

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

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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-

VERIFIED COMPLAINT
Index #5122-16

JURY TRIAL DEMANDED

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.

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“It is the purpose of the legislature to recognize that each individual citizen and taxpayer of the state has an interest in the proper disposition of all state funds and properties. Whenever this interest is or may be threatened by an illegal or unconstitutional act of a state officer or employee, the need for relief is so urgent that any citizen-taxpayer should have and hereafter does have a right to seek the remedies provided for herein.”

State Finance Law Article 7-A, §123: “Legislative purpose”

Plaintiffs, as and for their verified complaint, respectfully set forth and allege:

1. By this citizen-taxpayer action pursuant to State Finance Law Article 7-A [§123 *et seq.*], plaintiffs seek declaratory judgments as to the unconstitutionality and unlawfulness of the Governor’s Legislative/Judiciary Budget Bill #S.6401/A.9001, both the original bill and the enacted amended bill #S.6401-a/A.9001-a. The expenditures of the enacted budget bill – embodying the

Legislature's proposed budget for fiscal year 2016-2017, the Judiciary's proposed budget for fiscal year 2016-2017, and tens of millions of dollars in uncertified and nonconforming legislative and judicial reappropriations – are unconstitutional, unlawful, and fraudulent disbursements of state funds and taxpayer monies, which plaintiffs hereby seek to enjoin.

2. Plaintiffs also seek declarations voiding the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation because they are statutorily-violative, fraudulent, and unconstitutional, with further declarations striking the budget statute establishing the Commission – Chapter 60, Part E, of the Laws of 2015 – as unconstitutional and itself fraudulent – and injunctions to prevent further disbursement of state money pursuant thereto.

3. Additionally, plaintiffs seek declarations that the “process” by which the State budget for fiscal year 2016-2017 was enacted is unconstitutional, specifically including:

- the failure of Senate and Assembly committees and the full chambers of each house to amend and pass the Governor's appropriation bills and to reconcile them so that they might “become law immediately without further action by the governor”, as mandated by Article VII, §4 of the New York State Constitution;
- the so-called “one-house budget proposals”, emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly joint budget conference committee and its subcommittees, conducted by staff, behind-closed-doors, based on the “one-house budget proposals”; and
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

4. Finally, plaintiffs seek declarations as to the unconstitutionality and unlawfulness of the appropriation item entitled “For grants to counties for district attorney salaries” in the Division of Criminal Justice Services' budget for fiscal year 2016-2017, contained in Aid to Localities Budget

Bill #S.6403-d/A.9003-d and of items of reappropriation therein pertaining to previous “grants to counties for district attorney salaries” and “recruitment and retention” incentives – and enjoining disbursement of state monies pursuant thereto.

5. For the convenience of the Court, a Table of Contents follows:

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✓
AS AND FOR A SECOND CAUSE OF ACTION

**The Judiciary's Proposed Budget for 2016-2017,
Embodied in the Governor's Budget Bill #S.6401/A.9001,
is Unconstitutional & Unlawful**

34. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-33 herein with the same force and effect as if more fully set forth.

35. Plaintiffs' second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331). Such is not barred by Justice McDonough's August 1, 2016 decision (Exhibit D) – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

36. Establishing that the August 1, 2016 decision is a judicial fraud -- and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

37. As highlighted by the analysis (Exhibit G: pp. 24-28), plaintiffs' second and sixth causes of action (Exhibit B: ¶¶99-108; Exhibit C: ¶¶179-193) – which correspond to their tenth cause of action (Exhibit A: ¶¶317-331) – were each dismissed by Justice McDonough in the same fraudulent way: by completely disregarding the fundamental standards for dismissal motions, distorting the few allegations he cherry-picked, baldly citing inapplicable law, and resting on “documentary evidence” that he did not identify – and which does not exist.

