

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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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-

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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**AFFIRMATION**

Index No. 1788-14

April 16, 2015

McDonough, J.

Adrienne J. Kerwin, an attorney licensed to practice in the State of New York, affirms the following under penalty of perjury pursuant to CPLR 2106:

1. I am an Assistant Attorney General of counsel in this matter to Eric T. Schneiderman, Attorney General of the State of New York, attorney for defendants Governor Andrew M. Cuomo, the New York State Senate, the New York State Assembly, Dean Skelos, Sheldon Silver, Eric T. Schneiderman and Thomas DiNapoli in the above-captioned action.

2. I submit this affirmation in opposition to plaintiffs' motion for leave to supplement the Complaint in the above-captioned action.

3. This action was commenced by the filing of a Summons and Complaint on or about March 28, 2014. A copy of the Summons and Complaint, without exhibits, is annexed hereto at **Exhibit A**.

4. Although voluminous, the Complaint in this action challenges only the initial steps taken toward the enactment of the 2014-15 Legislature and Judiciary budgets.

5. Specifically, plaintiffs allege that (1) the Legislature did not provide a certified estimate of its financial needs for the 2014-15 fiscal year as required by Article VII, section 1 of the New York State Constitution; (2) the certified estimates of financial needs submitted by the Legislature and Judiciary were not properly itemized pursuant to Article VII, section 1 of the New York State Constitution; (3) the Governor failed to present the certified estimates of the Legislature and Judiciary in his executive budget “without revision” as required by Article VII, section 1 of the New York State Constitution; and (4) the Legislature failed to follow its own rules and procedures. See Exh. A.

6. A motion to dismiss the original Complaint was made by the defendants on or about April 18, 2014.

7. Defendants’ motion to dismiss was granted in part and denied in part. A copy of the court’s October 9, 2014 decision and order is annexed hereto at **Exhibit B**.

8. The only claim to survive dismissal was plaintiffs’ Fourth Cause of Action alleging that the defendants violated Legislative Law 32-a in connection with the negotiating of the 2014-15 budget. See Exh. B.

9. Defendant’s thereafter answered the Complaint on or about November 6, 2014. A copy of defendants’ Answer is annexed hereto at **Exhibit C**.

10. Plaintiff now seeks leave to file a Verified Supplemental Complaint, which includes allegations identical to those alleged in the original complaint, except that the allegations relate to the 2015-16 Legislature and Judiciary budgets. See proposed Verified Supplemental Complaint.

11. Specifically, the Fifth Cause of Action in the proposed Verified Supplemental Complaint alleges that the “Legislature’s Proposed Budget for Fiscal Year 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful.” See id. at ¶¶169-178.

12. The First Cause of Action in the original Complaint alleges that the “Legislature’s Proposed Budget for Fiscal Year 2014-2015, Embodied in Budget Bill #S.631/A.8551, is Unconstitutional & Unlawful.” See Exh. A at ¶¶76-98.

13. The Sixth Cause of Action in the proposed Verified Supplemental Complaint alleges that the “Judiciary’s Proposed Budget for 2015-2016, Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional.” See proposed Verified Supplemental Complaint at ¶¶179-193.

14. The Second Cause of Action in the original Complaint alleges that the “Judiciary’s Proposed Budget for 2014-2015, Embodied in Budget Bill #S.6351/A.8551, is Unconstitutional.” See Exh. A at ¶¶99-108.

15. The Seventh Cause of action in the proposed Verified Supplemental Complaint alleges that “Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies ‘Without Revision.’” See proposed Verified Supplemental Complaint at ¶¶194-202.

16. The Third Cause of Action in the original Complaint alleges that “Budget Bill #S.6351/A.8551 is Unconstitutional & Unlawful Over & Beyond the Legislative & Judiciary Budgets it Embodies ‘Without Revision.’” See Exh. A at ¶¶109-112.

17. The Eighth Cause of Action in the proposed Verified Supplemental Complaint alleges that “Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards.” See proposed Verified Supplemental Complaint at ¶¶203-236.

18. The Fourth Cause of Action alleges that “Nothing Lawful or Constitutional Can Emerge From a Legislative Process that Violates its Own Statutory & Rule Safeguards.” See Exh. A at ¶¶113-126.

19. The causes of action that plaintiffs seeks to add in a Verified Supplemental Complaint as the Fifth, Sixth and Seventh Causes of Action have already been found by the court as legally insufficient to state a claim. See Exh. B.

20. The existing scheduling order provides that discovery was to end on March 20, 2015, and that dispositive motions are due May 22, 2015. A copy of the scheduling order is annexed hereto at **Exhibit D**.

WHEREFORE, the defendants respectfully request that the court issue an order (1) denying plaintiffs’ motion for leave to supplement the complaint and (2) granting the defendants any further relief that court deems just, proper and equitable.

Dated: Albany, New York  
April 9, 2015

  
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Adrienne J. Kerwin