

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-

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.

**Affidavit in Support of
Order to Show Cause**

Index #1788-2014

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STATE OF NEW YORK)
ALBANY COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named unrepresented individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for declaratory judgment and injunctive relief. I am fully familiar with all the facts, papers, and proceedings heretofore had and submit this affidavit in support of the relief requested by plaintiffs' order to show cause.

2. With respect to the first branch of relief, granting summary judgment to plaintiffs on the sixth cause of action of their September 2, 2016 verified complaint (¶¶59-68), this is the only

cause of action that this Court's December 21, 2016 decision preserved when it dismissed plaintiffs' other nine causes for failing to state a cause of action and directed that defendants had "30 days from the date of this order to answer" (at pp. 6-7, 8). Now that defendants have answered¹, plaintiffs move for summary judgment pursuant to CPLR §3212.

3. All the facts and law sufficient for granting plaintiffs summary judgment on their sixth cause of action were before the Court when it rendered its December 21, 2016 decision. This is why, as to the sixth cause of action and the other nine, plaintiffs' September 30, 2016 memorandum of law in opposition to AAG Kerwin's cross-motion to dismiss their complaint, had requested the Court grant summary judgment to plaintiffs pursuant to CPLR §3211(c) – relief the decision concealed when it concealed the existence of plaintiffs' September 30, 2016 opposition papers.

4. With respect to the second branch of relief, granting leave to plaintiffs to file their accompanying March 29, 2017 verified supplemental complaint, pursuant to CPLR §3025(b), such provision states:

“Amendments and supplemental pleadings by leave. A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.”

5. As demonstrated by plaintiffs' accompanying verified supplemental complaint, virtually all defendants' constitutional, statutory, and rule violations with respect to the budget for fiscal year 2017-2018 are identical repetitions of their violations with respect to the budget for fiscal year 2016-2017 – the subject of plaintiffs' September 2, 2016 verified complaint. Likewise, the

¹ This Court's December 21, 2016 decision/order – and defendants January 20, 2017 answer – were annexed as Exhibits T-1 and T-4 by plaintiffs' February 15, 2017 order to show cause for the Court's

judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation, that will take effect, by “force of law”, on April 1, 2017 – funding for which is embedded in the Legislative/Judiciary budget bill for fiscal year 2017-2018 – suffer from the identical constitutional and statutory violations as the judicial salary increases recommended by the same December 24, 2015 report, that took effect, by “force of law”, on April 1, 2016, with funding embedded in the Legislative/Judiciary budget bill for fiscal year 2016-2017.

6. Based on these replicated violations of constitutional provisions, statutes, and legislative rules for fiscal year 2017-2018, the supplemental complaint simply reiterates the ten causes of action of the September 2, 2016 verified complaint pertaining to fiscal year 2016-2017, as applicable to fiscal year 2017-2018.

7. It would be wasteful to bring a separate citizen taxpayer action when the facts and law are identical – and when any such separate citizen taxpayer action would doubtless be assigned to the Court as a related proceeding.

8. At to the “merit” of plaintiffs’ supplemental complaint, its reiterated sixth cause of action (pp. 67-68) is “cognizable” in the same way as the sixth cause of action of plaintiffs’ September 2, 2016 complaint (¶¶59-68), preserved by the Court’s December 21, 2016 decision, as to which plaintiffs are herein moving for summary judgment pursuant to CPLR §3212.

9. As to the supplemental complaint’s other nine causes of action (pp. 63-71), reiterated from the September 2, 2016 complaint (¶¶23-58, 69-110), the record before the Court, entitling plaintiffs to summary judgment as to those nine, was highlighted by their September 30, 2016 memorandum of law – and reinforced further by their Exhibit U to their February 15, 2017 order to

disqualification/vacatur, etc. Nevertheless, AAG Kerwin annexed these same documents as Exhibits B and C to her March 22, 2017 affirmation in opposition thereto.

show cause for this Court's disqualification for the actual bias that its December 21, 2017 decision demonstrates, *prima facie*.

