

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

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,

#1788-14

ORAL ARGUMENT

-against-

ANDREW M. CUOMO, in his official capacity as
Governor of the State of New York, et als.
Defendants.

X

PROCEEDINGS held in
Supreme Court in the above-entitled matter
on the 23rd day of March, 2016, at 11:30
AM., at the Albany County Court House, 16
Eagle Street, Albany, New York.

BEFORE: HON. PAUL CZAJKA,
J.F.C.

*Acting Supreme Court
Justice Roger McDough*

REPORTED BY: Cynthia A. West

PRESENT:

ELENA RUTH SASSOWER, Pro se
P.O. Box 8101
White Plains, NY 10602

JAMES B. MCGOWAN, ESQUIRE, AAG
Office of the Attorney General
The Capitol
Albany, New York 12224
ATTORNEY FOR DEFENDANT

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ADRIENNE J. KERWIN, ESQUIRE, AAG
Office of the Attorney General
The Capitol
Albany, New York 12224
ATTORNEY FOR DEFENDANT

P R O C E E D I N G S

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3 THE COURT: Be seated please. On
4 the record in the matter of the Center for
5 Judicial Accountability, Incorporated, and
6 Elena Sassower, et als, against Andrew
7 Cuomo, et als, and I'll have the parties and
8 the pro se plaintiff, or petitioner,
9 identify herself for the record, please?

10 MS. SASSOWER: Thank you, Elena
11 Sassower, pro se, on behalf of the People of
12 the State of New York, and the public
13 interest.

14 THE COURT: Okay.

15 I would have the defendant
16 identify themselves, counsel?

17 MR. MCGOWAN: James McGowan,
18 Assistant Attorney General, on behalf of the
19 defendants and here with me is Andrienne
20 Kerwin, who is an Assistant Attorney
21 General, from our office.

22 THE COURT: Okay. I'll note that
23 this is similar to litigation already
24 pending before the Court for which the Court
25 has issued a number of Decisions including

1 one in October of 2014 dismissing multiple
2 causes of action in the plaintiff's initial
3 filing.

4 I'll note that we're here today
5 on an emergency Order to Show Cause with a
6 Temporary Retraining Order request filed by
7 the petitioner or the plaintiff. I'll note
8 that I'll certainly hear argument from
9 counsel, but I don't know that -- and I see
10 there's an exhibit list I am assuming from
11 Ms. Sassower?

12 MS. SASSOWER: Correct, those
13 papers.

14 THE COURT: I don't know that
15 we're hearing evidence, but I'll hear what
16 you have to say in regards to the TRO and
17 what the defendant's response is, but go
18 ahead Mrs. Sassower.

19 MS. SASSOWER: Thank you. This
20 is a citizen tax payer action, brought
21 pursuant to Article 7 (a) 123.

22 THE COURT: Okay. We're here on
23 the TRO right now so you I am fully
24 familiar --

25 MS. SASSOWER: Correct.

1 THE COURT: So you're familiar
2 with what were here to discuss today, not
3 the underlying action.

4 MS. SASSOWER: Correct.

5 THE COURT: Nor the amendment
6 which is for lack of a better word what I
7 will call the latest emergency Order, but in
8 regards to the TRO?

9 MS. SASSOWER: Thank you. Let's
10 get to the most sweeping relief, which is
11 branches four and five, because it appears
12 that the Legislative and Judiciary Budget
13 Bill, has not at all been amended, but as to
14 8 other budget bills that comprise the
15 Executive submission, the budget, it appears
16 that they were amended on a date that the
17 Legislature was not in session, two dates,
18 on March 11th and March 12th. Now --

19 THE COURT: Is the relief you are
20 requesting the type of relief that you can
21 request through a temporary restraining
22 Order Ms. Sassower?

23 MS. SASSOWER: Yes. Because
24 what I'm asking is that the general budget
25 conference committee and sub committees, be

1 enjoined from proceeding further. Their
2 function is to resolve differences in
3 amended Bills.

4 THE COURT: Ms. Sassower, you are
5 aware that you can't get a TRO against a
6 public officer, to restrain the performance
7 of statutory duties, correct?

