

Plaintiffs' March 29, 2017 Verified Supplemental Complaint [R.671-743]

SUPREME COURT OF STATE OF NEW YORK
ALBANY COUNTY

superseding/corrected

----- 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,

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

**VERIFIED SUPPLEMENTAL
COMPLAINT**

Plaintiffs,
-against-

JURY TRIAL DEMANDED

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

Plaintiffs, as and for their Verified Supplemental Complaint, respectfully set forth and allege:

111. Plaintiffs repeat, reallege, and reiterate the entirety of their September 2, 2016 verified complaint in this citizen-taxpayer action, which they incorporate by reference, including its incorporated three pleadings from their prior citizen-taxpayer action, *CJA v. Cuomo, et al* (Albany Co. #1788-2014), *to wit*, their March 23, 2016 proposed verified second supplemental complaint, their March 28, 2014 verified complaint, and their March 31, 2015 verified supplemental complaint – Exhibits A, B, and C thereto.¹

¹ The record of the prior citizen-taxpayer action, as likewise of this citizen-taxpayer action, is posted on plaintiff CJA's website, www.judgewatch.org, accessible *via* the prominent homepage link: "CJA's Citizen-

112. Virtually all the constitutional, statutory, and rule violations detailed by plaintiffs' September 2, 2016 verified complaint pertaining to the budget for fiscal year 2016-2017 – and by their incorporated pleadings pertaining to the budgets for fiscal years 2016-2017, 2014-2015 and 2015-2016 – are replicated with respect to the budget for fiscal year 2017-2018. Indeed, the constitutional violations are not only replicated, but 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)² 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.

113. Suffice to here quote the unequivocal language of Article VII, §§4, 5, 6, which the legislative defendants have utterly transgressed:

§4. The legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein, but it may add thereto items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer each to a single object or purpose. None of the restrictions of this section, however, shall apply to appropriations for the legislature or judiciary.

Such an appropriation bill shall when passed by both houses be a law immediately without further action by the governor, except that appropriations for the legislature and judiciary and separate items added to

Taxpayer Actions to End NYS' Corrupt Budget 'Process' and Unconstitutional 'Three Men in a Room' Governance".

² As identified by ¶56, the fifth cause of action is ¶¶362-383 of the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint and its sixteenth cause of action (¶¶458-470), in its entirety.

the governor's bills by the legislature shall be subject to approval of the governor as provided in section 7 of article IV.

§5. Neither house of the legislature shall consider any other bill making an appropriation until all the appropriation bills submitted by the governor shall have been finally acted on by both houses, except on message from the governor certifying to the necessity of the immediate passage of such a bill.

§6. Except for appropriations contained in the bills submitted by the governor and in a supplemental appropriation bill for the support of government, no appropriations shall be made except by separate bills each for a single object or purpose. All such bills and such supplemental appropriation bill shall be subject to the governor's approval as provided in section 7 of article IV.

No provision shall be embraced in any appropriation bill submitted by the governor or in such supplemental appropriation bill unless it relates specifically to some particular appropriation in the bill, and any such provision shall be limited in its operation to such appropriation."

114. Indeed, because the legislative defendants' "amending" of defendant Governor's budget bills not only violates Article VII, §§4, 5, 6, but was fraud and no "amending" in fact, accomplished by their violation of their own legislative rules, summary judgment for plaintiffs is also mandated on their reiterated fourth cause of action (¶¶48-53)³ pertaining to the legislative defendants' plethora of statutory, legislative rule, and other constitutional violations with respect to the fiscal year 2017-2018 budget.

115. As stated by plaintiffs' September 2, 2016 complaint (¶ 33) – quoting from their prior pleadings – and hereinbelow further demonstrated:

"In every respect, defendants SENATE and ASSEMBLY have fallen beneath a constitutionally acceptable threshold of functioning – and it appears the reason is not limited to Senate and Assembly rules that vest in the Temporary Senate President and Speaker strangulating powers, the subject of the Brennan Center's 2004, 2006, and 2008 reports on the Legislature. Rather, it is because – without warrant of the Constitution, statute, or Senate and Assembly rules, as here demonstrated, the Temporary Senate President and Speaker have seized

³ As identified by ¶49, the fourth cause of action is the twelfth cause of action of plaintiffs' March 23, 2016 verified second supplemental complaint, (Exhibit A: ¶¶336-384).

control of the Legislature’s own budget, throwing asunder the constitutional command: ‘itemized estimate of the financial needs of the legislature, certified by the presiding officer of each house’.”

116. For the convenience of the Court, a Table of Contents follows:

TABLE OF CONTENTS

FACTUAL ALLEGATIONS 7

The Legislature’s Proposed Budget for Fiscal Year 2017-2018..... 7
(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))

The Judiciary’s Proposed Budget for Fiscal Year 2017-2018..... 10
(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))

A New Legislative Session..... 14
(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))

The Governor’s Legislative/Judiciary Budget Bill #S.2001/A.3001 15
(Facts Pertaining to a Reiterated Third Cause of Action (¶¶40-47))

The Governor’s Aid to Localities Budget Bill #S.2003/A.3003.....19
(Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶ 85-110))

The Legislature’s Incompetent, Superficial, & Misleading Budget Analyses.....22

With respect to the Legislature’s proposed budget22
(Facts Pertaining to a Reiterated First Cause of Action (¶¶23-33))

With respect to the Judiciary’s proposed budget23
(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))

With respect to district attorney salary reimbursement to the counties
in the Governor’s Aid to Localities Budget Bill # S.2003/A.300324
(Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶85-110))

With respect to the Governor’s qualifying language
in his Aid to Localities Budget Bill #S.2003/A.3003 –
& in his other appropriation bills25
(Facts Pertaining to a Reiterated Fifth Cause of Action (¶¶54-58))

The Senate & Assembly Joint Budget Hearings.....27
(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))

Accountability, Audit and Internal Control Act of 1987 and 1999, requiring internal controls, internal audits and, every three years, independent audits. Plaintiffs' FOIL requests to defendants SENATE and ASSEMBLY for documents establishing compliance have not resulted in responses consistent therewith.

