

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

RECEIVED  
2017 JUN 12 PH 2:03  
ALBANY COUNTY CLERK

----- X  
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,

**NOTICE OF APPEAL  
with pre-calendar statement**

-against-

Index #5122-16  
RJI # 01-16-122174

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 P. 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.  
----- X



PLEASE TAKE NOTICE that plaintiffs hereby appeal to the Appellate Division, Third  
Department, Justice Building, 5<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12223, from two  
interconnected decisions and orders of Acting Supreme Court Justice Denise A. Hartman, each dated  
May 5, 2017 and entered in the Albany County Clerk's Office on May 9, 2017:

- (1) Judge Hartman's May 5, 2017 decision and order (Exhibit A), denying, "in its entirety", plaintiffs' order to show cause for her disqualification, vacatur of her December 21, 2016 decision and order, disclosure, reargument/renewal, and other relief; and
- (2) Judge Hartman's May 5, 2017 amended decision and order (Exhibit B), identical to her original December 21, 2016 decision and order, except for its inclusion of a CPLR §2219(a) recitation of "papers used on the motion".

Dated: White Plains, New York  
June 10, 2017

Yours, etc.



ELENA RUTH SASSOWER, unrepresented plaintiff,  
individually & as Director of the Center for Judicial  
Accountability, Inc., and on behalf of the People of the State  
of New York & the Public Interest

10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)

TO: Albany County Clerk  
Albany County Court House, Room 128  
16 Eagle Street  
Albany, New York 12207-1077

Attorney General Eric T. Schneiderman  
The Capitol  
Albany, New York 12224-0341  
ATT: Assistant Attorney General Adrienne J. Kerwin/of Counsel

**PRE-CALENDAR STATEMENT**  
**State of New York**  
**Supreme Court – Appellate Division**  
**Third Judicial Department**

**Albany County Index #5122-16**  
**RJI #: 01-16-122174**  
**Commencement Date: September 2, 2016**

**1. Case Title:**

*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,*

*-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 P. 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.*

**2. Parties Involved:** Set forth the full names of the original parties and any change in parties:

<b>Party Name</b>	<b>Original Status</b>	<b>Appellate Status</b>
Center for Judicial Accountability, Inc.	Plaintiff	Appellant
Elena Ruth Sassower, individually and as Director	Plaintiff	Appellant
Governor Andrew M. Cuomo	Defendant	Respondent
Temporary Senate President John Flanagan	Defendant	Respondent
New York State Senate	Defendant	Respondent

Assembly Speaker Carl Heastie	Defendant	Respondent
New York State Assembly	Defendant	Respondent
Attorney General Eric T. Schneiderman	Defendant	Respondent
Comptroller Thomas DiNapoli	Defendant	Respondent
Chief Judge Janet DiFiore	Defendant	Respondent

**3. Counsel for Appellants:**

*Set forth the name, address, e-mail address, telephone number and facsimile telephone number of counsel for appellant(s).*

Plaintiffs/appellants are without counsel – Acting Supreme Court Justice Denise Hartman having failed to rule on the threshold issue of their entitlement to representation/intervention by the New York State Attorney General, which they sought pursuant to Executive Law §63.1 and State Finance Law, Article 7-A [§123 *et seq.*], based on their *prima facie*/summary judgment entitlement to declarations, in their favor, on the ten causes of action of their September 2, 2016 verified complaint. Plaintiff/appellant Elena Sassower appears herein, unrepresented, individually & as Director of the Center for Judicial Accountability, Inc., and on behalf of the People of the State of New York & the Public Interest.

