitlement to a preliminary injunction through the tender of evidentiary proof.” *Brodsky v. Rochester*, 142 A.D.2d 1002, 1003 (4th Dep’t 1988).

Plaintiff’s application for a preliminary injunction and TRO, which seeks relief related solely to the 2017-2018 budget, fails to satisfy the fundamental requirement of being related to

the underlying action. *See* C.P.L.R. 6301. And Plaintiff has failed to submit any evidence to establish that (1) she, or the public, will be irreparably harmed in the absence of the relief she seeks, (2) she would be likely to succeed on the merits if she properly filed claims for the relief sought, or (3) the balance of equities tips in her favor.

**A. Plaintiff Is Not Entitled to a Declaration that Any of the 2017-18 Budget Bills are Null and Void or that they Violate Article III, § 10 of the New York State Constitution**

Plaintiff's motion for declaratory and injunctive relief with respect to nine bills for Fiscal Year 2017-2018 should be denied because Plaintiff has not alleged any imminent and irreparable harm that would result from failing to nullify those bills, that she would be likely to succeed on a claim challenging those bills, or that the balance of equities tips in her favor.

The relief sought should be denied at the outset because those requests for relief are unrelated to the Complaint in this case. It is a fundamental requirement that an application for a preliminary injunction or a TRO must be premised on alleged conduct "respecting the subject of the action." C.P.L.R. 6301; C.P.L.R. 6313 (providing that a TRO may be granted upon the required showing on a motion for a preliminary injunction). The only remaining "subject" of this "action" is Chapter 60, Part E, of the Laws of 2015. Accordingly, insofar as Plaintiff's motion seeks relief regarding any specific budget bills for the Fiscal Year 2017-2018 budget, it must be denied.

First, Plaintiff seeks to have the following bills declared null and void for purported violations of Article III, section 10 of the New York State Constitution:

- Senate Bill 2000/Assembly Bill 3000 (State Operations);
- Senate Bill 2003/Assembly Bill 3003 (Aid to Localities);
- Senate Bill 2004/Assembly Bill 3004 (Capital Projects);
- Senate Bill 2005/Assembly Bill 3005 (Public Protection and General Government);
- Senate Bill 2006/Assembly Bill 3006 (Education, Labor & Family Assistance);

- Senate Bill 2007/Assembly Bill 3007 (Health and Mental Hygiene);
- Senate Bill 2008/Assembly Bill 3008 (Transportation, Economic Development, and Environmental Conservation); and
- Senate Bill 2009/Assembly Bill 3009 (Revenue)
- Debt Service Budget Bill S2003/A3003 for Fiscal Year 2017-2018.

Ex. 4 at 2-3.

Article III, section 10 of the New York State Constitution provides:

Each house of the legislature shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

N.Y. Const. Art. III, § 10.

To the extent Plaintiff's challenges to the foregoing bills are construed as related to the subject of this action, Plaintiff's application should nevertheless be denied because she fails to submit any evidentiary proof demonstrating a violation of Article III, section 10. Plaintiff fails to submit proof that either house failed to keep a journal of its proceedings, that the doors of either house were improperly closed, or that either house adjourned for more than two days without the consent of the other house. Accordingly, Plaintiff does not show any likelihood of success on the merits of these claims. This is especially true because, in seeking to have these bills annulled, Plaintiff expressly seeks, via TRO, the ultimate relief she would seek pursuant to a properly filed claim. Plaintiff falls far short of showing that she is entitled to such relief. *See Grumet*, 162 Misc. at 929-30 ("It is well settled that temporary injunctions which in effect give the same relief which is expected to be obtained by final judgment, if granted at all, are granted with great caution and only when required by urgent situations or grave necessity, and then only on the clearest of evidence." (internal quotation marks omitted)).

To the extent Plaintiff relies on any assertions in her proposed Supplemental Complaint to support her application for preliminary injunctive relief, such reliance is misplaced. To



demonstrate entitlement to such relief, Plaintiff is required to submit “evidentiary proof.”

