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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM PART IA15

-----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,

-against-

Index No.
302951/2012

ANDREW M. CUOMO, in his official capacity as Governor
of the State of New York, ERIC T. SCHNEIDERMAN, in his
official capacity as Attorney General of the State of
New York, THOMAS DiNAPOLI, in his official capacity as
Comptroller of the State of New York, DEAN SKELOS, in his
official capacity as Temporary President of the New York
State Senate, THE NEW YORK STATE SENATE, SHELDON SILVER,
in his official capacity as Speaker of the New York State
Assembly, THE NEW YORK STATE ASSEMBLY, JONATHAN LIPPMAN,
in his official capacity as Chief Judge of the State of New
York, the UNIFIED COURT SYSTEM, and THE STATE OF NEW YORK,

Defendants.

-----X
851 Grand Concourse
Bronx, New York 10451
March 30, 2012

B E F O R E:

Honorable Mary Ann Brigantti-Hughes,
Justice of the Supreme Court

A P P E A R A N C E S:

ELENA RUTH SASSOWER, Plaintiff, Pro Se
4901 Henry Hudson Parkway, Apt. 8M
Bronx, New York 10471

FOR THE DEFENDANTS:
STATE OF NEW YORK OFFICE OF THE ATTORNEY GENERAL
120 Broadway
New York, New York 10271-0332
BY: RODERICK ARZ, ESQ.
Assistant Attorney General

JoAnn DiDonato
Senior Court Reporter

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1 THE COURT: We are here entertaining the Order to
2 Show Cause for a stay with a TRO. This is the Center for
3 Judicial Accountability, Inc. and Elena Ruth Sassower
4 against Andrew Cuomo and a group of other elected
5 officials.

6 Can you please state your appearances for the
7 record.

8 MS. SASSOWER: My name is Elena Ruth Sassower,
9 and I am the plaintiff, pro se.

10 THE COURT: The plaintiff, pro se. Are you
11 representing a corporation?

12 MS. SASSOWER: I cannot represent a corporation,
13 Your Honor, because I'm not an attorney.

14 THE COURT: Oh, okay. Thank you.

15 MR. ARZ: Roderick Arz with the Office of the
16 Attorney General of the State of New York, on behalf of the
17 Attorney General of the State of New York.

18 THE COURT: Thank you. You may proceed with your
19 arguments.

20 MS. SASSOWER: Thank you. At the outset, I'd
21 like to identify that it is our position that we are
22 entitled to the representation of the Attorney General in
23 this important case. The Attorney General is the people's
24 lawyer and has a duty to uphold the law. His position in
25 litigation is determined by the interest of the state.

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1 Where he has no defense on the merits, and I
2 believe he has none here, his obligation pursuant to 63.1
3 of the Executive Law is to represent not the state bodies,
4 the public officers, but the people, so that is the first
5 issue that I'd like to place before the Court, because you
6 did ask whether I was representing the Center for Judicial
7 Accountability and I cannot, and it is the Attorney General
8 who should be intervening, coming on board to represent
9 both the center and myself.

10 What a privilege to be before you, Your Honor,
11 because your case, your decision in McKinney against
12 Commissioner of New York State Department of Health is the
13 one and only case cited in the cause of action relating to
14 the unconstitutionality of Chapter 567 of the laws of 2010,
15 which are here being challenged as unconstitutional.

16 And one of the grounds is -- are those -- are
17 reflected by your decision, which is to say that there is
18 an unconstitutional delegation by the Legislature to a body
19 which is not governed by appropriate provisions
20 safeguarding a representative provision to the -- to ensure
21 the integrity of its determinations.

22 The issue, however, is much more narrow on this
23 application, which is the likelihood of success on the
24 merits.

25 Has Your Honor had an opportunity, if I may ask,

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1 to examine the opposition report of October 27th, which we
2 presented to our highest constitutional officers, the
3 Governor, the Temporary President, the Assembly Speaker and
4 the Chief Judge?

5 THE COURT: You may present your argument.

6 MS. SASSOWER: That report demonstrated with fact
7 and law that the report of the Commission on Judicial
8 Compensation and its recommendations of a judicial pay
9 raise, pay raises, was unconstitutional, statutorily
10 violative and a fraud on the People of the State of New
11 York.

12 The opposition report was presented to our
13 highest constitutional officers so that they could
14 discharge their constitutional duties to protect the
15 public, the people. That is their charge. And the report
16 expressly on its cover sought specific action, the first
17 being legislation to override and void the judicial pay
18 raises that would otherwise take effect automatically under
19 the statute on April 1st. Additional relief was also
20 sought, including voiding, repeal of the statute.

21 What were their findings of fact and conclusions
22 of law? These public officers, our highest public
23 officers, are, I believe, all attorneys, and they have huge
24 staffs of attorneys, counsel. What were their
25 determinations with respect to our showing?

