

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.

AFFIRMATION

Index No. 5122-16
RJI No. 01-16-122174

Helena Lynch, an attorney licensed to practice in the State of New York, affirms the
following under penalty of perjury pursuant to C.P.L.R. 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for 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 in the above-captioned action.

2. I submit this Affirmation in opposition to plaintiffs' motion for partial summary judgment, for leave to file a Supplemental Complaint, and her application for preliminary injunctive relief and a temporary restraining order seeking various forms of relief, brought via Order to Show Cause signed by the Court on March 29, 2017.

3. Annexed hereto as **Exhibit 1** is a true and correct copy of the Complaint in this action, dated September 2, 2016, by which this action was commenced. Exhibit 1 is the Complaint only, without exhibits.

4. On or about September 15, 2016, Defendants moved to dismiss the Complaint. Annexed hereto as **Exhibit 2** is a true and correct copy of the Decision and Order of this Court dated December 1, 2016, which was the Court's ruling on Defendants' motion to dismiss the Complaint.

5. On or about February 17, 2016, Plaintiff filed a motion, via order to show cause, to have the Court disqualified, and for reargument and reconsideration of the December 21, 2016, Decision and Order. Annexed hereto as **Exhibit 3** is a true and correct copy of the Order to Show Cause signed by this Court on February 21, 2017, by which Plaintiff sought the aforementioned relief. That motion remains pending.

6. On or about March 29, 2017, Plaintiff submitted an application, via order to show cause, for partial summary judgment, leave to file a Verified Supplemental Complaint, and a preliminary injunction and a temporary restraining order on various grounds. Annexed hereto as **Exhibit 4** is a true and correct copy of the Order to Show Cause signed by the Court on March 29, 2017, by which Plaintiff seeks the aforementioned relief.

7. Annexed hereto as **Exhibit 5** is a true and correct copy of Plaintiff's proposed Verified Supplemental Complaint, in its corrected version dated March 29, 2017.

8. Annexed hereto as **Exhibit 6** is a true and correct copy of a printout of the summary of the Assembly's Actions on bill No. AO300D. Exhibit 6 was downloaded from the Assembly's public website and is available at:

http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03000&term=2017&Summary=Y&Actions=Y&Text=Y.

9. Annexed hereto as **Exhibit 7** is a true and correct copy of page 450 of bill AO300D. The entire bill is available on the Assembly's public website, at:

http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03000&term=2017&Summary=Y&Actions=Y&Text=Y.

10. Annexed hereto as **Exhibit 8** is a true and correct copy of a printout of a summary of the Senate's actions on bill No. S2003D. Exhibit 9 was downloaded from the Senate's public website and is available at:

<https://www.nysenate.gov/legislation/bills/2017/s2003/amendment/d>.

11. Annexed hereto as **Exhibit 9** is a true and correct copy of the cover page of the Judiciary budget for Fiscal Year 2017-2018, with the certification of the Chief Judge of the Court of Appeals, and approval of the then-current members of the Court of Appeals.

12. Annexed hereto as **Exhibit 10** is a true and correct copy of the cover letter, signed by John J. Flanagan and Carle E. Heastie, certifying the Legislature's budget for Fiscal Year 2017-2018, submitted to the Governor on December 1, 2016.

13. In addition to the aforementioned annexed Exhibits, submitted herewith is Defendants' Memorandum of Law in Opposition to Plaintiff's Application for Partial Summary Judgment, to Supplement the Complaint, and for a Preliminary Injunction and Temporary Restraining Order, which sets forth Defendants' legal arguments in opposition to Plaintiffs' application.

14. In her motion, Plaintiff seeks an order (1) granting summary judgment on Plaintiff's sixth cause of action, parts of which survived Defendants' motion to dismiss, (2) granting leave to file a Verified Supplemental Complaint, which contains replicas of the ten cause of action asserted in the Complaint, except applied to the Fiscal Year 2017-2018 budget; (3) declaring null and void, pursuant to Article III, § 10 of the New York State Constitution, eight budget bills for Fiscal Year 2017-2018, specifically: 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); (4) Declaring 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) declaring 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 unidentified bills amended on March 13, 2017; and (6) enjoining 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. *See* Exhibit 4 at 2-3. Plaintiff also seeks motion costs. *See* Exhibit 4 at 3.

15. With her motion papers, Plaintiff submitted three requests pursuant to the Freedom of Information Law (“FOIL”) (two of which were directed to the Senate Records Access Office and one of which was addressed to the Assembly Records Access Officer); her proposed Verified Supplemental Complaint (submitted herewith as Exhibit 5); and copies of: numerous bills, the summary of recommended changes to the Executive Budget, prepared by the Assembly Ways and Means Committee for presentation to the Members of the Assembly, and Senate Resolution No. 1050.

16. Defendants are unable to locate in the papers submitted by Plaintiff any legal argument in support of Plaintiff’s motion for summary judgment, or any evidence in support thereof.

17. Aside from two limited and unsupported assertions in her proposed Supplemental Complaint, Defendants are also unable to locate anything in the papers submitted by Plaintiff that would direct the Court to the portion of any of the submitted bills that reflects the constitutional violations she alleges.

18. Defendants are also unable to locate in the papers submitted by Plaintiff any assertion or evidence of an irreparable injury that would result if she were to be denied the preliminary injunctive relief and the temporary restraining order she requests, or any argument or

evidence showing that equitable considerations favor the preliminary injunction and temporary restraining order Plaintiff seeks.

WHEREFORE, Defendants respectfully request that the Court issue an order (1) denying Plaintiff's motion for partial summary judgment, (2) denying Plaintiff's motion for leave to file the proposed Verified Supplemental Complaint, (3) denying Plaintiffs' application for preliminary injunctive relief and a temporary restraining order, (4) denying Plaintiff's request for motion costs; and (5) granting Defendants such further relief that the Court deems just, proper, and equitable.

Dated: Albany, New York
April 21, 2017



Helena Lynch