

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,

May 15, 2017

**Affidavit in Reply & in
Further Support of Plaintiffs’
March 29, 2017 Order to
Show Cause with Preliminary
Injunction & TRO**

-against-

Index #5122-16
RJI # 01-16-122174

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.

-----X
STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss.:

ELENA RUTH SASSOWER, being duly sworn deposes and says:

1. I am the unrepresented individual plaintiff in this citizen-taxpayer action brought pursuant to Article 7-A of the State Finance Law (§123 *et seq.*) and fully-familiar with all the facts, papers, and proceedings heretofore had. I submit this affidavit in reply to defendants’ April 21, 2017 opposition to plaintiffs’ March 29, 2017 order to show cause with preliminary injunction and TRO,

interposed by Assistant Attorney General Helena Lynch, and in further support of the order to show cause.

2. In addition to swearing to the truth of the factual allegations in plaintiffs' accompanying memorandum of law, which I wrote and incorporate herein by reference, this affidavit annexes and describes exhibits further establishing plaintiffs' entitlement to all the relief requested by the seven branches of their March 29, 2017 order to show cause, including the preliminary injunctions sought by the third, fourth, fifth, and sixth branches – and TRO.

3. The Court's May 5, 2017 so-ordered letter extending my time to file these papers to May 15, 2017 (Exhibit 4-b)¹ denies, *without reasons*, my request for reconsideration of its March 29, 2017 *without reasons* denial of a TRO, while "reserv[ing] decision" on my "request of an evidentiary hearing on [my] pending application for a preliminary injunction".

4. Based on the evidence before the Court, no hearing is necessary for the granting of the preliminary injunctions requested by the third, fourth, fifth, and sixth branches of plaintiffs' order to show cause. Yet, that same evidence suffices to mandate the granting of an evidentiary hearing so that plaintiffs can further prove their entitlement to the underlying declarations of unconstitutionality and fraud and to preliminary injunctive relief in the interim.

5. Consistent with the expedition and preference commanded by State Finance Law §123-c(4), plaintiffs request an immediate evidentiary hearing so that the Court's determinations can promptly issue. Each day, countless millions, if not billions, of taxpayer dollars are disbursed as a result of the now enacted 150-plus billion-dollar state budget – and AAG Lynch makes no claim that the massive amounts of taxpayer monies already disbursed can be recovered. This includes the

¹ This affidavit in reply and further support continues the sequence of exhibits begun by my March 29, 2017 moving affidavit in support of plaintiffs' March 29, 2017 order to show cause, which annexed Exhibits 1, 2, 3.

monies disbursed from the enacted unamended Legislative/Judiciary Budget Bill #S.2001/A.3001 to pay for judicial salary increases pursuant to a statute whose unconstitutionality and fraud is the subject of the first branch of plaintiffs' March 29, 2017 order to show cause for summary judgment.

6. As demonstrated by plaintiffs' memorandum of law and further particularized herein, AAG Lynch furnishes neither evidence nor law to counter plaintiffs' *prima facie* merits entitlement to any of the seven branches of their March 29, 2017 order to show cause and, by her flagrant litigation fraud, countenanced, if not directed, by the highest supervisory personnel in the Attorney General's office, including defendant Attorney General SCHNEIDERMAN himself, reinforces that defendants have none.

7. Apart from her fraud at the March 29, 2017 oral argument that the Senate and Assembly "amended" bills were "internal" documents – which she has retracted (Exhibit 7-c) – her foremost fraud on March 29, 2017, which she repeats throughout her April 21, 2017 opposing papers, is that plaintiffs have presented no evidence demonstrating a likelihood of success on the merits. In rebuttal, annexed is the transcript of the March 29, 2017 oral argument (Exhibit 5). It reflects that over and over again, on March 29, 2017, I reiterated that plaintiffs were entitled to a TRO and preliminary injunction to enjoin further action on the Senate and Assembly "amended" budget bills because their facial violations of Article VII, §4 of the New York State Constitution and of the controlling consolidated decision of the New York Court of Appeals in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), verifiable by comparing them to the Governor's budget bills, entitled plaintiffs to summary judgment – and that I had brought all such budget bills with me, to the courthouse, for an evidentiary hearing then and there, or, alternatively, for an evidentiary hearing to be held on March 31, 2017.