Address: 10 Stewart Place, Apt. 2D-E  
White Plains, New York 10603  
E-Mail Address: [elena@judgewatch.org](mailto:elena@judgewatch.org)  
Telephone: 914-421-1200  
Fax: --

**4. Counsel for Respondent(s) and Counsel for Other Parties:**

*Set forth the name, address, e-mail address, telephone number and facsimile telephone number of counsel for respondent(s) and for each other party.*

Name: Attorney General Eric T. Schneiderman  
Asst. Attorney General Adrienne J. Kerwin, of Counsel  
Address: The Capitol  
Albany, New York 12224-0341  
Telephone: 518-776-2608  
Fax: 518-915-7738

**5. Court, Judge and County:**

*Identify the court, judge or justice, and the county from which the appeal is taken.*

Supreme Court, Acting Supreme Court Justice Denise A. Hartman, Albany County

**6. Nature and Object of Action or Proceeding:**

*Concisely set forth the nature and object of the underlying action or proceeding.*

This is a citizen-taxpayer action, pursuant to State Finance Law, Article 7-A [§123, *et seq.*], whose September 2, 2016 verified complaint, brought in the public interest and on behalf of the People of the State of New York, seeks declaratory and injunctive relief with respect to the New York State budget for fiscal year 2016-2017 by reason of its unconstitutionality, unlawfulness, and fraud – the repetition of which, with respect to the state budget for fiscal year 2017-2018, is the subject of a March 29, 2017 verified supplemental complaint, likewise seeking declaratory and injunctive relief, as to which leave to supplement is *sub judice* before Judge Hartman.

**7. Appellate Issue(s):**

*Set forth a clear and concise statement of the issue(s) to be raised on the appeal, the grounds for reversal or modification to be advanced and the specific relief sought on the appeal.*

This appeal involves Judge Hartman’s actual bias born of her financial interest and personal and professional relationships with defendants, as to which she made no disclosure, notwithstanding requested to do so. Such actual bias took the form of:

(a) Judge Hartman’s concealment and failure to adjudicate threshold integrity issues involving defense counsel, the New York State Attorney General, for whom she worked for 30 years before being appointed to the bench in 2015 by former Attorney General, now Governor, Andrew Cuomo – the first named defendant, sued for corruption with the other named defendants, Attorney General Eric Schneiderman, among them;

(b) Judge Hartman’s obliteration of all cognizable adjudicative standards to “protect” and save defendants – public officers all – from ten causes of action to which they have no defense and as to which the record establishes plaintiffs’ summary judgment entitlement, *as a matter of law*, with sweeping declaratory and injunctive relief in their favor, consistent with such definitive caselaw as *Korn v. Gulotta*, 72 NY2d 363 (1988); *New York State Bankers Assn v. Wetzler*, 81 NY2d 98 (1993); *King v. Cuomo*, 81 NY2d 247 (1993); *Pataki v. New York State Assembly, New York State Senate/Silver v. Pataki*, 4 NY3d 75 (2004). All such declaratory judgments, germane to the New York State budget, are being sought on the appeal.

**8. Additional Information:**

*Please set forth any information you deem relevant to the determination of whether the matter is appropriate for a Civil Appeals Settlement Program (CASP) Conference.*

State Finance Law §123-c(4) commands that citizen-taxpayer actions be “promptly determined”. The speediest means to resolve the far-reaching, constitution-vindicating issues on this appeal and prevent further dissipation and theft of billions of dollars in taxpayer monies from a state budget that will have to be declared unconstitutional (see above caselaw) is *via* a settlement conference. That defendants/respondents have no defense to the record herein, establishing that Judge Hartman’s appealed-from decisions are criminal acts, flagrantly falsifying the record and obliterating the law, makes the holding of such settlement conference all the more compelled.