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1 We got no response from them, nor did we get any
2 response from Attorney General Schneiderman, to whom we
3 furnished a copy of the opposition report, nor from anyone
4 else has there been any denial or dispute, any contest of
5 what we evidentiarily set forth.

6 Now, Your Honor of course is aware that where
7 something is not denied or disputed, it is deemed admitted.
8 It is deemed conceded. And if you ran your eyes over the
9 opposition report, although I am sure you would not have
10 had more time than that, to just briefly eyeball it, you
11 saw that this was not something that could be ignored. It
12 had to be addressed. This was a serious and substantial
13 presentation.

14 THE COURT: I don't want to interrupt you, but
15 right now I'd like you to focus on your application for the
16 TRO.

17 MS. SASSOWER: So the issue here is an
18 evidentiary one, likelihood of success on the merits. And
19 as set forth in my affidavit in support of the Order to
20 Show Cause, it is clear from the opposition report that
21 these pay raises, the report of the Commission on Judicial
22 Compensation cannot stand for a myriad of reasons all
23 demonstrated and that the likelihood of success on the
24 merits is absolute.

25 And, of course, you see in the presentation I

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1 made that a month ago, as time was ticking down to this
2 day, I wrote to our highest constitutional officers and
3 asked them to come forward with their findings of facts and
4 conclusions of law so that the public might be safeguarded
5 here. Their response was the same as their response to
6 presentation of the report, no response, burdening our
7 unfunded Center for Judicial Accountability and me, a
8 nonlawyer --

9 THE COURT: Can you speak to the irreparable
10 damages, please?

11 MS. SASSOWER: Irreparable damages?

12 THE COURT: Of your request for a TRO.

13 MS. SASSOWER: Well, as I indicated, there may be
14 an argument made that once the pay raises take effect as a
15 matter of law removing them would be an unconstitutional
16 diminution of compensation, which is expressly proscribed
17 by the Constitution of Article XX -- what is it? Article
18 VI 25(a), so the public would be severely compromised.

19 But there is no showing -- there is no showing
20 that the Commission's report can withstand constitutional
21 and statutory scrutiny or any scrutiny.

22 We have made an evidentiary showing. The
23 evidence is for the people and for the requested relief.
24 The Attorney General, and I will say that prior to
25 presenting this Order to Show Cause, I called up the

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1 Attorney General earlier this week and identified that I
2 was going to be bringing an Order to Show Cause with a TRO,
3 and making it very explicit and putting it in writing as
4 well, also furnished to the Governor on down, and it's
5 annexed, and also quoted in my affidavit that this was the
6 time, this was the time for them to come forward with the
7 evidence.

8 You have only evidence in support of
9 unconstitutionality and statutory violations and fraud.
10 You have no evidence on the other side. They have not met
11 their burden. We have met ours.

12 THE COURT: Thank you.

13 MS. SASSOWER: Thank you.

14 MR. ARZ: Thank you, Your Honor.

15 With all due respect to Ms. Sassower and her
16 evident sincerity, she wants to strike down and permanently
17 enjoin the lawful operation of the judicial pay raises
18 which have been lawfully enacted and are scheduled to go
19 into effect on April the 1st, 2012, but this lawsuit in
20 general, the instant application for the TRO and the Order
21 to Show Cause specifically suffer from many procedural and
22 substantive defects, and because of those defects the Court
23 should decline to sign the Order to Show Cause, should not
24 grant any TRO or stay. Plaintiff is, of course, free to
25 bring an action by service of a summons and complaint. But

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1 let me go into the defects. I will be brief, Your Honor,
2 here.

3 At the threshold, plaintiff lacks standing. She
4 herself admits she's not a lawyer. She can't represent the
5 Center for Judicial Accountability. As to her standing
6 personally, she is -- she has suffered no injury. She's
7 not within the zone of interest of the statute that
8 established the Commission on Judicial Compensation.

9 Moving on, this Court lacks jurisdiction in fact
10 to issue the TRO. She would have this Court enjoin the
11 Comptroller presumably, although the request for the
12 injunctive relief is couched in very general terms.
13 Nonetheless, because of the inclusion of the Comptroller,
14 one can presume she seeks to enjoin the Comptroller from
15 paying out these raises under the budget, something that
16 the Comptroller is statutorily required to do. Under CPLR
17 6313, the Court cannot issue a TRO enjoining a public
18 officer from performing his official duties.

19 Moreover, for preliminary injunction this Court
20 would be the wrong venue because a preliminary injunction
21 against, for example, the Comptroller would need to be in
22 Albany, where the Comptroller is. So, even if this Court
23 were to find that it did have jurisdiction, we would argue
24 that venue would be appropriate in Albany.

25 Setting aside those procedural defects, which I

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1 would submit on their own are sufficient for the Court to
2 decline to sign the Order to Show Cause in its entirety,
3 nonetheless, plaintiff has not even come close to
4 establishing the elements for preliminary relief. She has
5 not articulated any imminent harm to herself.