*Brodsky*, 142 A.D.2d at 1003.

Finally, the balance of the equities tips far in favor of Defendants. That Plaintiff seeks such a drastic form of relief without showing any irreparable harm or any likelihood of succeeding on a constitutional challenge to numerous budget bills only underscores that the equities in her favor are non-existent. The equities in favor of Defendants are substantial. It would be difficult to overstate the extent of the disruption to countless facets of government operations that would result from nullifying numerous duly enacted budget bills.

**B. Plaintiff is Not Entitled to a Declaration that Any Purported Amended Budget Bills are Null and Void or that they Violated Article VII, §§ 4, 5, or 6 of the New York State Constitution**

Plaintiff asks the Court to declare null and void, pursuant to Article VII, §§ 4, 5, 6 of the New York State Constitution and *Pataki v. New York State Assembly*, 4 N.Y.3d 75 (2004), certain bills amended on March 13, 2017. Plaintiff is not entitled to this relief.

As with the bills that Plaintiff alleges violate Article III, section 10, the bills purportedly amended on March 13, 2017, are unrelated to the subject matter of the Complaint. And Plaintiff has not alleged, much less demonstrated with evidentiary proof, any irreparable harm that would result if these purportedly amended bills – which Plaintiff largely does not identify – were not annulled. And Plaintiff fails to show any likelihood of success on the merits. Article VII, section 4 provides, in relevant part:

The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, 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.

N.Y. Const. Art. VII, § 4.

Plaintiff alleges that the legislature “altered appropriations by increases and additions, directly to the bills, not ‘stated separately and distinctly from the original item’ and removing and inserting qualifying language.” Ex. 4 at 3. But Plaintiff fails to submit any evidentiary proof of any violation of Article VII, section 4. In her proposed Supplemental Complaint, Plaintiff identifies an alleged \$100,000 discrepancy for the Commission on Judicial Conduct that was not “flagged by any underlying italics.” Suppl. Compl. ¶ 237. Plaintiff alleges the Governor’s budget appropriated \$5,584,000 for the Commission on Judicial Conduct, but that Assembly Bill 3000-B appropriates \$5,684,000. *Id.* Plaintiff submits to the Court only bill A3000-B, but the publicly available actions on that bill demonstrate that Bill A3000-B was never Acted on: “print number 3000b” was printed on March 13 2017, but that prints 3000c and 3000d were printed on April 8, 2017. *See* Actions on Bill No. AO3000D, annexed as Exhibit 6 to Lynch Aff. *available at* [http://assembly.state.ny.us/leg/?default\\_fld=&leg\\_video=&bn=A03000&term=2017&Summary=Y&Actions=Y&Text=Y](http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03000&term=2017&Summary=Y&Actions=Y&Text=Y). Bill No. A3000D contains an appropriation of \$5,584,000 for the Commission on Judicial Conduct. Ex. 7 (page 450 of bill AO3000D). Moreover, public sources show that the B print, or bill 3000D, was never acted on – the D print, or bill AO3000D, was submitted to the Governor (indicating delivered to Governor on 4/9/2017). *Id.*

Plaintiff also identifies bill S2003/A2003, and claims that the appropriations and re-appropriations for the aid to localities portion of the Criminal Justice Services budget were amended from \$184,245,000 to 200,575,000 and from \$263,379,989 to \$385,599,349, respectively. Suppl. Compl. ¶¶ 235-36. Plaintiff also claims that the salary reimbursements for district attorneys were amended from \$4,212,000 to \$5,812,000. *Id.* at ¶ 236. However, Plaintiff submits to the Court only bill S2003B, and the summary of actions by the Senate shows that the

print number S2003B was printed on March 13, 2017, but that 2003C and 2003D were subsequently printed on April 4, 2017. Ex. 8 (summary of Actions on S2003D), *available at* <https://www.nysenate.gov/legislation/bills/2017/s2003/amendment/d>. Plaintiff does not submit to the Court S2003D, which, as public sources demonstrate, is the bill that was delivered to Governor. Ex. 8 at 1 (indicating delivered to Governor on Apr. 9, 2017).

