

At an IAS Part of the Supreme Court of the State of New York, held in and for the County of Albany at the Courthouse, located at 16 Eagle Street, Albany, ~~New York~~, New York on the 16<sup>th</sup> day of June, 2014.

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 # 1788-14

Plaintiffs,

**Order to Show Cause with  
TRO to Prevent Destruction  
of Original Records & Direct  
Turn-Over**

-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.

Defendants.



----- X  
Upon the annexed affidavit of ELENA RUTH SASSOWER, plaintiff *pro se*, sworn to on  
June 6, 2014, and on all the papers and proceedings heretofore had.

A handwritten signature in black ink, consisting of stylized cursive letters, possibly 'E.R.S.', written over a horizontal line.

LET defendants show cause before this Court at 16 Eagle Street, Albany, New York 12207 on the 8<sup>th</sup> day of ~~June~~ <sup>July</sup> 2014 at 9:30 a.m. or as soon thereafter as the parties or their counsel may be heard, for an order:

(1) Enjoining defendants from destroying the documents that Plaintiff SASSOWER handed up to the Legislature at its February 6, 2013 joint budget hearing on "public protection" in substantiation of her oral testimony on that date in opposition to the Judiciary's proposed budget and the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation;

(2) Directing defendants to furnish all such documents to the Court;

(3) For such other and further relief as may be just and proper.

SUFFICIENT CAUSE APPEARING THEREFORE, let defendants be enjoined from destroying such documents pending the hearing and determination of this motion.

LET SERVICE of this order to show cause, together with the papers on which it is based, be made on or before the 25<sup>th</sup> day of June 2014 upon the defendants herein by e-mail and certified mail be deemed good and sufficient service.

  
\_\_\_\_\_  
Supreme Court Justice

*Personal appearances are not required on the return date.*

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 #1788-14

Plaintiffs,

-against-

**Affidavit in Support  
of Order to Show Cause,  
to Prevent Destruction of  
Original Records & Direct  
Turn-Over**

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,

Defendants.

-----X  
STATE OF NEW YORK                    )  
WESTCHESTER COUNTY                ) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff, fully familiar with all the facts, papers, and proceedings heretofore had. I submit this affidavit in support of the relief sought by plaintiffs' accompanying order to show cause to prevent destruction of original records and direct their turn-over to the Court to establish plaintiffs' entitlement to summary judgment with respect to the monies being disbursed for the third phase of the judicial salary increase.

2. In this citizen-taxpayer action, brought under State Finance Law Article 7-A, plaintiffs seek to enjoin defendants from disbursing monies for the third phase of the judicial salary increase, embedded in Budget Bill #S.6351/A.8551, upon a declaration that this third phase of the judicial salary increase, recommended by the August 29, 2011 Report of the Special Commission, is “a wrongful expenditure, misappropriation...illegal [and] unconstitutional” (verified complaint, pp. 44-45: Prayer for Relief, at 1B, 2).

3. As set forth by the March 28, 2014 verified complaint herein and detailed by its dispositive Exhibit C (¶¶5, 28-32-34, 51, 108), the *prima facie*, documentary proof that the judicial salary increase is statutorily-violative, fraudulent, and unconstitutional is plaintiffs’ October 27, 2011 Opposition Report and their March 30, 2012 verified complaint in the declaratory judgment action based thereon, *CJA v. Cuomo I*, which I handed up to the Legislature when I testified in opposition to the second phase of the judicial salary increase at its February 6, 2013 joint budget hearing on “public protection”.

4. The Legislature’s statutory duty to preserve this documentary evidence is Legislative Law §67. Entitled “Data for financial committees to be preserved”, it reads as follows:

“All books, papers, transcripts of records, pamphlets, statements, reports, documents, data, memoranda and written or printed matter used by or submitted to the finance committee of the senate and ways and means committee of the assembly during any session of the legislature shall be preserved until the adjournment of the next ensuing annual session of the legislature, in the senate finance committee room. All such matters and things in the committee room of the ways and means committee of the assembly at the close of an annual session of the legislature shall be transferred to the committee room of the senate finance committee. The duty of caring for such matters and things, and keeping them intact, between sessions of the legislature shall devolve on the superintendent of public buildings.” (underlining added).

5. “[T]he adjournment of the next ensuing annual session of the legislature” is scheduled for June 19, 2014. Based on the language of Legislative Law §67, it would appear that after that date, the Legislature is free to discard the documentary evidence substantiating my February 6, 2013 oral testimony.

6. It is to prevent this from happening, less than two weeks from now, that I bring this order to show cause for a preliminary injunction, with TRO, to enjoin such destruction – and to have the documentary evidence I submitted to the Legislature on February 6, 2013 furnished to the Court in substantiation of the second cause of action of plaintiffs’ complaint that the third phase of the judicial salary increase is statutorily-violative, fraudulent, and unconstitutional.

7. The documents I handed up to the Legislature on February 6, 2013 are itemized by my April 2, 2013 letter to the chairs and ranking members of its fiscal committees, putting them on notice of their preservation obligation pursuant to Legislative Law §67.<sup>1</sup> A copy is annexed.

8. No application for this relief has previously been sought, other than by plaintiffs’ May 16, 2014 cross-motion. Its first branch seeks conversion of AAG Kerwin’s motion to dismiss plaintiffs’ complaint to one for summary judgment in plaintiffs’ favor, pursuant to CPLR §3211(c), and, in conjunction therewith, requests a so-ordering of plaintiffs’ March 26, 2014 Notice to Furnish Papers to the Court Pursuant to CPLR §2214(c) so as to compel defendants to produce, *inter alia*:

“the documents handed up by Plaintiff ELENA RUTH SASSOWER at the Legislature’s February 6, 2013 joint budget hearing on “public protection” in substantiation of her oral testimony on that date in opposition to the Judiciary’s proposed budget and the judicial salary increases recommended by the August 29, 2011 Report of the Special Commission on Judicial Compensation.<sup>fn1</sup>” (Exhibit X-2, p. 3).<sup>2</sup>

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<sup>1</sup> Such letter was additionally furnished to the chairs and ranking members on February 21, 2014, as part of plaintiffs’ letter to them of that date (Exhibit K-1 to verified complaint, fn. 4).

<sup>2</sup> Annexed to my May 16, 2014 affidavit in support of plaintiffs’ cross-motion, it also includes plaintiffs’ April 2, 2012 letter to the chairs and ranking members of the Legislature’s fiscal committees.

8. As stated by plaintiffs' May 16, 2014 cross-motion memorandum of law:

“Such demanded production is dispositive of plaintiffs' entitlement to the voiding of the third phase of the judicial salary increase, embedded in Budget Bill S.6351/A.8551, as it primarily consists of the verified complaint in *CJA v. Cuomo I*, whose most important exhibit is CJA's October 27, 2011 Opposition Report.” (p. 26 underlining in the original).

  
ELENA RUTH SASSOWER

Sworn to before me this  
6<sup>th</sup> day of June 2014

  
Notary Public

JANE ROMERO  
Notary Public, State of New York  
No. 0000170695  
New York Westchester County  
Commission Expires Nov. 5, 2015