**9. Other Related Matters:**

*Indicate if there is another related action or proceeding, identifying and briefly describing same.*

The facts giving rise to, and additionally substantiating, this citizen-taxpayer action are chronicled in plaintiffs’ prior citizen-taxpayer action, which the record herein incorporates and whose record, likewise, establishes plaintiffs’ entitlement to summary judgment on all causes of action and declaratory and injunctive relief in their favor:

*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,*

*-against-*

*ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, DEAN SKELOS in his official capacity as Temporary Senate President, THE NEW YORK STATE SENATE, SHELDON SILVER, 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, and THOMAS DiNAPOLI, in his official capacity as Comptroller of the State of New York,*

Submitted by:

  
Signature

Print Name: Elena Ruth Sassower

Date: June 10, 2017

**10. Attachments**

**Check:**

- |  |  |
|--|--|
| 1. Copy of order <del>or judgment</del> appealed from          | <input checked="" type="checkbox"/> attached |
| 2. Copy of <del>opinion or decision</del> .                    | <input checked="" type="checkbox"/> attached |
|  | <input type="checkbox"/> does not exist      |
| 3. Copy of notice of appeal or order granting leave to appeal. | <input type="checkbox"/> attached            |

Attach copies, not originals.

File this original form with attachments when original notice of appeal is filed in the office where the judgment or order of court of original instance is entered.

A copy of this document must be served upon all counsel and *pro se* parties.

**The Civil Appeals Settlement Program (CASP) functions independently of the appeals function of the Appellate Division, Third Department with the intent to assist the parties in pragmatically resolving their disputes by agreement. The progress of and communications of matters in CASP are not shared with the Court as part of the appeal and play no role in the Court's resolution of an appeal. The communications and opinions expressed at a CASP conference are considered confidential and may not be communicated to the Court as part of the merits of an appeal. The consideration of an appellate matter by CASP does not excuse compliance with any Appellate Division, Third Department rule concerning the timely perfection of the appeal.**

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 P. 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.

---

APPEARANCES:

ELENA RUTH SASSOWER  
Plaintiff pro se  
PO Box 8101  
White Plains, New York 10602

ERIC T. SCHNEIDERMAN, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK  
Adrienne J. Kerwin, of Counsel  
Attorney for Defendants  
The Capitol  
Albany, New York 12224-0341

DECISION AND  
ORDER

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

RECEIVED  
2017 MAY -9 PM 3:12  
ALBANY COUNTY CLERK

SA



Hartman, J.

In this citizen-taxpayer action pursuant to State Finance Law § 123-b, plaintiff Elena Ruth Sassower moves for an order (1) disqualifying the undersigned Judge, (3) granting reargument and renewal of the Court's decision and order dated December 21, 2016, (3) vacating that decision and order, and (4) granting \$ 100 costs on the motion. The December 21, 2016 decision and order, among other things, dismissed 9 of the 10 causes of action asserted in the complaint for failure to state a cause of action, but denied defendants' motion to dismiss with respect to the sixth cause of action.

First, plaintiff has not alleged a proper ground for disqualification. The undersigned Judge has no interest in this litigation or blood relation or affinity to any party hereto (*see People v Call*, 287 AD2d 877, 878–879 [3d Dept 2001]; *People v Call*, 287 AD2d 877 [3d Dept 2001]; *Trimarco v Data Treasury Corp.*, 2014 NY Slip Op 30664[U] [Sup Ct, Suffolk County 2014], citing *Paddock v. Wells*, 2 Barb. Ch. 331, 333 [Chancellor's Ct 1847]). Plaintiff's conclusory allegations of bias and fraud are meritless.

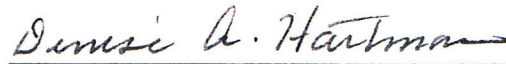
Second, plaintiff has not established “matters of fact or law” that the Court “overlooked or misapprehended,” or new facts that would warrant renewal or reargument. Plaintiff correctly points out that the Court failed to “recite the papers used on the motion,” as required by CPLR 2219 (a). The Court has signed and filed an amended decision and order correcting this

mistake (*see* CPLR 5019 [a]; *Rakhlev v NY City Hous. Auth.*, 253 AD2d 526, 527 [2d Dept 1998]). Accordingly, it is

**ORDERED** that plaintiff's motion is denied in its entirety.

This constitutes the Decision and Order of the Court. The original Decision and Order is being transmitted to defendant's counsel. All other papers are being transmitted to the County Clerk for filing. The signing of this Decision and Order does not constitute entry or filing under CPLR 2220 and counsel is not relieved from the applicable provisions of that rule respecting filing and service.