As for any remaining bills allegedly amended on March 13, 2017, Plaintiff submits no evidence to enable the Court to examine the question of whether the purported amendments by the Legislature complied with the requirements of Article VII, section 4 regarding legislative amendments related to appropriations.

As with her challenges pursuant to Article III, section 10, the relief sought by Plaintiff with respect to the purported violations of Article VII would be identical to the ultimate relief sought in a properly filed claim. Plaintiff falls far short of the stringent showing required for such a drastic form of relief. *See Grumet*, 162 Misc. at 929-30. And Plaintiff cannot show that the balance of equities tips in her favor, in contrast with the disruption to state operations that would result from nullifying numerous budget bills.

**C. Plaintiff is Not Entitled to an Injunction Against the Legislative/Judiciary Budget Bill S2001/A3001 or Against Disbursements Pursuant to Any Part Thereof**

Plaintiff seeks to enjoin Defendants from enacting the unamended Legislative/Judiciary Bill S2001/A3001 and from disbursing monies pursuant thereto, or alternatively: (i) for the legislative portion, enjoining enactment of § 1 appropriations and § 4 reappropriations and disbursements because they are not certified; and (ii) for the judiciary portion, enjoining enactment of § 3 reappropriations and disbursements. The sole basis for Plaintiff's request to

enjoin the budget bills for two entire branches of the state government is: “because they are not certified.” Ex. 4 at 3.

Plaintiff’s application to enjoin the enactment of the Legislative/Judiciary budget bill is moot, because it has already been enacted. In any event, to the extent Plaintiff’s vague assertion that “they are not certified” is construed as asserting that the Judiciary’s and Legislature’s budget estimates were not certified, as required by Article VII, § 1 of the New York State Constitution, Plaintiff submits no evidence in support thereof. Nor could she. The Judiciary’s budget estimate for Fiscal Year 2017-2018 was certified. *See Lynch Aff. Ex. 9.* And the Legislature’s budget estimate for Fiscal Year 2017-2018 was certified. *See Lynch Aff. Ex. 10.*

Plaintiff fails to identify or provide evidence to demonstrate an irreparable harm that would result from allowing disbursements from the duly enacted budgets for the Judiciary and Legislative branches. And the balance of the equities tips against her. The certain disruptions that would result from enjoining disbursements to two entire branches of state government tilt the equities heavily toward the Defendants.

Plaintiff is not entitled to any injunctive relief related to the Legislative/Judicial Budget Bill.

#### **POINT IV**

##### **PLAINTIFF IS NOT ENTITLED TO MOTION COSTS**

Plaintiff seeks costs of \$100.00, pursuant to C.P.L.R. 8202. Plaintiff is not entitled to costs. C.P.L.R. 8202 provides: “Costs awarded on a motion shall be in an amount fixed by the court, not exceeding one hundred dollars.” C.P.L.R. 8202.

Motion costs are discretionary. *See, e.g., Carp v. Marcus*, 116 A.D.2d 854, 854 (3d Dep’t 1986). Plaintiff submits no argument in support of her request for motion costs, and the


Court should not exercise its discretion to grant such costs. Plaintiff filed an Order to Show Cause containing a premature and unsupported motion for summary judgment, a motion to file a supplemental complaint containing causes of action that are either meritless or duplicative, and an application for a preliminary injunction and temporary restraining order for relief unrelated to the Complaint and for which Plaintiff provides no evidentiary support. Plaintiff should not be rewarded for filing a meritless motion and application for preliminary relief for which she provides no support.

### CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court deny Plaintiff's motion and requests for relief in all respects, and order such other and further relief as the Court shall seem just and equitable.

Dated: Albany, New York  
April 21, 2017

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