8 MS. SASSOWER: Well, the
9 Constitution requires and I now speak of
10 Article 3 Section 14, that no passage of any
11 law can be other than by a majority.

12 THE COURT: I understand that
13 what you are -- the underlying action that
14 you're bringing so, but I'm referring to
15 whether or not the relief you are seeking is
16 available through a TRO? What I am asking
17 you is if you are aware, of course, that the
18 Court can't grant a TRO to prevent a public
19 authority or a public officer from
20 performing a statutory duty which is what
21 you're asking for in your TRO.

22 MS. SASSOWER: But they're not
23 discharging their statutory and indeed their
24 Constitutional duty, of passing budget
25 Bills. They have completely aborted and

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subverted --

THE COURT: I understand that's your underlying argument in regards in the action in general, but in regard to the TRO and we need to concentrate on the TRO relief and the relief that you are seeking, that isn't available under the TRO. You understand that, correct?

MS. SASSOWER: I did not, I do not. But I will go further, because what I have set forth in the second supplemental verified Complaint, is complete obliteration of all Constitutional statutory and rule provisions, decided and designed to protect the budget process.

THE COURT: Okay. Let's discuss the TRO, if you will, and I'll ask the defendant if he would like to speak with regard to the TRO?

MR. MCGOWAN: Your Honor, just for clarification, I'm aware of the section that's in Article or Section 62 deals with not enjoining statutory public officials from performing statutory functions and I think that they're actually in this case is

1 already been a discussion of that with
2 respect to the tax payer actions, and it
3 would be the plaintiff's burden to establish
4 that with respect to a tax payer action in
5 particular fund that is issued that needs to
6 be enjoined instead you're -- we're talking
7 using the tax payer action as a hook, to
8 stop the entire budgetary process. And in
9 that regard, I agree that the real relief
10 that she is seeking to prevent the
11 Legislature, and all the members from
12 functioning from trying to get a budget
13 adopted as of April first.

14 THE COURT: So, while that relief
15 may be available or the relief may be
16 available in a larger action, there's no
17 possibility of a TRO in this case, isn't
18 that the case?

19 MR. MCGOWAN: I think that the
20 correct result.

21 MS. SASSOWER: Excuse me? I
22 just want to draw to your attention, because
23 it was not recognized two years ago, in an
24 Article 7 (a) at 123, subsection (E), relief
25 by the Court, section (2), the Court at the

1 commencement of the action pursuant to this
2 article, or any time subsequent thereto and
3 prior to entering a judgment upon
4 application by the plaintiff or the Attorney
5 General on behalf of the People of the State
6 may grant a preliminary injunction not
7 withstanding the requirements of Section
8 6213 of the CPLR, wherein it appears that an
9 immediate irreparable injury, loss or damage
10 will result unless defendant is restrained
11 before a hearing can be heard. So, it seems
12 to me, that there is an express recognition
13 in the statute in that preliminary
14 injunctive relief is in fact available.

15 THE COURT: Again, as counsel
16 points out, not in the form in which you're
17 asking for it, as it strikes the Court in
18 reviewing your pleadings. Do you want to be
19 heard counsel?

20 MR. MCGOWAN: Nothing further.

21 THE COURT: All right.

22 MS. SASSOWER: May I continue
23 then?

24 THE COURT: Well again, we're not
25 going to argue the merits of the underlying

1 matter, I don't believe in the manner in
2 which you asked for a TRO. And again your
3 papers speak for themselves. You're asking
4 that one, leave to supplement your previous
5 verified Complaint that would be I believe
6 the third amendment or the fourth amendment?

7 MS. SASSOWER: No, the second
8 it's not an amendment, it's a supplement,
9 and that is because --

10 THE COURT: You're also seeking
11 under sub paragraph (2) to enjoin the
12 defendant from enacting the budget.

13 MS. SASSOWER: Not the budget,
14 the Legislative and Judiciary Budget Bill,
15 which --

16 THE COURT: Enjoining the
17 defendant from -- the defendant from
18 enacting any Bill appropriating the funds
19 for judicial salary increases.