Dated: Albany, New York  
May 5, 2017

  
Denise A. Hartman  
Acting Supreme Court Justice

Papers Considered

1. Order to Show Cause and Moving Affidavit, with Exhibits T-X
2. Affirmation in Opposition, with Exhibits A-C
3. Memorandum of Law in Opposition

COPY

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-

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 P. 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

AMENDED  
DECISION AND  
ORDER\*

APPEARANCES:

ELENA RUTH SASSOWER  
Plaintiff pro se  
PO Box 8101  
White Plains, New York 10602

ERIC T. SCHNEIDERMAN, ATTORNEY  
GENERAL OF THE STATE OF NEW YORK  
Adrienne J. Kerwin, of Counsel  
Attorney for Defendants  
The Capitol  
Albany, New York 12224-0341

\*Amended to include a recitation of the papers considered.



Hartman, J.

Plaintiffs Center for Judicial Accountability and Elena Sassower seek a declaratory judgment under the State Finance Law that the Legislature's and Judiciary's proposed 2016–2017 budgets are improper and that the budgeting process violates various New York State Constitutional and statutory provisions, and an injunction blocking certain disbursements under the 2016–2017 legislative and judicial budget bill, including judicial pay raises and district attorney salary grants. Plaintiffs also move for a preliminary injunction preventing disbursement of funds.

Defendants move to dismiss the complaint to the extent it seeks to assert claims on behalf of the Center for Judicial Accountability. They also move to dismiss the complaint against defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore for lack of personal jurisdiction. Defendants further move to dismiss each cause of action pursuant to CPLR 3211 (a) (7).

Plaintiff's motion for preliminary relief is denied. Defendants' motion to dismiss the complaint to the extent it seeks to assert claims on behalf of the Center for Judicial Accountability is granted. Defendants' motion to dismiss for lack of personal jurisdiction is denied. Defendants' motion to dismiss pursuant to CPLR 3211 (a) (7) is granted to the extent that all causes of action except the sixth are dismissed.

## **Background**

Plaintiffs commenced a similar action in 2014 to challenge the Legislature's 2014–2015 budget. In October 2014, Supreme Court (McDonough, J.) dismissed three of the complaint's four causes of action. With leave of the Court, plaintiffs served and filed a supplemental complaint, which expanded their challenge to include the 2015–2016 budget, adding four new causes of action that mirrored the first four. In August, 2016, the Court dismissed the supplemental complaint and made a number of declarations validating the challenged budgets. The Court denied plaintiffs' motion to serve a second supplemental complaint, which would have added an additional eight causes of action and which included the 2016–2017 budget, explaining that proposed causes of action 9–12 were "patently devoid of merit" and that proposed causes of action 13–16 arose "out of materially different facts and legal theories" than those that had been alleged in the 2014 complaint.

In this action, plaintiffs' first four causes of action are essentially identical to the first four causes of action asserted in the 2014 action, as well as causes of action 9–13 asserted in the proposed second supplemental complaint in that action. Cause of action five in this complaint replicates part of causes of action 12 and 16 from the 2014 proposed second supplemental complaint. And causes of action 6–9 in this complaint correspond to causes of action 13–16 from the 2014 proposed second supplemental complaint. Cause of

action 10 in this complaint does not appear to have a counterpart from the 2014 action.

**The Complaint's Assertion of Claims on Behalf of the Center for Judicial Accountability Dismissed**

CPLR 321 (a) requires corporations to appear by attorney. Plaintiff Elena Ruth Sassower is not an attorney. Accordingly, the complaint is dismissed to the extent that it seeks to assert causes of action on behalf of the Center for Judicial Accountability (*see Pelaez v Silverstone*, 19 NY3d 954 [2012]; *Boente v Peter C. Kurth Off. of Architecture & Planning, P.C.*, 113 AD3d 803, 804 [2d Dept 2014]).