8. The voluminous budget bills that I brought to the courthouse on March 29, 2017 to establish plaintiffs' *prima facie* entitlement to the injunctive and declaratory relief sought were three full sets of the Governor's original budget bills, the Senate's budget bills which it purported to have "amended" on March 13, 2017 and March 20, 2017, the Assembly's budget bills which it purported to have "amended" on those same dates – plus three sets of the Senate and Assembly "one-house budget resolutions" – these three sets being for the Court, for the Attorney General, and for myself. I also brought a single set of the Governor's 30-day amended bills. This is itemized by my March 30, 2017 e-mail to Deputy Attorney General Meg Levine (Exhibit 7-b) – with a copy to AAG Lynch and the Court – in which I further stated that I had left the Attorney General's set in chambers, for pick-up, and had filed in the clerk's office the Court's set, together with the Governor's 30-day amended bills.

9. Additionally, six FOIL requests were annexed to my March 29, 2017 moving affidavit as Exhibits 1, 2, 3 – three being FOIL requests to the Senate's records access officer (Exhibits 1-a; 2-a; and 3-a) and three being FOIL requests to the Assembly's records access officer (Exhibits 1-b; 2-b; and 3-b):

A. Relevant to the violations of Article VII, §§4, 5, and 6 that are the subject of the fifth branch of plaintiffs' March 29, 2017 order to show cause, these FOIL requests sought, with respect to eight Senate "amended" budget bills and eight Assembly "amended" budget bills for fiscal year 2017-2018:

- records showing what specific changes the amendment to each bill made, as for instance, the "detail sheets" and "amended memorandum", required by Senate Rule VII, §4(b) and Assembly Rule III, §6;

B. Relevant to the fraud and violations of Article III, §10 that are the subject of the third and fourth branches of plaintiffs' March 29, 2017 order to show cause, these FOIL requests sought with respect to nine Senate "amended" budget bills and nine Assembly "amended" budget bills for fiscal year 2017-2018:

- records showing the "non-sponsor" who introduced the

amendment to each bill, since it obviously was not the Governor;

- records showing the date and time of the meetings of the Senate Finance Committee and Assembly Ways and Means Committee meeting at which motions to amend each bill were on their agendas – and the notice thereof furnished to committee members and the public, required by Senate Rule VIII, §2 and Assembly Rule IV, §2;
- records of the meetings of the Senate Finance Committee and Assembly Ways and Means Committee at which the motions to amend each bill were deliberated and voted upon, including the number of legislators present and the number of senators who had submitted voting sheets – and the vote on the motions to amend, including the votes of each legislator, such as required by Senate Rule VIII, §2 and Assembly Rule IV, §2.

C. Relevant to the identical violations of Article VII, §§4, 5, and 6 and Article III, §10 in eight Senate “amended” budget bills and eight Assembly “amended” budget bills for fiscal year 2016-2017 – embraced by the fourth and fifth causes of action of plaintiffs’ September 2, 2016 verified complaint – these FOIL requests sought the identical records as to those budget bills.

10. As stated at ¶13 of my March 29, 2017 moving affidavit, I supplied these FOIL requests to the Attorney General’s office in advance of that day’s oral argument with repeated notice that its top personnel should come prepared with responsive documents – and, likewise, prepared to discuss the Court of Appeals’ consolidated decision in *Silver v. Pataki/Pataki v. Assembly & Senate* – and its equally decisive decision in *New York State Bankers Association v. Wetzler*, 81 NY2d 98 (1993).

11. Annexed hereto is my correspondence with the Attorney General’s office prior to the March 29, 2017 oral argument (Exhibit 6) – a portion of which I had not only furnished to the Court, but addressed to the Court and furnished to the Attorney General’s office. Thus, my March 24, 2017 letter to the Court (Exhibit 6-a), whose “RE” clause included the words “Notice to the Attorney General”, with content that read:

“By this letter, plaintiffs give notice to AAG Kerwin – and her highest superiors, including Attorney General Schneiderman – to bring to the March 28th oral argument records responsive to these four FOIL/records requests and come prepared to demonstrate to the Court how the fiscal year 2017-2018 ‘amended’ budget bills – and the Senate and Assembly one-house resolutions, based on the ‘amended’ bills, with their accompanying summary of changes, already made to the budget bills – are anything less than a *sub silentio* repudiation of Article VII, §§4, 5, 6 of the New York State Constitution and of the controlling consolidated Court of Appeals decisions in the budget lawsuits to which the Senate and Assembly were both parties: *Silver v. Pataki* and *Pataki v. Assembly*, 4 N.Y.3d 75 (2004). This, apart from their violations of Article III, §10 of the New York State Constitution: ‘Each house of the legislature shall keep a journal of its proceedings, and publish the same... The doors of each house shall be kept open...’” (Exhibit 6-a, at p. 2, italics in the original).

