

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,

Index #1788-14

Plaintiffs,

**Affidavit in Reply & in Further
Support of Plaintiffs' Cross-
Motion**

-against-

Oral Argument Requested

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.

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STATE OF NEW YORK)
WESTCHESTER COUNTY) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the above-named *pro se* individual plaintiff in this citizen-taxpayer action brought under State Finance Law Article 7-A [§123 *et seq.*] for a declaratory judgment, and am fully familiar with all the facts, papers, and proceedings heretofore had.

2. I submit this affidavit for purposes of swearing to the truth of plaintiffs' accompanying reply memorandum of law, which I have written and which I incorporate by reference

– and to furnish the Court with further evidence reinforcing plaintiffs’ entitlement to all branches of their cross-motion.

Plaintiffs’ Entitlement to Declarations that the Judicial Salary Increases Recommended by the August 29, 2011 Report of the Commission on Judicial Compensation, Embedded in the Judiciary’s Proposed Budgets and Legislative/Judiciary Budget Bills, are Fraudulent, Statutorily-Violative, and Unconstitutional – & that Chapter 567 of the Laws of 2010 – Now Materially Replicated in Chapter 60 of the Laws of 2015 -- was Unconstitutional, as Written & as Applied

3. On Friday, September 25, 2015, I had a phone conversation with AAG Kerwin in which I apprised her of an important discovery I had made a day or two after e-mailing and mailing plaintiffs’ September 22, 2015 opposition/cross-motion. That discovery, which I told her would be included in plaintiffs’ reply papers, was Assembly Bill, #07997, which – recognizing the unconstitutionality of Part E of Budget Bill #S.4610-A/A.6721-A – sought to amend it.

4. Part E of Budget Bill #S.4610-A/A.6721-A had repealed Chapter 567 of the Laws of 2010, replacing the Commission on Judicial Compensation with a materially identical Commission on Legislative, Judicial and Executive Compensation. My September 22, 2015 affidavit (at p. 7) had annexed Part E as Exhibit 21-b – and plaintiffs’ September 22, 2015 memorandum of law had discussed it at page 48.¹

5. The content of my September 25, 2015 phone conversation with AAG Kerwin is reflected by the e-mail I sent her three days later (Exhibit 22-a), furnishing her with a link to Assembly Bill #07997 and its accompanying sponsor’s memo (Exhibit 22-b). In pertinent part, my September 28, 2015 e-mail to her stated:

“As discussed, the memo delineates the unconstitutionality of the provision that allows the pay raise recommendations of the Commission on Legislative, Judicial, and Executive Compensation to take effect, automatically, without requiring

¹ Part E of Budget Bill #S.4610-A/A.6721 is additionally discussed in Exhibit 13 to my September 22, 2015 affidavit, which are pages from Comptroller DiNapoli’s April 2015 Report on the State Fiscal Year 2015-16 Enacted Budget (see pp. 52-53 “Pay Raise Commission”).

any affirmative legislative action – replicating the identical provision in Chapter 567 of the Law of 2010, whose unconstitutionality CJA has been challenging, as likewise the fraudulent and statutorily-violative judicial pay raises it has enabled.

Please show it to your superiors – and also CJA’s September 22nd reply/cross-motion papers. I would have no objection to your withdrawing your dismissal/summary judgment motion, consistent with your duty under New York’s Rules of Professional Conduct for Attorneys, Executive Law 63.1, and State Finance Law Article 7-A – and engaging in settlement discussions.

Please advise.”

6. I did not hear back from AAG Kerwin with respect to this e-mail and her dismissal/summary judgment motion was not withdrawn. Rather, as demonstrated by plaintiffs’ accompanying reply memorandum of law, she has interposed papers so flagrantly fraudulent as to reinforce plaintiffs’ entitlement to all the relief sought by their cross-motion. This includes the fifth branch of plaintiffs’ cross-motion for Attorney General Schneiderman’s disqualification for conflict of interest, which – as reflected by pp. 46-48 of plaintiffs’ memorandum of law – was the specific context for plaintiffs’ furnishing the Court with Part E of Budget Bill #S.4610-A/A.6721-A.

7. Beyond plaintiffs’ October 27, 2011 Opposition Report and March 30, 2012 verified complaint in *CJA v. Cuomo, I* – which plaintiffs’ opposition/cross-motion furnished to the Court – the annexed sponsors’ memo to Assembly Bill #07997 further substantiates plaintiffs’ entitlement to a declaration as to the unconstitutionality of Chapter 567 of the Laws of 2010, as it specifies five respects in which “the force of law” provision – replicated in what is now Chapter 60 of the Laws of 2015 – is unconstitutional.

8. Additional proof of the unconstitutionality of that same provision is what the Association of the Bar of the City of New York wrote in its *amicus brief* in support of Court of Appeals review of *McKinney v. New York State Department of Health, et al.*, 15 Misc.3d 743 (2007) – the case challenging the commission precursor of Chapter 567 of the Laws of 2011, identified in plaintiffs’ second cause of action in *CJA v. Cuomo I* (¶¶145 *et seq.*) – and what now Court of

Appeals Judge Eugene Fahey wrote, in dissent, as an Appellate Division, Fourth Department justice, in *St. Joseph Hospital, v. Novello*, 43 A.D.3d 139 (2007), challenging the same commission precursor as *McKinney*. Both the *amicus* brief and dissent are summarized at pages 23-35 of plaintiffs' accompanying reply memorandum of law, quoting from pages 4-5 of my April 20, 2013 memo to the Assembly Committee on Government Employees, thereafter furnished to all Legislators and the Governor, without response from them. A copy of the memo is annexed hereto as Exhibit 23.



Elena Ruth Sassower

Sworn to before me this
5th day of November 2015

Notary Public

TABLE OF EXHIBITS

Exhibit 22-a: Plaintiff Sassower's September 28, 2015 e-mail to AAG Kerwin

Exhibit 22-b: Assembly Bill #07997, with sponsors' memo

Exhibit 23: Plaintiffs' April 20, 2015 memo to all members & the chair of the Assembly Committee on Governmental Employees – "RE: Constitutional, statutory, & other infirmities of A.246 establishing 'a special commission on compensation for state employees designated as managerial or confidential, and providing for its powers and duties'..."

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**PLAINTIFF SASSOWER'S REPLY AFFIDAVIT
in Further Support of Plaintiffs' Cross-Motion
for Summary Judgment & Other Relief**

ELENA RUTH SASSOWER, Plaintiff *Pro Se*, individually
& as Director of the Center for Judicial Accountability, Inc.,
and on behalf of the People of the State of New York &
the Public Interest

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