

SUPREME COURT  
COUNTY OF ALBANY

STATE OF NEW YORK

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 No 1788-14

*Plaintiffs,*

April 16, 2015

-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, 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.*

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**MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE TO SUPPLEMENT  
THE COMPLAINT**

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Defendants Andrew M. Cuomo, Dean  
Skelos, NYS Senate, Sheldon Silver, NYS  
Assembly, Eric T. Schneiderman and  
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Adrienne J. Kerwin  
Assistant Attorney General,  
of Counsel

## PRELIMINARY STATEMENT

This action was commenced by the filing of a Summons and Complaint, by plaintiffs Center for Judicial Accountability, Inc. (“CJA”) and Elena Ruth Sassower, on or about March 28, 2014. See Kerwin aff. at Exhibit A. In the Complaint, plaintiffs challenge the negotiation of the 2015-2015 Legislative and Judiciary budgets. See id. A motion to dismiss made on behalf of defendants Governor Andrew M. Cuomo, Dean Skelos, the New York State Senate, Sheldon Silver, the New York State Assembly, Attorney General Eric T. Schneiderman and Comptroller Thomas DiNapoli was granted in part, and denied in part, by a decision and order of the court dated October 9, 2014. See Kerwin aff. at Exh. B. The court’s decision and order (1) dismissed all claims against Attorney General Schneiderman and Comptroller DiNapoli, and (2) dismissed plaintiff’s First, Second and Third Causes of Action as failing to state a claim. See Kerwin aff. at Exh B. Defendants Governor Cuomo, Temporary Senate President Skelos, Assembly Speaker Silver, the New York State Senate and the New York State Assembly answered the complaint on or about November 6, 2014. See Kerwin aff. at Exh. C.

Plaintiffs now seek leave to file a Verified Supplemental Complaint containing allegations and causes of action relating to the 2015-2016 Legislative and Judiciary budgets that are identical to those contained in the original complaint relating to the 2014-2015 Legislative and Judiciary budgets. Cf. Kerwin aff. at Exh. A and Proposed Verified Supplemental Complaint.

## ARGUMENT

### POINT I

#### PLAINTIFFS' EFFORT TO SUPPLEMENT THE COMPLAINT WITH THE PROPOSED FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION WOULD BE FUTILE

A motion for leave to supplement a pleading is considered under the same standard that applies to motions for leave to amend under CPLR 3025. Maulella v. Maulella, 90 AD2d 535, 537 (2d Dept 1982). When a party seeks to amend or supplement a pleading that would be dismissed on a motion to dismiss, any effort to amend or supplement would be futile. Under such circumstances, a motion for leave to amend or supplement a pleading should be denied. Deep v. Boise, 16 Misc3d 1121(A) (Sup. Ct. Albany Co. 2007)(leave to amend should be denied when the proposed amendment would be futile, citing Saferstein v. Mideast Systems, 143 AD2d82[2d Dept 1988]).) See also South Bronx UNITE! v. New York City Industrial Development Agency, 2014 NY Misc LEXIS 3329, \*16 (Sup. Ct. Bronx Co. 2014)(court is not required to permit an amendment that lacks merit); UBS Securities, LLC v. Angioblast Systems, Inc., 2013 NY Misc LEXIS 6200, \*9 (Sup. Ct. New York Co. 2013)(motion to amend denied because court already determined allegations were insufficient to state a cause of action).

In this case, the court has already determined that the allegations in plaintiffs' proposed Fifth, Sixth and Seventh Causes of Action are legally insufficient to state a claim. See Kerwin aff. at Exh. B. Since these claims would be dismissed in the same way that the First, Second and Third Causes of Action in the original complaint were dismissed, plaintiffs' motion for leave to supplement the complaint should be denied.

POINT II

PERMITTING PLAINTIFFS TO SUPPLEMENT  
THE COMPLAINT WITH THE PROPOSED  
EIGHTH CAUSE OF ACTION WOULD NOT  
PROMOTE JUDICIAL ECONOMY

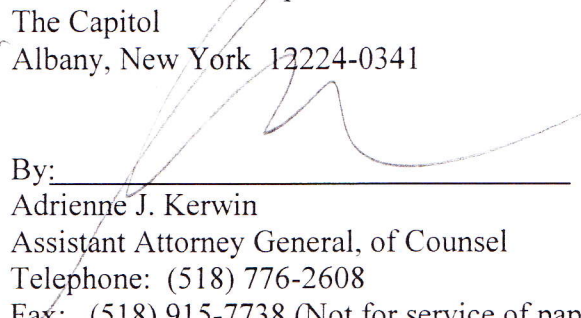
This case has been pending for over a year. The existing scheduling order provides that discovery was to end on March 20, 2015, and that dispositive motions are due May 22, 2015. If the plaintiffs are permitted to supplement the complaint to include claims relating to a budget process that occurred a year after the one at issue in this case, discovery will essentially need to start over. Such a result is unreasonable and prejudicial because a claim analyzing an entirely different budget process necessarily arises out of materially different facts than those relating to last year's budget process. Koenig v. Action Target, Inc., 76 AD3d 997 (2d Dept 2010)(amendment that arises out of materially different facts prejudices the opposing party). If plaintiffs wish to challenge the 2015-16 budget process, they should be required to commence a new action.

## CONCLUSION

For the reasons discussed above, plaintiffs' motion for leave to file a supplemental complaint should be denied.

Dated: Albany, New York  
April 9, 2015

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
Attorney for Defendants Andrew M. Cuomo, Dean  
Skelos, NYS Senate, Sheldon Silver, NYS  
Assembly, Eric T. Schneiderman and  
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