Also, my March 28, 2017 e-mail to the Court (Exhibit 6-n) – which I simultaneously sent to Deputy Attorney General Meg Levine and Litigation Bureau Chief Jeffrey Dvorin, in addition to AAG Lynch and AAG Kerwin, stating, in pertinent part:

“...in view of the serious and substantial nature of the injunctive relief being sought – enjoining ALL further budget actions on the legislative defendants’ purportedly ‘amended’ budget bills – and the *prima facie* evidence supporting the striking of the ‘amended’ budget bills on constitutional grounds -- the highest-ranking members of the Attorney General’s office – including Attorney General Schneiderman himself – must be present at the oral argument of the TRO. The order to show cause for a preliminary injunction, with TRO, that I had planned to present today is attached so that you – and the Attorney General recipients – can be fully apprised of what is at issue.

...

Meantime, in addition to the four FOIL/records requests regarding the legislative defendants’ ‘amended’ budget bills that I furnished you last week as enclosures to my March 24th letter – which I also supplied to the Attorney General – attached are my two further FOIL requests pertaining to the legislative defendants’ ‘amended’ debt service budget bill, also already supplied to the Attorney General, who is on notice, by my March 24th letter and by my further e-mail communications, to come to Court with the requested documents...”

This March 28, 2017 e-mail was followed by a further March 28, 2017 e-mail addressed to the Court (Exhibit 6-r), simultaneously sent to Deputy Attorney General Levine, Litigation Bureau Chief Dvorin, AAG Lynch, and AAG Kerwin. It stated, in full:

“I hereby give further notice to the highest supervisory levels of the Attorney General’s office:

Tomorrow afternoon, Wednesday, March 29th, at 3 p.m., before Justice Hartman, for presentment of plaintiffs’ order to show cause for preliminary injunction with TRO. Come prepared with documents responsive to plaintiffs’ FOIL requests pertaining to your legislative clients’ ‘amended’ budget bills, as well as prepared to discuss the Court of Appeals’ consolidated decision in *Silver v. Pataki* and *Pataki v. Assembly*, 4 NY3d 75 (2004) – and, its equally decisive decision in *NYS Bankers Association v Wetzler*, 81 NY2d 98 (1993).”

12. It was against this backdrop of notice and fact-specific, law-supported communications with the Attorney General’s office that a lowly assistant attorney general, AAG Lynch, was dispatched to the March 29, 2017 oral argument, without ANY records responsive to the FOIL requests, unaccompanied by a single legislator to give testimony, offering up paltry argument (Exhibit 5, pp. 12-13) whose material misrepresentation that the Senate and Assembly “amended” budget bills were “not actually amendments”, but “markups for internal discussions...not amendments so they don’t implicate sections 4, 5, and 6 of Article 7”, being “markups for internal discussion which render them a nonjusticiable issue” (Exhibit 5, p. 13, lns. 7-15) was so concocted and indefensible as to compel a retraction from her, the next day (Exhibit 7-c), possibly even before receipt of my complaining e-mail to Deputy Attorney General Levine (Exhibit 7-b).

13. Following the March 29, 2017 oral argument (Exhibit 5), my communications with the Attorney General’s office were no less vigorous. In addition to furnishing particularized notice of AAG Lynch’s misconduct at the oral argument, I identified the mountain of *prima facie*, summary judgment evidence I had presented in support of plaintiffs’ March 29, 2017 order to show cause – the

budget bills, the Senate and Assembly one-house-budget resolutions, the FOIL requests, my sworn March 29, 2017 moving affidavit, and the March 29, 2017 verified supplemental complaint – all establishing, as I stated, plaintiffs’ “entitlement, AS A MATTER OF LAW, to a TRO – no hearing being required.” (Exhibit 7-a). Annexed is that post-argument correspondence (Exhibit 7), which, unlike my prior correspondence, I sent directly to the highest echelons of the Attorney General’s office: Executive Deputy Attorney General Kent Stauffer; Chief Deputy Attorney General Janet Sabel; Chief Deputy Attorney General Jason Brown, and, at the top, defendant Attorney General SCHNEIDERMAN.