6 Moreover, she would have this Court issue an
7 injunction that would actually be in the form of a
8 mandatory injunction. It would change the status quo. The
9 status quo as it stands right now is the operation of
10 current law now in effect. She hasn't met the extremely
11 high barrier for injunctive relief that alters the status
12 quo.

13 She spoke about likelihood of success on the
14 merits. That is really where her claims, even setting
15 aside some of these procedural issues, completely fail, and
16 that is because, first of all, the bar for showing the
17 unconstitutionality of a statute is extremely high. But,
18 moreover, the Court of Appeals has already ruled in its
19 Maron v. Silver decision, at 14 NY3d 230, the
20 constitutional necessity of legislative action to raise
21 judicial pay. Moreover, the Court of Appeals in its Maron
22 decision explicitly set forth that the judiciary may
23 intervene in the state budget only in the narrowest of
24 instances. And in that case, which was about the
25 constitutionality of judicial pay raises, the Court there

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1 declined to issue any injunctive relief. It found that the
2 Legislature had a constitutional duty to act on judicial
3 pay raises, which the Legislature did, setting up the
4 Commission on Judicial Compensation, which issued its
5 report.

6 Plaintiff would now have this Court force the
7 Legislature to create and pass affirmative legislation
8 changing that legal status quo. Plaintiff has made no
9 argument, whether in law, evidence or what have you, that
10 go anywhere near to meeting the burden under that standard.

11 She spoke to the Attorney General himself, and I
12 will just address that briefly. She mentioned Executive
13 Law 63.1, but I will point out to Your Honor that the
14 Attorney General has great discretion as to who he
15 represents and what cases he pursues.

16 So in conclusion, Your Honor, and I won't belabor
17 the point, due to the myriad of procedural and substantive
18 defects in petitioner's application, I would respectfully
19 request the Court decline to sign the Order to Show Cause,
20 do not issue any injunctive relief and then permit, if she
21 wishes, plaintiff to go forward in her own capacity
22 bringing a lawsuit, as she could. I would point out that
23 it should be venued in Albany though.

24 I would just point out that to the extent the
25 Court were to sign the Order to Show Cause, perhaps

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1 striking out any interim relief, but to allow the matter to
2 be brought on by that Order to Show Cause, that it not
3 allow service by E-mail, as is, I believe, requested in the
4 Order to Show Cause. We just got these papers very late in
5 the day yesterday. But I would obviously ask that any
6 commencement be by personal service on the defendants of
7 any Order to Show Cause.

8 But again, it's our position no Order to Show
9 Cause should be issued. Thank you very much.

10 MS. SASSOWER: May I just be heard briefly?

11 THE COURT: I've heard enough. Thank you very
12 much.

13 Okay. I will be signing the Order to Show Cause,
14 to be returnable April 9th, and I will grant your
15 application for personal service made on or before
16 April 4th upon all defendants, and I will, for the record,
17 strike that paragraph requesting the TRO.

18 The Court finds that economic damages is not
19 irreparable damages for purposes of the TRO.

20 Decision is reserved with regards to your relief
21 on declaratory judgment on --

22 MS. SASSOWER: Thank you, Your Honor.

23 THE COURT: -- those four grounds that you have
24 brought up.

25 Thank you very much.

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1 MR. ARZ: Thank you, Your Honor.

2 If I may make just one final point, if there were
3 any way to get a bit of additional time. As Your Honor can
4 see, the papers in this are extensive, but I appreciate it,
5 Your Honor. Thank you.

6 THE COURT: Additional time? Well, in light of
7 the fact that there is a holiday around the corner, I have
8 to agree with you that many people are not going to be
9 available because of that, so additional time will be
10 granted, and I can give you the following Monday, which is
11 April 16. Is that enough time?

12 MR. ARZ: Thank you, Your Honor. Yes.

13 MS. SASSOWER: I'm sorry. It would be returnable
14 April 16th, rather than the 9th?

15 THE COURT: Rather than the 9th, and I'm giving
16 you more time for service.

17 MS. SASSOWER: Thank you.

18 THE COURT: So I will give you -- how is
19 April 6th?

20 MS. SASSOWER: Fine. Fine, for service of the
21 papers.

22 THE COURT: Personal service.

23 MS. SASSOWER: All the papers.

24 THE COURT: April 6th. Thank you very much.
25 Have a great day.

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1 MS. SASSOWER: May I just say that on the venue
2 issue, this Court of course can transfer venue if it deems
3 this not to be the appropriate one, and I certainly believe
4 in view of where the judicial compensation cases were
5 brought, the judges' judicial cases were brought, this
6 venue is proper.

7 THE COURT: Thank you very much. I will have a
8 short order available to you within ten minutes.

9 MS. SASSOWER: Thank you, Your Honor.

10 MR. ARZ: Thank you, Your Honor.

11 * * * * *

12 Certified to be a true and accurate record of the
13 above proceedings.

14 

15 JoAnn DiDonato
16 Senior Court Reporter
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