38. Plaintiffs analysis is accurate, true, and correct in all material respects.

39. In addition to the facts set forth by the tenth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint (Exhibit A: ¶¶317-331) is the further fact, anticipated by its ¶331, namely, that the Judiciary is funding the 2016 phase of the judicial salary increase recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation from its §3 reappropriations, *via* its §2 interchange provision. Such reinforces the unconstitutionality of the interchange provision and the reappropriations, detailed at ¶¶320-331— key features of the Judiciary's slush-fund budget.

AS AND FOR AN THIRD CAUSE OF ACTION

**The Governor's Budget Bill #S.6401/A.9001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
"Without Revision"**

40. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-39 herein with the same force and effect as if more fully set forth.

41. Plaintiffs' third cause of action herein is the eleventh cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶332-335). Such is not barred by Justice McDonough's August 1, 2016 decision – nor could it be as the August 1, 2016 decision is a judicial fraud, falsifying the record in all material respects to conceal plaintiffs' entitlement to summary judgment on causes of action 1-4 of their verified complaint and causes of action 5-8 of their verified supplemental complaint and, based thereon, to the granting of their motion for leave to file their verified second supplemental complaint with its causes of action 9-16.

42. Establishing that the August 1, 2016 decision is a judicial fraud – and that Justice McDonough was duty-bound to have disqualified himself for pervasive actual bias born of his financial interest in the litigation – is plaintiffs' analysis of the decision, annexed hereto (Exhibit G).

- the failure of the Senate and Assembly, by their committees and by their full chambers, to amend and pass the Governor's appropriation bills and to reconcile them so that they might "become law immediately without further action by the governor", as mandated by Article VII, §4 of the New York State Constitution;
- the so-called "one-house budget proposals", emerging from closed-door political conferences of the Senate and Assembly majority party/coalitions;
- the proceedings of the Senate and Assembly Joint Budget Conference Committee and its subcommittees, conducted by staff, behind-closed-doors, based on the "one-house budget proposals";
- the behind-closed-doors, three-men-in-a-room budget deal-making by the Governor, Temporary Senate President, and Assembly Speaker.

58. The specified violations of Article VII, §4, 5, 6 of the New York State Constitution, particularized by and comprising this separate cause of action, pertaining to the "process" by which the fiscal year 2016-2017 budget was enacted, are accurate, true, and correct.

AS AND FOR A SIXTH CAUSE OF ACTION

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, As Written –
and the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

59. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-58 herein with the same force and effect as if more fully set forth.

60. Plaintiffs' sixth cause of action herein is the thirteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶385-423. It is accurate, true, and correct in all material respects.

A. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power by Giving the Commission’s Judicial Salary Recommendations “the Force of Law”

61. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of “force of law” legislative power is set forth by the incorporated Exhibit A: ¶¶388-393. It is accurate, true, and correct in all material respects.

62. Also true and correct is the constitutional significance of ¶392. Containing underscoring and capitalization for emphasis, it reads, in full:

“392. This outsourcing to an appointed seven-member commission of the duties of examination, evaluation, consideration, hearing, recommendation, which Chapter 60, Part E, of the Laws of 2015 confers upon it, are the duties of a properly functioning Legislature, acting through its committees – and there is NO EVIDENCE that any legislative committee has ever been unsuccessful in engaging in such duties and in producing bills based thereon that could not then be enacted by the Legislature and Governor.” (underlining and capitalization in the original).

B. Chapter 60, Part E, of the Laws of 2015 Unconstitutionally Delegates Legislative Power Without Safeguarding Provisions

63. Plaintiffs’ showing as to the unconstitutionality of the statute’s delegation of legislative power without safeguarding provisions is set forth by the incorporated Exhibit A: ¶¶394-402. It is accurate, true, and correct in all material respects.

64. Also accurate, true, and correct is the constitutional significance of ¶¶400-402. Containing underscoring and italics for emphasis, it reads, in full:

“400. It is unconstitutional to raise the salaries of judges who should be removed from the bench for corruption or incompetence – and who, by reason thereof, are not earning their current salaries. *Consequently, a prerequisite to any judicial salary increase recommendation must be a determination that safeguarding appellate, administrative, disciplinary and removal provisions of Article VI of the New York State Constitution are functioning.*

401. Likewise, it is unconstitutional to raise the salaries of other constitutional officers and public officials who should be removed from office

for corruption – and who, by reason thereof, are not earning their current salaries. Consequently, a prerequisite to any salary increase recommendation as to them must be a determination that mechanisms to remove such constitutional and public officers are functional, lest these corrupt public officers be the beneficiaries of salary increases.