20 MS. SASSOWER: Yes.

21 THE COURT: Enjoining the
22 defendant, from any Bill appropriating the
23 funds for judicial salary increases and you
24 believe -- so the leave you're seeking, is
25 not available in the context of a temporary

1 restraining Order and what the Court is
2 trying to point out to you, Mrs. Sassower.

3 MS. SASSOWER: Well I will point
4 out, that -- this Court in its wisdom
5 preserved the fourth cause of action of the
6 original Complaint. That fourth cause was
7 about the Legislative process.

8 THE COURT: Right, and that might
9 very well be an action that you failed to
10 meet the -- or the defendants failed to
11 raise sufficient argument for me to find it
12 in any other way than I did find, but again
13 we're talking today about the TRO and not
14 we're talking about the underlying action.
15 It's the TRO request that we're here on the
16 record today.

17 MS. SASSOWER: Well, okay, all
18 the violations that -- the Constitutional,
19 the statutory, the rule violations that were
20 laid out two years ago in the verified
21 Complaint and that were laid out last year,
22 in the supplemental verified supplemental
23 Complaint, are repeated and identical.

24 THE COURT: I understand.

25 MS. SASSOWER: So as a --

1 THE COURT: Again, I will direct
2 that you direct your comments to the TRO and
3 availability of such, in the manner that
4 you're asking for and at most -- and ma'am
5 we can't both speak at the same time. If
6 you do the steno won't be able to take down
7 what you say or what I say.

8 MS. SASSOWER: I apologize, Your
9 Honor.

10 THE COURT: That's okay. What I
11 am asking you to do is to direct your
12 comments toward the availability of the TRO,
13 to accomplish the relief that you're
14 seeking.

15 MS. SASSOWER: Well, we know
16 that, in 7 days you will have a salary
17 increase of about nineteen thousand dollars,
18 your salary will jump from \$174,000, to I
19 believe \$199,000.

20 Okay. Now, the issue, the
21 unconstitutionality of the statute that
22 gives those recommendations the commission
23 the force of law, have already been briefed
24 and presented to the Court, and are in a
25 summary judgment motion. I have sought

1 summary judgment by a cross motion to
2 dismiss a motion, a summary judgement motion
3 that they made, last Summer. By the way,
4 when I was in the Court Clerk's office, I
5 asked for a docket, and I am quite disturbed
6 and perplexed that it does not reflect the
7 last Decision as there were two Decisions by
8 this Court.

9 THE COURT: Ma'am, just so we're
10 clear, we're here talking about the TRO.

11 MS. SASSOWER: Well, I've
12 already established a likelihood of success
13 on the merits because --

14 THE COURT: Look, that may or may
15 not be the case, okay Ms. Sassower, again --

16 MS. SASSOWER: I apologize.

17 THE COURT: We have not even had
18 a discussion on the likelihood of the
19 success on the merits, the discussion had
20 not advanced beyond my query in regards to
21 whether or not the type of relief you're
22 seeking is even available under a TRO. You
23 get to answer that question. I'm wondering
24 if you have anything else to add in that
25 regard?

1 MS. SASSOWER: Well, you said
2 that a preliminary injunction is not
3 available, to restrain public officers, but
4 as to those judicial pay raises, they take,
5 they take effect automatically by force of
6 law.

7 Now, I've challenged the
8 Constitutionality of the predecessor statute
9 on which this statute was identically
10 modeled and it's already been briefed, and I
11 would direct your attention to the --

12 THE COURT: We're not here to
13 argue, ma'am, on the underlying merits of
14 your action.

15 MS. SASSOWER: Well okay, but
16 that will take effect automatically, no
17 public officer needs to be enjoined, okay?
18 That is a Constitutional issue, fully
19 briefed before the Court, and for some
20 reason, notwithstanding the directives of
21 citizen tax payer actions that they are to
22 take precedence over very other proceeding
23 and be addressed expeditiously and given a
24 preference promptly determined and it says,
25 123 (C) shall be promptly determined the

1 undiscussed prejudice all over in all
2 courts. Notwithstanding, I fully briefed
3 the -- the issue, of the unconstitutionality
4 of the statute, the predecessor statute,
5 that was replicated in the present statute,
6 so it's already briefed and the Court is
7 already familiar, with the records, that it
8 was not addressed by the Attorney General,
9 they didn't touch it.