**Personal Jurisdiction**

The Office of the Attorney General argues that the Court lacks personal jurisdiction over defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore because plaintiff herself made service upon them. “Although CPLR 2103 (a) requires service to be made by a person who is not a party to the action, a violation of this provision is a mere irregularity which does not vitiate service” where, as here, no resulting prejudice is shown” (*Neroni v Follender*, 137 AD3d 1336, 1337 [3d Dept 2016] [internal quotation marks omitted]). Accordingly, the motion to dismiss for lack of personal jurisdiction is denied.

### **The First Five Causes of Action Are Dismissed**

In its April 2016 decision, the Court held that causes of action 9–12 in the proposed second supplemental complaint were “patently devoid of merit,” given the Court’s dismissal of similar causes of action regarding prior budget years (*citing Lucido v Mancuso*, 49 AD3d 220, 229 [2d Dept 2008]). Because causes of action 1–4 are identical to those the Court held “patently devoid of merit,” they are barred (*see Maki v Bassett Healthcare*, 141 AD3d 979, 981 [3d Dept 2016]). Likewise, the fifth cause of action, which alleges violations of New York State Constitution Article VII, §§ 4, 5, 6, must be dismissed because it restates arguments and claims already rejected by the Court in its prior decisions.

### **Causes of Action Seven through Ten Are Dismissed**

Causes of action seven and eight both challenge the actions of the Commission on Legislative, Judicial, and Executive compensation, which is not a party to this action. Accordingly, these causes of action must be dismissed. The ninth cause of action challenges the constitutionality of “three-men-in-a-room” budget negotiation. As defendants point out, the negotiation of the 2016–2017 budget is moot, because the budget has passed (*see N.Y. Pub. Interest Research Group, Inc. v Regan*, 91 AD2d 774 [3d Dept 1982], *lv denied* 58 NY2d 610 [1983]). Assuming without deciding that the exception for issues capable of repetition but evading review applies, plaintiff has failed to state a cause of

action. Taking all the allegations in the complaint as true, plaintiff has not alleged a violation of law. None of the authority cited by plaintiff prohibits the Governor and leaders of the Senate and Assembly from holding budget negotiations (*see Pataki v N.Y. State Assembly*, 4 NY3d 75, 85 [2004]; *Urban Justice Ctr. v Pataki*, 38 AD3d 20, 27–30 [1st Dept 2006], *appeal dismissed, lv denied* 8 NY3d 958 [2007]).

The tenth cause of action must also be dismissed. Plaintiff's itemization arguments are non-justiciable (*Pataki*, 4 NY3d at 96; *Urban Justice Ctr.*, 38 AD3d at 30). And the district attorney salary appropriation plaintiff challenges specifically supersedes any law to the contrary. Lastly, the reference to fiscal year 2014–2015 rather than 2016–2017 is a typographical error that does not invalidate the challenged legislation (*see Matter of Morris Bldrs., LP v Empire Zone Designation Bd.*, 95 AD3d 1381, 1383 [3d Dept 2012]).

### **Cause of Action Six States a Claim**

“When considering these pre-answer motions to dismiss the complaint for failure to state a cause of action, we must give the pleadings a liberal construction, accept the allegations as true and accord the plaintiffs every possible favorable inference” (*Chanko v Am. Broadcasting Cos. Inc.*, 27 NY3d 46, 52 [2016]). The key question before the court on a CPLR 3211 (a) (7) motion to dismiss is “whether the facts alleged fit within any cognizable legal theory



(*Loch Sheldrake Beach & Tennis Inc. v Akulich*, 141 AD3d 809, 814 [3d Dept 2016]).