402. The absence of explicit guidance to the Commission that corruption and the lack of functioning mechanisms to remove corrupt public officers are ‘appropriate factors’ for its consideration in making salary recommendations renders the statute unconstitutional, as written.”

65. As Judiciary Law §183-a statutorily links district attorney salaries with judicial salaries, the failure of the Commission statute to include an express provision requiring the Commission to take into account such “appropriate factor” means that district attorneys become the beneficiary of judicial salary increase recommendations, without ANY evidence, or even claim, that existing district attorney salaries are inadequate – and, likewise, without ANY evidence, or even claim, that district attorneys are discharging their constitutional and statutory duties to enforce the penal law and that mechanisms to remove them for corruption are functional. Such additionally renders the Commission statute unconstitutional, *as written*.

C. Chapter 60, Part E, of the Law of 2015 Violates Article XIII, §7 of the New York State Constitution

66. Plaintiffs’ showing that the Commission statute violates Article XIII, §7 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶403-406. It is accurate, true, and correct in all material respects.

D. Chapter 60, Part E, of the Law of 2015 Violates Article VII, §6 of the New York State Constitution – and, Additionally, Article VII, §§2 and 3

67. Plaintiffs’ showing that the Commission statute violates Article VII, §6, 2, 3 of the New York State Constitution is set forth by the incorporated Exhibit A: ¶¶407-412. It is accurate, true, and correct in all material respects.

E. Chapter 60, Part E, of the Laws of 2015 is Unconstitutional because Budget Bill #4610-A/A.6721-A was Procured Fraudulently and Without Legislative Due Process

68. Plaintiffs' showing that the Commission statute is unconstitutional because it was procured fraudulently and without legislative due process is set forth by the incorporated Exhibit A: ¶¶413-423. It is accurate, true, and correct in all material respects.

AS AND FOR A SEVENTH CAUSE OF ACTION

**Chapter 60, Part E, of the Laws of 2015 is Unconstitutional, *As Applied* –
& the Commission's Judicial Salary Increase Recommendations
are Null & Void by Reason Thereof**

69. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-68 herein with the same force and effect as if more fully set forth.

70. Plaintiffs' seventh cause of action herein is the fourteenth cause of action of their incorporated March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶424-452). It is accurate, true, and correct in all material respects.

71. The first and overarching ground upon which Chapter 60, Part E, of the Laws of 2015 is unconstitutional, *as applied*, was set forth at ¶425. Its importance was such that its pertinent words were capitalized and the whole of it was underscored, as follows:

“Defendants’ refusal to discharge ANY oversight duties with respect to the constitutionality and operations of a statute they enacted without legislative due process renders the statute unconstitutional, *as applied*. Especially is this so, where their refusal to discharge oversight is in face of DISPOSITIVE evidentiary proof of the statute’s unconstitutionality, *as written and as applied* – such as plaintiffs furnished them (Exhibits 38, 37, 39, 40, 41, 42, 43, 44, 46, 47, 48).”

72. Subsequent events reinforce this key ground of unconstitutionality. Thus, even upon being given notice of, and furnished with, plaintiffs' March 23, 2016 verified second supplemental

complaint (Exhibit A), the legislative defendants have continued to willfully and deliberately refuse to discharge ANY oversight duties with respect to the constitutionality and operations of the statute:

a. On April 1, 2016, with full knowledge that the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation are statutorily-violative, fraudulent, and unconstitutional for all the multitude of reasons particularized by the verified second supplemental complaint (¶¶385-457), the legislative defendants allowed its judicial salary recommendations for fiscal year 2016-2017 to take effect.

b. Since mid-April 2016, the legislative defendants have sought to have the state reimburse the counties for the district attorney salary increases resulting from the April 1, 2016 fraudulent, statutorily-violative, and unconstitutional judicial salary increases, disregarding notice from plaintiffs on the subject, including as to the necessity of repealing Judiciary Law §183-a, statutorily-linking district attorney and judicial salaries – as to which there had been no oversight by the legislative defendants since its enactment 40 years ago.