10 THE COURT: Ma'am again, if I can
11 and so far and I've been trying to get you
12 to -- I've been trying to get you to address
13 the TRO question.

14 If you have anything else you
15 would like to say about the TRO question I
16 will be happy to hear it, but I want to
17 concentrate on that issue as that's the only
18 reason we're here today.

19 Do you have anything to say in
20 regards to the issue as to the temporary
21 restraining Order?

22 MS. SASSOWER: Well you said,
23 that I cannot seek to enjoin public
24 officers.

25 MR. MCGOWAN: Objection, Your

1 Honor.

2 MS. SASSOWER: What else, so?

3 THE COURT: Hold on a second.

4 MR. MCGOWAN: Perhaps there's a
5 misunderstanding, the only issue that I
6 understand we're addressing right now is
7 whether you should issue a temporary
8 restraining Order stopping the budget
9 provisions that she's talking about.

10 THE COURT: Correct.

11 MR. MCGOWAN: And I would want
12 to make it clear no one has indicated here,
13 that the preliminary injunction application
14 is being decided now and that's going to
15 be --

16 THE COURT: That's correct.

17 Those are two separate issues and when I
18 pointed out Mrs. Sassower, here we go again,
19 I'm talking and you're talking, but we both
20 can't do it ma'am. What I want to try to
21 point out is that, to the extent that I
22 guess it's my failure, and my inability to
23 convince or explain we're not dealing with
24 the preliminary injunction and you're
25 dealing with the temporary restraining

1 Order.

2 MS. SASSOWER: Right, I thought
3 -- I thought understood it correctly, but
4 as I said, I'm trying to focus on the
5 aspects that has nothing to do with
6 enjoining the public officers, but enjoining
7 the application if the force of law
8 provisions --

9 THE COURT: Okay. Is there
10 anything else, ma'am?

11 MS. SASSOWER: No, Your Honor, I
12 would just say, that again, I am most
13 disturbed that the docket does not reflect,
14 the substantial motion that was made by the
15 Attorney General.

16 THE COURT: Ma'am, what does that
17 have to do with the TRO issue?

18 MS. SASSOWER: Because the
19 record is establishing my entitlement to
20 summary judgment, and the issue on
21 injunction is the likelihood of success, on
22 the merits.

23 THE COURT: Ma'am, that's an
24 issue if I'm -- and we haven't reached that
25 point. We're talking about the availability

1 of the TRO as the vehicle to achieve the
2 relief that you're seeking. So, I know you
3 want to argue other points.

4 MS. SASSOWER: Okay. It's all
5 right if I misunderstood, I apologize.

6 THE COURT: You don't have to
7 apologize ma'am I'm just trying to, to the
8 extent that I can, focus your argument on
9 the issue that is actually at bar today.

10 MS. SASSOWER: Thank you.

11 THE COURT: Because if I denied
12 the temporary restraining Order I'm going to
13 be issuing a briefing schedule on the
14 additional issues that are raised in your
15 papers.

16 MS. SASSOWER: Appreciate it.

17 THE COURT: I'm not denying those
18 actions at that point, I'm not even ruling
19 on them, but I'm trying to address the
20 temporary restraining Order issue and I'm
21 asking if you have anything else you want to
22 say?

23 MS. SASSOWER: I'm simply
24 pursuant to Article 7 (a) of the State
25 Finance Law that a citizen has the action

1 seeking to prevent the disbursement of
2 moneys that will automatically be disbursed
3 beginning a week from today. I believe that
4 relief is available to me, under State
5 Finance Law 123, etc.