Plaintiff argues that the 2015 legislation that created the Commission on Legislative, Judicial & Executive Compensation (Commission) violates the New York State Constitution (*see* Chapter 60, Laws of 2015 [Part E]). In particular, she argues that the provision therein that gives the Commission's recommendations the "force of law" violates the separation of powers doctrine and improperly delegates legislative function to the Commission. She further argues 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." Plaintiff raises additional challenges to the form and timing of the bill by which the legislation was introduced, among other things.

Here, on the record before it, the Court cannot say that plaintiff's claim is not cognizable. Defendants argue that the Appellate Division has already approved of commissions similar to the Commission here (*see McKinney v Commr. of the N.Y. State Dept. of Health*, 41 AD3d 252 [1st Dept 2007]). But the Court does not consider *McKinney* to be sufficiently analogous to this case to foreclose any and all challenge to the Commission legislation. Nor does *McKinney* address all the arguments raised by plaintiff.

**Motion for Preliminary Injunction Denied**

Plaintiff has not demonstrated a likelihood of success on the merits or irreparable harm. Thus, she is not entitled to preliminary relief (*Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Eklund v Pinkey*, 31 AD3d 908, 909 [3d Dept 2006]).

Accordingly, it is

**ORDERED** that plaintiff's motion for preliminary relief is denied; it is

**ORDERED** that defendants' motion to dismiss the causes of action asserted by the Center for Judicial Accountability is granted; it is

**ORDERED** that defendants' motion to dismiss the complaint against defendants Andrew M. Cuomo, Temporary Senate President John J. Flanagan, the New York State Senate, and Chief Judge Janet M. DiFiore for lack of personal jurisdiction is denied; it is

**ORDERED** that the motion to dismiss for failure to state a cause of action is granted with respect to causes of action one through five and seven through ten and those causes of action are dismissed; it is

**ORDERED** that the motion to dismiss for failure to state a cause of action is denied with respect to cause of action six; it is

**ORDERED** that defendants have 30 days from the date of this order to answer; it is

**ORDERED** that plaintiff's request for oral argument is denied.

This constitutes the Amended Decision and Order of the Court. The original Amended Decision and Order and all other papers are being transmitted to the County Clerk for filing.

Dated: Albany, New York  
May 5, 2017

*Denise A. Hartman*

---

Denise A. Hartman  
Acting Supreme Court Justice

Papers Considered

1. Order to Show Cause Dated September 2, 2016
2. Notice of Right to Seek Intervention
3. Letter Dated September 7, 2016, Correcting Complaint
4. Affidavit of Service Dated September 8, 2016
5. Summons and Verified Complaint, with Exhibits A-K
6. Notice of Cross-Motion to Dismiss the Complaint
7. Affirmation in Opposition to Plaintiff's Application for Preliminary Injunctive Relief and in Support of Defendants' Motion to Dismiss
8. Memorandum of Law in Opposition to Plaintiff's Application for Preliminary Injunctive Relief and in Support of Defendants' Cross-Motion to Dismiss the Complaint
9. Plaintiff's Affidavit in Further Support of Plaintiff's Order to Show Cause, in Reply/Opposition to Defendants' Cross Motion & Other Relief
10. Plaintiff's Memorandum of Law in Further Support of Order to Show Cause for a Preliminary Injunction, in Reply/Opposition to Defendants' Cross-Motion, & for Other Relief

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss:

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

I am the unrepresented individual plaintiff herein, over 18 years of age, and reside in the State of New York.