14. This is the context in which, after the Court gave to AAG Lynch more than three weeks to respond to plaintiffs’ March 29, 2017 order to show cause, she has offered up a legally-insufficient, prejudicial, non-probative opposition, whose multitudinous frauds in virtually each and every line are particularized by plaintiffs’ accompanying memorandum of law. These include her continually repeated fraud that plaintiffs have furnished no evidence, her concealment of the content of plaintiffs’ FOIL requests – as to which she has made no production, her concealment of the issue as to whether the Senate and Assembly “amended” bills were amended “in fact”; and her complete failure to discuss the Court of Appeals decision in *Silver v. Pataki/Pataki v. Assembly & Senate*, mentioning it only in the context of reciting plaintiffs’ request for relief pursuant thereto, with no mention, even in passing, of *New York State Bankers Association v. Wetzler*.

15. Adding to the foregoing *prima facie* evidence of plaintiffs’ entitlement to the preliminary injunctive relief sought by the third, fourth, and fifth branches of their March 29, 2017 order to show cause, annexed is my exchange of correspondence with the Senate and Assembly records access officers (Exhibits 8-13), reflecting the status of plaintiffs’ six FOIL requests germane to those branches. As of this date, it appears that the Senate and Assembly have NO records

establishing who the legislative sponsor(s) of the amendments to the Governor's budget bills were; NO records establishing that the Governor's budget bills were, in fact, "amended", as, for instance, the votes of legislators on motions to amend; and that the ONLY responsive records – and this from the Senate – are "detail sheets" specifying the changes made by the Senate's "amended" budget bills – the cost of which is \$972.50 for the requested bills for fiscal year 2017-2018 and \$730 for the requested bills for fiscal year 2016-2017.

16. Assuredly, if such "detail sheets" were corroborative of the legislative defendants' compliance with Article VII, §4 and *Silver v. Pataki/Pataki v. Assembly & Senate*, AAG Lynch would have obtained them, free of charge, and produced them. Certainly, too, she could have readily furnished affidavits from her legislative clients attesting to the legitimacy of their "amending" of the budget bills and supplying information, consistent with Article III, §10 as to the legislative sponsors of the amendments, the notice to committee members and the public, the votes of committee members on motions to "amend", and that such "amendments" were consistent with Article VII, §4. She has furnished none of this, just as, likewise, she has furnished no affidavit from a single legislator, let alone a legislator in a position of leadership, and not only with respect to the injunctive relief and declarations sought by the third, fourth, and fifth branches of plaintiffs' March 29, 2017 order to show cause, but the injunctive relief sought by the sixth branch. Nor, with respect to the sixth branch, has she furnished an affidavit from any representative of the Judiciary. Indeed, even as to the issue of certification, challenged by the sixth branch, she has furnished no affidavit from any of her legislative clients, attesting to certification of the legislative appropriations and reappropriations and none from her judiciary clients, attesting to the certification of the judiciary reappropriations.

17. Therefore, in conjunction with this reply, I will be furnishing subpoenas to the Court, for its signature, so that it can have the benefit of the FOIL records from the Senate that AAG Lynch has withheld. Suffice to say, upon the Court's scheduling of a prompt evidentiary hearing on plaintiffs' entitlement to the requested preliminary injunctions, I will travel to Albany for purposes of inspecting and selectively-copying such FOIL-requested records, either produced by the subpoena or available through the Senate.

18. Meantime, annexed hereto (Exhibits 14-b and 15-b) are illustrative comparisons of appropriations and reappropriations from the State Operations and Aid to Localities budget bills – comparing the Governor's originals (#S.2000/A.3000; #S.2003/A.3003) with the Senate's "amended" bills (#S.2000-b; S.2003-b), the Assembly's "amended" bills (#A.3000-b; A.3003-b), and the subsequently enacted three-men-in-a-room "amended" bills (#S.2000-d/A.3000-d; #S.2003-d/A.3003-d). These substantiate plaintiffs' summary judgment entitlement to declarations that the "amended" bills violate Article VII, §4 by increases "not stated separately and distinctly" from the original items of the Governor's bills. They also reveal that defendant Attorney General SCHNEIDERMAN, as head of the Department of Law, and defendant Comptroller DiNAPOLI, as head of the Department of Audit and Control – both duty-bound to ensure compliance with constitutional, statutory, and rule provisions pertaining to the budget – as likewise the Division of the Budget, which is under defendant Governor CUOMO's control – are beneficiaries of unconstitutional increases, proscribed by Article VII, §4, in the enacted "three men in a room"-amended State Operations budget bill (#S.2000-d/A.3000-d) (Exhibit 14-b).