A. As Applied, a Commission Comprised of Members who are Actually Biased and Interested and that Conceals and Does Not Determine the Disqualification/Disclosure Issues Before it is Unconstitutional

73. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶428-432. It is accurate, true, and correct in all material respects.

B. As Applied, a Commission that Conceals and Does Not Determine Whether Systemic Judicial Corruption is an "Appropriate Factor" is Unconstitutional

74. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶433-435. It is accurate, true, and correct in all material respects.

C. As Applied, a Commission that Conceals and Does Not Determine the Fraud before It – Including the Complete Absence of ANY Evidence that Judicial Compensation and Non-Salary Benefits are Inadequate – is Unconstitutional

75. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶436-444. It is accurate, true, and correct in all material respects.

D. As Applied, a Commission that Suppresses and Disregards Citizen Input and Opposition is Unconstitutional

76. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶445-452. It is accurate, true, and correct in all material respects.

AS AND FOR AN EIGHTH CAUSE OF ACTION

The Commission's Violations of Express Statutory Requirements of Chapter 60, Part E, of the Laws of 2015 Renders its Judicial Salary Increase Recommendations Null and Void

77. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-76 herein with the same force and effect as if more fully set forth.

78. Plaintiffs' eighth cause of action herein is the fifteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶453-457. It is accurate, true, and correct in all material respects.

79. A further "appropriate factor" that the Commission failed to "take into account", in violation of §2, ¶3 of the Commission statute, is the statutory link between judicial salaries and district attorneys, plainly impacting upon "the state's ability to fund increases in compensation and non-salary benefits" – one of the six factors enumerated by §2, ¶3 of the Commission statute.

80. The Commission's disregard of this "appropriate factor" for its consideration was not inadvertent. Plaintiffs' advocacy alerted the Commissioners to the statutory link between judicial salaries and district attorney salaries and its financial impact to the state.³

³ Plaintiffs' October 27, 2011 opposition report (at p. 24); the video of plaintiff Sassower's testimony before the Legislature at its February 6, 2013 "public protection" budget hearing, accessible from the links plaintiffs furnished.

AS AND FOR AN NINTH CAUSE OF ACTION

**Three-Men-in-a-Room Budget Dealing-Making is Unconstitutional,
*As Unwritten and As Applied***

81. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-80 herein with the same force and effect as if more fully set forth.

82. Plaintiffs' ninth cause of action herein is the sixteenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action, Exhibit A: ¶¶458-470. It is accurate, true, and correct in all material respects.

A. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, As Unwritten**

83. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶459-466. It is accurate, true, and correct in all material respects.

B. **Three-Men-in-a-Room Budget Deal-Making is Unconstitutional, As Applied**

84. Plaintiffs' showing is set forth by the incorporated Exhibit A: ¶¶467-470. It is accurate, true, and correct in all material respects.

AS AND FOR A TENTH CAUSE OF ACTION

**The Appropriation Item Entitled "For grants to counties for district attorney salaries",
in the Division of Criminal Justice Services' Budget, Contained in Aid for Localities
Budget Bill #S.6403-d/A.9003-d, Does Not Authorize Disbursements
for Fiscal Year 2016-2017 and is Otherwise Unlawful and Unconstitutional.
Reappropriation Items are also Improper, if not Unlawful**

85. Plaintiffs repeat, reiterate, and reallege ¶¶ 1-84 herein with the same force and effect as if more fully set forth.

86. Defendant CUOMO's Aid to Localities budget bill for fiscal year 2016-2017, #S.6403/A.9003, was over 900 pages. In addition to the first two amendments to the Aid to