10. With respect to the third and fourth branches of relief, declaring null and void, by reason of fraud and violation of Article III, §10 of the New York State Constitution, the legislative defendants' "amending" of nine of defendant CUOMO's budget bills which, in fact, they had not "amended" – and enjoining all budget actions based thereon – plaintiffs' supplemental complaint furnishes the particulars of the legislative defendants' fraudulent, completely-opaque "amending" at ¶¶229-233, 238-242.

11. To further establish the evidentiary facts as to the legislative defendants' flagrant violations of their own legislative rules and of Article III, §10 with respect to their "amending" of these budget bills, annexed as Exhibits 1, 2, and 3², are plaintiffs' FOIL requests to the records access officers of both defendant SENATE and defendant ASSEMBLY for pertinent documents.

12. Absent production of evidentiary proof of the legislative defendants' compliance with their own procedures for amending bills – including a vote to amend what are non-sponsor amendments – the bills were not "amended" in fact – and the so-called "amended" bills are nullities.

13. To ensure there would be no impediment to the Court's granting of a TRO to enjoin defendants from taking further budget action on "amended" budget bills that are each nullities, plaintiffs gave repeated notice to defendants' counsel, the Attorney General, to bring to the oral argument herein the documents sought by plaintiffs' FOIL requests.

14. With respect to the fifth branch of relief, declaring null and void, by reason of the legislative defendants' violation of Article VII, §§ 4, 5, 6 of the New York State Constitution and the controlling decision of the Court of Appeals in *Pataki v. Assembly* and *Silver v. Pataki*, 4 NY3d

² The FOIL requests in Exhibit 3 are for records pertaining to the Senate and Assembly's "amending" of the budget bills for fiscal year 2016-2017.

75 (2004), the eight “amended” budget bills that altered appropriations by increases and additions directly to the bills, not “stated separately and distinctly from the original item”, and removing and inserting qualifying language – and enjoining all budget actions based thereon – plaintiffs’ supplemental complaint furnishes the particulars of the legislative defendants’ *sub silentio* repudiation of Article VII, §§4, 5, 6 of the New York State Constitution and of the controlling Court of Appeals caselaw with respect to their alterations of defendant CUOMO’s budget bills at ¶¶234-237, 253-259.

15. As stated at the very outset of plaintiffs’ supplemental complaint – at its ¶112:

“the legislative defendants have so brazenly repudiated Article VII, §§4, 5, 6 of the New York State Constitution – and the controlling consolidated Court of Appeals decision in the budget lawsuits to which they were parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004) – that nothing more is required for summary judgment to plaintiffs on their reiterated fifth cause of action (¶¶54-58)³ than to compare defendant Governor’s budget bills for fiscal year 2017-2018 with the legislative defendants’ ‘amended’ budget bills. And facilitating the comparison are the legislative defendants’ one-house budget resolutions and their accompanying summary/report of recommended budget changes, already embodied in their ‘amended’ budget bills – as well as their own press releases and public statements.” (underlining in the original).

16. The Attorney General was furnished with this paragraph more than a day before the oral argument – and comparable notice four days earlier – ample time to confront the cited evidence, all available to him from his legislative clients, including their websites, over and beyond from plaintiff CJA’s website, so as to be ready to confront plaintiffs’ *prima facie* entitlement to declarations of unconstitutionality with respect to the “amended” budget bills – and for immediate injunctive relief.