19. Because the injunctive relief sought by plaintiffs' third, fourth, and fifth causes of action is to "enjoin[] all budget actions based" upon the Senate and Assembly "amended" budget bills, AAG Lynch's memorandum of law (at pp. 14-15) seeks to mislead the Court into believing

there is no connection between the enacted budget bills and the Senate and Assembly “amended” bills – and that these enacted bills removed proscribed increases. As detailed by plaintiffs’ memorandum of law (at pp. 40-41), this is false. The enacted bills are the Senate and Assembly “amended” bills that the “three men in a room”, defendants CUOMO, FLANAGAN, and HEASTIE, “amended”, behind closed doors, and, though eliminating some of their proscribed increases, retained the rest, either in whole or part, and made new increases.

20. These three-men-in-a-room “amended” budget bills are null and void, not only because they rest on Senate and Assembly “amended” bills that are null and void by reason of their constitutional violations and fraud – consistent with what I stated at the oral argument “fraud vitiates everything it touches”² (Exhibit 5, p. 15) – but because the three-men-in-a-room “amended” bills themselves replicate the same violations of Article III, §10 and Article VII, §§4, 5, 6 as the Senate and Assembly “amended” bills – and are, likewise, fraudulent, having never, in fact, been “amended” – there having been no votes by legislators to amend.

21. Yet, notwithstanding the collusion of defendants CUOMO, FLANAGAN, and HEASTIE by their behind-closed-doors “amending” of the Senate and Assembly “amended” budget bills, including by increases and changes in conditioning language, embodied directly in their “amended” bills, defendant CUOMO maintains the pretense, following legislative passage of the budget bills he colluded in “amending”, that these contain “legislative additions”, which he can strike “in accordance with Article VII of the State Constitution”. His April 20, 2017 press release entitled “Governor Cuomo Vetoes 154 Legislative Additions to the FY 2018 Enacted Budget”, <https://www.governor.ny.gov/news/governor-cuomo-vetoes-154-legislative-additions-fy-2018-enacted-budget>, identifies that “eight appropriations are vetoed on constitutional grounds such as that

the purpose of the reappropriation was changed.” His accompanying “full list of vetoes” specifies these constitutionally-based vetoes as:

Veto #60:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of the reappropriation by deleting the language ‘Provided further that notwithstanding any inconsistent provision of law, any portion of the funds hereby appropriated may be transferred or suballocated without limit by the director of the budget to any other program or fund within the state education department to accomplish the intent of this appropriation’.”

Veto #61:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of the reappropriation by deleting the language ‘Notwithstanding any inconsistent provision of law, and subject to the approval of the director of the budget, the amounts appropriated herein may be increased or decreased by interchange or transfer without limit to any local assistance appropriation of the state education department’.”

Veto #131:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission because it changes the reappropriation amount by increasing its value.”

Veto #132:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission because it changes the reappropriation amount by increasing its value.”

Veto #133:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of the reappropriation by deleting the language ‘pursuant to a plan prepared by the director of the office of victim services and approved by the director of the budget, or’.”

Veto #134:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of

² See *Hadden v. Consolidated Edison Company of New York*, 45 NY2d 466 (1978), citing *Angerosa v White Co.*, 248 App Div 425, 431, aff’d 275 NY 524.

the reappropriation by deleting the language ‘pursuant to a plan prepared by the director of the office of victim services and approved by the director of the budget, or’.”

Veto #135:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of the reappropriation by deleting the language “pursuant to a plan prepared by the director of the office of victim services and approved by the director of the budget, or’.”

Veto #136:

“Unconstitutional alteration of a reappropriation contained in the Executive Budget submission. Specifically, it changes the purpose of the reappropriation by deleting the language ‘pursuant to a plan prepared by the director of the office of victim services and approved by the director of the budget, or’.”

22. In other words, and without so-identifying, defendant CUOMO is resting on Article VII, §4 and the Court of Appeals’ decision in *Silver v. Pataki/Pataki v. Assembly & Senate*. So are plaintiffs – and, as noted in *Silver v. Pataki*, 192 Misc. 2d 117,125 (S.Ct/NY Co. 2002), citing to *New York State Bankers Association v Wetzler*, 81 NY2d 98 (1993):

“the traditional form of budget adoption by agreement of the Legislature and the Governor can give third parties rights when constitutionally prescribed procedures are not strictly followed...” (underlining added).