6 THE COURT: Okay. Counsel for
7 the defendant?

8 MR. MCGOWAN: Nothing further,
9 Your Honor.

10 THE COURT: Okay. Again having
11 reviewed the plaintiff's papers, and having
12 heard argument here today, I will strike the
13 temporary restraining Order or the emergency
14 relief section which reads sufficient cause
15 appearing therefore let a temporary
16 restraining Order issue against defendants
17 as herein above set forth pending a hearing
18 and determination of the motion. I will
19 sign it and indicate that personal
20 appearances are not necessary and I'll be
21 happy to hear any discussion in regards to a
22 briefing schedule; do you want to be heard
23 in that regard?

24 MR. MCGOWAN: Two weeks, Your
25 Honor, for submission from our side?

1 THE COURT: Okay. I'll set it
2 for -- defendant's response not later than
3 April 8th, and I'll allow the plaintiff to
4 reply -- do you need two weeks from that
5 date ma'am?

6 MS. SASSOWER: Yes Your Honor.

7 THE COURT: 4/22, so I'll make
8 the return date the 22nd day of April, about
9 again I've noted that there's no appearance
10 necessary, on that date.

11 Anything else?

12 MS. SASSOWER: Now, yes. If the
13 past is any indicator I will make a cross
14 motion.

15 THE COURT: Again that's --

16 MS. SASSOWER: I have not --

17 THE COURT: If you think you've
18 got the ability and the desire to do so, I'm
19 not going to preclude you as we sit here
20 today from doing so.

21 MS. SASSOWER: As I have said
22 the threshold issue in this case has always
23 been, the entitlement of the People, and the
24 unrepresented Center of Judicial
25 Accountability to the representation of the

1 Attorney General, whose intervention and
2 advocacy as a plaintiff, is contemplated by
3 the statute, there is no -- from the record
4 that has been before the Court for the past
5 two years, there's no legitimate defense and
6 I have demonstrated over and over again,
7 that the Attorney General's papers are
8 filled with -- replete with
9 misrepresentations of fraud and omission, to
10 no avail.

11 Lastly, again, I would say, that
12 this Court has identified in its Decision of
13 last year when it recognized my right to
14 supplement, this would be the second
15 supplement, occasioned only because this
16 case has been so protracted and we're now in
17 a new fiscal year. So there shouldn't be
18 any question that it's moot, all right?
19 Because we have the same violation
20 continuing in the successive budget cycles
21 and that's I have to, to protect the
22 integrity of the issues, amend -- to not
23 amend to supplement, there's no amendment
24 here, but when this Court again in its
25 wisdom granted my motion for leave to

1 supplement, it identified there was no basis
2 for disqualification and with respect to its
3 financial interests arising from the
4 judicial pay raise issue said well, all
5 judges would be disqualified by the law of
6 necessity. I understand that.

7 THE COURT: Well, you're arguing
8 a different point now. You are not here to
9 make -- I don't know whether you are making
10 an argument to renew or what you are making
11 right now, but that issue has been decided
12 in regards to the recusal and we're here
13 today on the TRO.

14 MS. SASSOWER: I just want to
15 reiterate, financial interests is a
16 statutory disqualification, I understand
17 that all judges face that statutory
18 disqualification; however, where a judge
19 cannot go above, beyond and to rise above
20 his or her very substantial interests he
21 should -- disqualify himself and pass it on
22 to a judge that albeit -- albeit
23 interested --

24 THE COURT: The issue was already
25 decided; are you making a motion to renew or

1 reconsider? I'm not sure what you're doing?
2 You are offering argument on an issue that's
3 already been decided.

4 MS. SASSOWER: I think that if
5 this Court examined the record, maybe it
6 would come to the conclusion that it was
7 erroneous in denying that application.

8 THE COURT: Again in the context
9 of assuming this is a motion to renew it's
10 not properly being made so --

11 MS. SASSOWER: It would be in
12 that regard.

13 THE COURT: You are not making
14 the motion in proper form.

15 Anything else, ma'am?

16 MS. SASSOWER: Thank you, Your
17 Honor.

18 THE COURT: Okay. Here's your
19 exhibit list, I'll get this to my secretary
20 and you can go in and after she's made
21 copies and you can submit --

22 MS. SASSOWER: May I identify
23 that I have provided to the Court three --
24 documents that I not furnished to the
25 Attorney General, may I identify what they

1 are, so this the Court may make a
2 determination about them?