17. With respect to the sixth branch of relief, enjoining defendants from enacting the unamended Legislative/Judiciary Bill #S.2001-A.3001 and/or disbursing monies pursuant thereto; or,

alternatively, for an injunction as to the §1 and §4 legislative portions, *inter alia*, because, in violation of Article VII, §I, they are not certified; and, as to the Judiciary’s §3 reappropriations, because, *inter alia*, they are not certified, plaintiffs’ supplemental complaint furnishes the particulars at ¶¶117-129, 148-163, 173-175, & p. 63 & 65 (with respect to the legislative portions) and at ¶¶130-141, 176-179, and p. 64 (with respect to the judiciary portions). Plaintiffs’ entitlement to summary judgment as to these, constituting their reiteration, for fiscal year 2017-2018, of the first, second, and third causes of action of their September 2, 2016 verified complaint pertaining to fiscal year 2016-2017 (¶¶23-47), is established by their entitlement to summary judgment on the causes of action of their September 2, 2016 verified complaint. Here, too, dispositive of the state of the record before the Court as to these three causes of action is plaintiffs’ September 30, 2016 memorandum of law – reinforced further by their Exhibit U to their February 15, 2017 order to show cause for this Court’s disqualification for the actual bias that its December 21, 2017 decision demonstrates, *prima facie*.

POSTSCRIPT

18. The granting of a TRO to enjoin defendants from taking further budget actions with respect to ALL nine of the legislative defendants’ “amended” budget bills is not any kind of calamity. To the contrary. New York State has, historically and repetitively, gone for months “without a budget” – even until August. Indeed, it would appear that this occurred precisely because the Legislature and Governor, *sub silentio* and in conspiracy with each other – and others, including the courts – decided to detour from Article VII, §§1-7 – and, in particular, §§4, 5, 6.

19. As I stated in testifying at the Legislature’s budget hearings, an on-time budget is in the Legislature’s own hands. Pursuant to Article VII, §4, each of the Legislature’s amended

³ As identified by ¶56, the fifth cause of action is ¶¶362-383 of the twelfth cause of action of plaintiffs’

appropriation bills, restricted to striking out or reducing items from the Governor's appropriation bills, becomes "law immediately without further action by the governor". In other words, the Constitution provides for a "rolling budget", enacted bill by bill.

20. The Court's enjoining further proceedings on the "amended" budget bills will not hinder the Legislature in enacting a budget. It need only return to the Governor's original budget bills and by amending them, consistent with Article VII, §4, and reconciling the differences between its two houses, each bill will become "law immediately without further action by the governor". When that is done – and only then – can the Legislature, pursuant to Article VII, §5, §6, enact its own "separate bills each for a single object or purpose" for the additions, "stated separately and distinctly from the original items of the bill" – and "refer[ring] each to a single object or purpose", subject to the Governor's "approval as provided in section 7 of article 4".

21. In other words, this Court's granting of the constitutionally-compelled TRO will force the state budget back to where it belongs – firmly "on the constitutional rails".

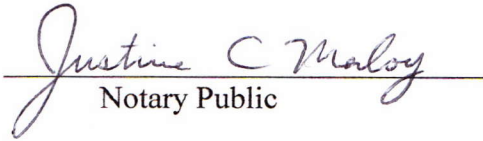
22. No other application has been made in this citizen-taxpayer action for the same or similar relief, other than on September 2, 2016. The facts pertaining to the order to show cause for a preliminary injunction, with TRO, that plaintiffs brought on that date are particularized by my September 30, 2016 affidavit in reply/opposition to AAG Kerwin's dismissal cross-motion – an affidavit whose existence, like plaintiffs' September 30, 2016 memorandum of law, was entirely concealed by the Court's December 21, 2016 decision – and so-highlighted by Exhibit U to plaintiffs' February 15, 2017 order to show cause for the Court's disqualification and vacatur of the December 21, 2016 decision/order.

March 23, 2016 verified second supplemental complaint and its sixteenth cause of action (¶¶458-470), in its entirety.



ELENA RUTH SASSOWER

Sworn to before me this
29th day of March 2017



Notary Public

JUSTINE C MALOY
Notary Public, State of New York
No. 01MA6339390
Qualified in Albany County
Commission Expires 03/28/2020