On June 10, 2017, I served a copy of the attached:

Notice of Appeal & Pre-Calendar Statement

upon: Attorney General Eric T. Schneiderman  
The Capitol  
Albany, New York 12224-0341

ATT: Assistant Attorney General Adrienne Kerwin -- [adrienne.kerwin@ag.ny.gov](mailto:adrienne.kerwin@ag.ny.gov)

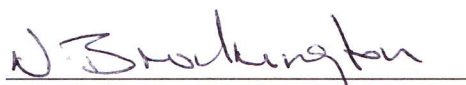
&, additionally, *via* e-mail to:

Attorney General Eric Schneiderman [Eric.Schneiderman@ag.ny.gov](mailto:Eric.Schneiderman@ag.ny.gov)  
Chief Deputy Attorney General Jason Brown [Jason.Brown@ag.ny.gov](mailto:Jason.Brown@ag.ny.gov)  
Chief Deputy Attorney General Janet Sabel [Janet.Sabel@ag.ny.gov](mailto:Janet.Sabel@ag.ny.gov)  
Executive Deputy Attorney General for State Counsel Kent Stauffer  
[Kent.Stauffer@ag.ny.gov](mailto:Kent.Stauffer@ag.ny.gov)  
Deputy Attorney General Meg Levine [Meg.Levine@ag.ny.gov](mailto:Meg.Levine@ag.ny.gov)  
Litigation Bureau Chief Jeffrey Dvorin [Jeffrey.Dvorin@ag.ny.gov](mailto:Jeffrey.Dvorin@ag.ny.gov)  
Assistant Attorney General Helena Lynch [Helena.Lynch@ag.ny.gov](mailto:Helena.Lynch@ag.ny.gov)

by depositing a true copy in a post-paid, properly-addressed envelope and mailing same at a U.S. post office within the State of New York at the address furnished by AAG Kerwin – and, additionally, *via* e-mail, as indicated above. A copy of the e-mail receipt is annexed.

  
ELENA RUTH SASSOWER

Sworn to before me this  
10<sup>th</sup> day of June 2017  
12

  
Notary Public

NOVELETTE A BROCKINGTON  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01BR6293108  
Qualified in Westchester County  
Commission Expires Nov. 25, 2017

## Center for Judicial Accountability, Inc. (CJA)

---

**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Saturday, June 10, 2017 2:11 PM  
**To:** 'Eric.Schneiderman@ag.ny.gov'; 'Jason.Brown@ag.ny.gov'; 'Janet.Sabel@ag.ny.gov'; 'Kent.Stauffer@ag.ny.gov'; 'Meg Levine'; 'Jeffrey Dvorin'; 'Adrienne Kerwin'; 'Helena Lynch'  
**Subject:** Citizen-Taxpayer Action -- CJA v. Cuomo, et al. - Albany Co. #5122-16  
**Attachments:** 6-10-17-pre-calendar-statement.pdf; 6-10-17-notice-of-appeal.pdf; 6-10-17-ltr-to-county-clerk.pdf

So as not to exceed size limits, herewith is the link to CJA's latest webpage pertaining to our above-entitled citizen-taxpayer action: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/6-10-17-osc.htm>

The webpage posts the following with respect to Judge Hartman's two May 5, 2017 decisions:

- (1) plaintiffs' unsigned order to show cause for reargument/renewal/disclosure/vacatur, my moving affidavit and exhibits;
- (2) plaintiffs' notice of appeal and pre-calendar statement, which are also attached hereto.

Also, my letter to the County Clerk.

I am en route to get these signed and notarized –and hard copies will be sent to you shortly, from the post office.

Thank you.

Elena Sassower, unrepresented plaintiff  
914-421-1200

SUPREME COURT OF STATE OF NEW YORK  
ALBANY COUNTY

----- X  
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,

Index #5122-16  
RJ#01-16-122174

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 P. 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.

---

**PLAINTIFFS' NOTICE OF APPEAL**  
(June 10, 2017)

---

ELENA RUTH SASSOWER, unrepresented plaintiff,  
individually & as director of the Center for Judicial Accountability, Inc.,  
and on behalf of the People of the State of New York & the Public Interest

10 Stewart Place, Apartment 2D-E  
White Plains, New York 10603  
914-421-1200  
[elena@judgewatch.org](mailto:elena@judgewatch.org)