3 THE COURT: Determination in what
4 regard, ma'am?

5 MS. SASSOWER: I have not
6 provided them to my adversary.

7 THE COURT: I don't know what
8 they are?

9 MS. SASSOWER: I will identify.

10 THE COURT: What determination
11 are you asking me to make?

12 MS. SASSOWER: Well, it's not
13 proper to furnish something to the Court.

14 THE COURT: I agree.

15 MS. SASSOWER: Right, so I am
16 entitled to, on the record, and if the Court
17 would like, to hand them back to me, or the
18 Attorney General feels I should hand that
19 back I'll take them now.

20 THE COURT: I don't know what
21 documents you are talking about.

22 MS. SASSOWER: They're only
23 three.

24 THE COURT: All right.

25 Go ahead.

1 MS. SASSOWER: The Budget Bill, I
2 believe it's S 4610, that was introduced
3 last March 31st, that gave rise to this
4 Commission on the Legislative Judicial
5 Executive Compensation, that is Chapter 60
6 part (E) of the laws of 2015.

7 THE COURT: My suggestion is if
8 you provide the Court with something, CC
9 that the defense counsel.

10 MS. SASSOWER: I wasn't able --
11 I had to obtain this from the Assembly
12 records room and there is only one original
13 copy.

14 THE COURT: All right. Provide
15 copies.

16 MS. SASSOWER: I don't have -- I
17 had only one.

18 THE COURT: I said copies, you
19 can make a copy counsel.

20 MS. SASSOWER: I don't have it,
21 I gave it to Your Honor an original, and
22 what I am saying, so, if they would like to
23 see it, because it's referred to and
24 introduced as a memorandum that's also
25 amended to eliminate the rule of law

1 provisions 9779 I believe it is. So I want
2 to identify because that's an introductory
3 memo so it starts out by saying it's a 137
4 page Budget Bill, but it's not.

5 THE COURT: I'll ask defense
6 counsel, do you want to have a copy of the
7 budget bill?

8 MR. MCGOWAN: No. Please.

9 MS. SASSOWER: It has no table
10 of contents.

11 THE COURT: Let's move on to the
12 second issue?

13 MS. SASSOWER: The second issue
14 is that I was able to obtain again from the
15 records room, again an original a current
16 copy of the Legislative Judiciary Budget
17 Bill.

18 THE COURT: Do you want a copy of
19 that counsel?

20 MR. MCGOWAN: No thank you.

21 THE COURT: What's the third
22 document?

23 MS. SASSOWER: The third
24 document is, is the December 24th, 2015
25 report of the Commission on Legislative

1 Judicial Executive Compensation, that
2 recommended the judicial salary increase.

3 THE COURT: Counsel, did you want
4 a copy of that?

5 MR. MCGOWAN: No thank you.

6 THE COURT: Okay.

7 MS. SASSOWER: Those are
8 furnished as a convenience to the Court.

9 THE COURT: Thank you. Counsel
10 doesn't want a copy.

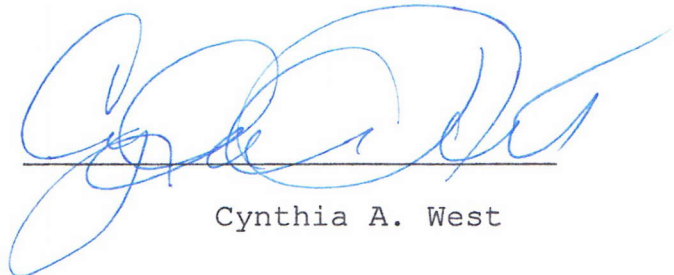
11 MS. SASSOWER: Okay. Thank you.

12
13 (Whereupon, the proceedings
14 concluded in the above-entitled matter).

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C E R T I F I C A T I O N

I, CYNTHIA A. WEST, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of the same, to the best of my ability and belief.


Cynthia A. West

Dated: April 5, 2016

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