23. Plaintiffs’ accompanying memorandum of law detail their entitlement to each of the seven branches of their March 29, 2017 order to show cause. Suffice to add a comparable “POSTSCRIPT” to that which closed my March 29, 2017 moving affidavit (¶¶18-21).

POSTSCRIPT

24. Had defendant Attorney General SCHNEIDERMAN or any of his high-level deputies come to court on March 29, 2017 and confronted the *prima facie* documentary evidence and controlling Court of Appeals’ caselaw – *Silver v. Pataki/Pataki v. Assembly & Senate* and *New York State Bankers Association v. Wetzler* – establishing that the state budget is OFF the constitutional

rails and that NINE Senate and Assembly “amended” budget bills were nullities by reason thereof and because they had not been “amended”, in fact, the disruption resulting from the Court’s TRO would have been minimal. As stated by my prior “POSTSCRIPT” (¶¶18-21) and reiterated at the oral argument (Exhibit 5, p. 14), enjoining further action on the Senate and Assembly “amended” bills would not have been any kind of calamity. The Senate and Assembly merely had to return to the Governor’s budget bills and by amending them consistent with Article VII, §4 and reconciling the differences between their two houses, each bill would become “law immediately without further action by the governor”. That is now, again, what must happen, upon the Court’s enjoining any further disbursement of monies pursuant to budget bills that are null and void by reason of their constitutional violations and their fraud.

25. The events subsequent to March 29, 2017 leading to the enactment of the state budget – including the so-called “extender budget” introduced by defendant CUOMO on April 3, 2017 and passed that same date by defendants SENATE and ASSEMBLY – were flagrant affronts to, and violations of, Article VII, §§4, 5, 6 and Article III, §10 of the New York State Constitution. What they show, however, is that defendants CUOMO, SENATE, and ASSEMBLY were able, essentially overnight, to put in place a temporary budget – albeit one having not the slightest warrant in the New York State Constitution and, in fact, inimical to Article VII, §§4, 5, and 6.

26. To minimize the disruption resulting from the Court’s issuance of the declarations and injunctive relief sought by the third, fourth, and fifth branches of plaintiffs’ March 29, 2017 order to show cause – and mandated by the evidence – plaintiffs propose that their effective date be stayed for 30 days to afford defendants SENATE and ASSEMBLY sufficient time to do what the Constitution requires them to do: return to defendant CUOMO’s original budget bills and 30-day amendments and amend them consistent with Article VII, §§4,5, and 6. Indeed, 30 days will afford time for

defendants SENATE and ASSEMBLY to hold further hearings, pursuant to Article VII, §3, and thereby engage in the public negotiation and transparent resolution of the budget that the Constitution and background history of the executive budgeting system contemplates.³ As stated in the ninth cause of action of plaintiffs’ September 2, 2016 verified complaint (¶¶81-84) pertaining to the unconstitutionality of “three-men-in-a-room” budget-dealmaking, *as unwritten* – incorporating the sixteenth cause of action of plaintiffs’ proposed March 23, 2016 verified second supplemental complaint in their first citizen-taxpayer action (Exhibit A: ¶¶458-470):

“459. The procedure governing the submission and enactment of the state budget is laid out in Article VII, §§1-7 of the New York State Constitution. Upon the Governor’s submission of the budget to the Legislature pursuant to §2, the procedure, is spelled out in §§3, 4.^[fn]

460. Pursuant thereto, once the Governor submits the budget, it is within the legislative branch. He has thirty days, as of right, within which to submit any amendments or supplements to his bills, following which it is by ‘consent of the legislature’. He also has the right ‘to appear and be heard during the consideration thereof, and to answer inquiries relevant thereto.’ Further, the Legislature may request the Governor to appear before it – and may command the appearance of his department heads to ‘answer inquiries’ with regard to the executive budget. Based thereon, and in such public fashion, it may ‘consent’ to the Governor’s further amending and supplementing his budget.

461. Neither the Constitution, nor statute, nor Senate and Assembly rules authorize the Governor, Temporary Senate President, and Assembly Speaker to huddle together for budget negotiations and the amending of budget bills – and it is

³ See, *inter alia*, the Report of the Commission on State Finances, Revenues and Expenditures, Relative to a Budget System for the State, State of New York in Convention Doc No. 32, at 21) [Aug. 4, 1915]), quoted in *Pataki v. Assembly & Senate/Silver v. Pataki*, 4 NY3d 75, at 108 (dissenting opinion of Chief Judge Judith Kaye):

“Nor is there the slightest force to the claim that the proposed system would give undue power to the Governor. It would add not one iota to the power that he now possesses through the veto of items in the appropriation bills. Whereas now that power is subject to no review and thus may be used as an instrument of reward or punishment after the legislative session is over, the proposed system would deprive him of his veto as to budget items and would thus compel him to use his influence in advance, in the open, under the fire of legislative discussion and the scrutiny of the entire State. It would thus be the Legislature which would have the final word.” (underlining added).

an flagrant violation of Article VII, §§3, 4 and Article IV, §7, transgressing the separation of powers, for them to do so.”

27. Pursuant to Article VII, §4, New York has a “rolling budget”, which the legislature enacts bill by bill – a fact I pointed out by my prior “POSTSCRIPT” (at ¶19) and reiterated at the oral argument (Exhibit 5, p. 14). In the circumstances at bar, where defendant legislators have had since January and February to fully familiarize themselves with defendant CUOMO’s budget bills, 30 days should more than suffice for them to put in place, constitutionally and transparently, a superseding state budget for the benefit of the People of the State of New York.



Elena Ruth Sassower, unrepresented plaintiff

Sworn to before me this
15th day of May 2017

Notary Public

TABLE OF EXHIBITS

- Exhibit 4-a: Plaintiff Sassower's April 28, 2017 letter to Judge Hartman
- Exhibit 4-b: Judge Hartman's May 5, 2017 so-ordered letter
- Exhibit 5: Transcript of March 29, 2017 oral argument
- Exhibit 6: Correspondence preceding March 29, 2017 oral argument
- Exhibit 6-a: Plaintiff Sassower's March 24, 2017 letter to Judge Hartman
- Exhibit 6-b: Judge Hartman's March 24, 2017 letter
- Exhibit 6-c: March 24, 2017 e-mail from Litigation Bureau Chief Jeffrey Dvorin (1:03 pm)
- Exhibit 6-d: Plaintiff Sassower's March 24, 2017 e-mail to Chief Dvorin (1:33 pm)
- Exhibit 6-e: Chief Dvorin's March 24, 2017 e-mail (1:44 pm)
- Exhibit 6-f: Plaintiff Sassower's March 24, 2017 e-mail to Chief Dvorin (4:03 pm)
- Exhibit 6-g: Chief Dvorin's March 24, 2017 e-mail (4:28 pm)
- Exhibit 6-h: Plaintiff Sassower's March 24, 2017 e-mail to Chief Dvorin (4:48 pm)
- Exhibit 6-i: Plaintiff Sassower's March 27, 2017 e-mail to Chief Dvorin (2:38 pm)
- Exhibit 6-j: Chief Dvorin's March 27, 2017 e-mail (2:38 pm)
- Exhibit 6-k: Plaintiff Sassower's March 27, 2017 e-mail (2:43 pm)
- Exhibit 6-l: Chief Dvorin's March 27, 2017 e-mail (2:51 pm)
- Exhibit 6-m: Plaintiff Sassower's March 27, 2017 e-mail to Deputy AG Meg Levine (3:07 pm)
- Exhibit 6-n: Plaintiff Sassower's March 28, 2017 e-mail to Judge Hartman (9:54 am)
- Exhibit 6-o: Judge Hartman's March 28, 2017 letter
- Exhibit 6-p: Deputy AG Levine's March 28, 2017 e-mail (10:13 am)
- Exhibit 6-q: Plaintiff Sassower's March 28, 2017 e-mail to Deputy AG Levine (10:38 am)

- Exhibit 6-r: Plaintiff Sassower's March 28, 2017 e-mail (11:29 am)
- Exhibit 7: Correspondence following March 29, 2017 oral argument
- Exhibit 7-a: Plaintiff Sassower's March 30, 2017 e-mail to Judge Hartman (11:20 am)
- Exhibit 7-b: Plaintiff Sassower's March 30, 2017 e-mail to Deputy AG Levine (1:35 pm)
- Exhibit 7-c: AAG Lynch's March 30, 2017 e-mail with letter to Judge Hartman (1:38 pm)
- Exhibit 7-d: Plaintiff Sassower's March 30, 2017 e-mail to AAG Lynch (3:08 pm)
- Exhibit 7-e: Plaintiff Sassower's March 31, 2017 e-mail to Attorney General Schneiderman, Chief Deputy Attorney General Jason Brown, Chief Deputy Attorney General Janet Sabel, Executive Deputy Attorney General Kent Stauffer (3:02 pm)
- Exhibit 7-f: Judge Hartman's March 31, 2017 letter
- Exhibit 7-g: Plaintiff Sassower's April 2, 2017 e-mail to Attorney General Schneiderman (11:16 am)
- Exhibit 7-h: Plaintiff Sassower's April 5, 2017 e-mail to Attorney General Schneiderman (10:50 am)
- Exhibit 8-a: Plaintiffs' March 24, 2017 FOIL request to Senate – "March 13, 2017 'amending' of Governor Cuomo's budget bills for fiscal year 2017-2018"
- Exhibit 8-b: Senate's March 31, 2017 e-mail
- Exhibit 8-c: Plaintiff Sassower's April 4, 2017 letter
- Exhibit 8-d: Plaintiff Sassower's April 28, 2017 letter, with enclosure
- Exhibit 8-e: Senate's May 5, 2017 e-mail
- Exhibit 9-a: Plaintiffs' March 24, 2017 FOIL request to Senate – "March 12, 2016 'amending' of Governor Cuomo's budget bills for fiscal year 2016-2017"
- Exhibit 9-b: Senate's March 31, 2017 e-mail
- Exhibit 9-c: Plaintiff Sassower's May 4, 2017 letter

Exhibit 9-d: Senate's May 11, 2017 e-mail

Exhibit 10-a: Plaintiffs' March 27, 2017 FOIL request to Senate – "March 20, 2017 'amending' of Governor Cuomo's Debt Service Budget Bill #S.2002 for fiscal year 2017-2018"

Exhibit 10-b: Senate's April 3, 2017 e-mail

Exhibit 10-c: Plaintiff Sassower's May 4, 2017 letter

Exhibit 11-a: Plaintiffs' March 24, 2017 FOIL request to Assembly – "March 13, 2017 'amending' of Governor Cuomo's budget bills for fiscal year 2017-2018"

Exhibit 11-b: Assembly's March 30, 2017 letter

Exhibit 11-c: Plaintiff Sassower's May 4, 2017 letter

Exhibit 11-d: Assembly's May 11, 2017 letter

Exhibit 12-a: Plaintiffs' March 24, 2017 FOIL request to Assembly – "March 11, 2016 'amending' of Governor Cuomo's budget bills for fiscal year 2016-2017"

Exhibit 12-b: Assembly's March 30, 2017 letter

Exhibit 12-c: Plaintiff Sassower's May 4, 2017 letter

Exhibit 12-d: Assembly's May 11, 2017 letter

Exhibit 13-a: Plaintiffs' March 27, 2017 FOIL request to Assembly – "March 20, 2017 'amending' of Governor Cuomo's Debt Service Budget Bill #A.3002 for fiscal year 2017-2018"

Exhibit 13-b: Assembly's April 3, 2017 letter

Exhibit 13-c: Assembly's April 13, 2017 e-mail

Exhibit 13-d: Plaintiff Sassower's May 4, 2017 letter

Exhibit 13-e: Assembly's May 11, 2017 letter

Exhibit 14-a: 1st page – enacted (3-men-in-a-room) State Operations Budget Bill
#S.2000-d /A.3000-d

Exhibit 14-b: Illustrative comparisons of appropriations/reappropriations in State Operations Budget Bills #S.2000/A.3000 (Governor's); #S.2000-b (Senate); #A.3000-b (Assembly); #S.2000-d/A.3000-d (3-men-in-a-room)

Exhibit 15-a: 1st page – enacted (3-men-in-a-room) Aid to Localities Budget Bill
#S.2003-d/A.3003-d

Exhibit 15-b: Illustrative comparisons of appropriations/reappropriations in Aid to Localities Budget Bills #S.2003/A.3003 (Governor's); #S.2003-b (Senate); #A.3003-b (Assembly); #S.2003-d/A.3003-d (3-men-in-a-room)

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 #5122-16
RJI #01-16-122174

Plaintiffs,

-against-

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.

**PLAINTIFF SASSOWER's MAY 15, 2017 AFFIDAVIT
IN REPLY & IN FURTHER SUPPORT
OF PLAINTIFFS' MARCH 29, 2017 ORDER TO SHOW CAUSE
WITH PRELIMINARY INJUNCTION & TRO**

ELENA RUTH SASSOWER, unrepresented plaintiff,
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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