129. The failure of defendants FLANAGAN and HEASTIE to include, in their budget narrative – or their transmittal letter – any information about compliance with Article VI of the Legislative Law (§§89-92) has enabled them to conceal that the “independent audits” are sham, fraudulent documents, not the least reason because of their bald and fraudulent representations – accepted by the “independent audit” – as to “controls” pertaining to enactment of the Legislature’s budget.

✓ **The Judiciary’s Proposed Budget for Fiscal Year 2017-2018**
(Facts Pertaining to a Reiterated Second Cause of Action (¶¶34-39))⁷

130. By two memoranda, dated December 1, 2016, Chief Administrative Judge Lawrence Marks furnished a two-part presentation of the Judiciary’s proposed budget to the same recipients as last year: defendants CUOMO, FLANAGAN, and HEASTIE, Senate Coalition Leader Jeffrey Klein, Senate Minority Leader Andrea Stewart-Cousins, Assembly Minority Leader Brian Kolb, as well as the chair and ranking member of the Senate Finance Committee – Senator Catharine Young and Senator Liz Krueger –; the chair and ranking member of the Assembly Ways and Means Committee – Assemblyman Herman Farrell, Jr. and Assemblyman Bob Oaks –; and the chairs of the Senate and Assembly Judiciary Committees – Senator John Bonacic and Assemblywoman Helene Weinstein.

⁷ As identified by ¶35, plaintiffs’ second cause of action herein is the tenth cause of action of their March 23, 2016 verified second supplemental complaint in their prior citizen-taxpayer action (Exhibit A: ¶¶317-331).

131. In language identical to that used for the past three years, the Chief Administrative Judge's memoranda represented this two-part proposed budget as: "itemized estimates of the annual financial needs of the Judiciary..." for its operating expenses and

"itemized estimates of funding for General State Charges necessary to pay the fringe benefits of judges, justices and nonjudicial employees separately from itemized estimates of the annual operating needs of the Judiciary."

132. The latter memorandum explained that the two-part presentation:

"follows the long-standing practice of the Executive and Legislative Branches of separately presenting requests for funding of fringe benefit costs and requests for operating funds. The Judiciary will submit a single budget bill, which includes requests for funding of operating expenses and fringe benefit costs for the 2017-2018 Fiscal Year." (underlining added).

133. The two parts of the Judiciary's proposed budget contained, for each part, a certification by the Chief Judge and approval by the Court of Appeals identical to those furnished in the last three years. However, identically to the last three years, because of the future tense "will" pertaining to the "single budget bill" and the bill's placement in the "Executive Summary" section, NO certification appeared to encompass the "single budget bill".

134. Identically to the last three years, the Judiciary's two-part budget, including its single "Executive Summary" and statistical tables, did not provide a cumulative dollar total for the Judiciary's budget request. Likewise, the Judiciary's "single budget bill" did not provide a cumulative tally.

135. Identically to the last three years, the Judiciary's failure to provide a cumulative dollar total for its two-part budget and to tally the figures in its "single budget bill" enabled it to conceal a discrepancy of tens of millions of dollars between them. This discrepancy was the result of

reappropriations in the “single budget bill” (at pp. 13-16) that were not in the Judiciary’s two-part budget presentation.

136. The Judiciary’s two-part budget presentation contained no reappropriations. They appeared only in the “single budget bill”. Their amount, as identified on the first page of the “single budget bill”, was \$84,350,000. This did not include the \$15,000,000 in IOLA reappropriations, identified on the last page of the “single budget bill” as part of its “SCHEDULE” (at p. 13) – and which, if added, make a cumulative total of \$99,350,000 in reappropriations.

137. Identically to the last three years, the Judiciary’s “single budget bill” consisted of two sections: the first, denominated §2, containing appropriations, including “General State Charges” (pp. 1-12), and the second, denominated §3, containing reappropriations (pp. 13-15).

138. Identically to the last three years, §2 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated by the appropriations, are hereby appropriated and authorized to be paid as hereinafter provided, to the respective public officers and for the several purposes specified, which amounts shall be available for the fiscal year beginning April 1, 2017.” (at p. 1).

Further down the page, under the heading “SCHEDULE”, another paragraph, stated:

“Notwithstanding any provision of law, the amount appropriated for any program within a major purpose within this schedule may be increased or decreased in any amount by interchange with any other program in any other major purpose, or any appropriation in section three of this act, with the approval of the chief administrator of the courts.” (at p. 1).

139. Identically to the last three years, §3 of the “single budget bill” began with a paragraph reading:

“The several amounts named in this section, or so much thereof as shall be sufficient to accomplish the purposes designated being the unexpended balances of a prior year’s appropriation, are hereby reappropriated from the

same funds and made available for the same purposes as the prior year's appropriation, unless amended herein, for the state fiscal year beginning April 1, 2017." (at p. 13).

140. Identically to the last three years, the §3 listing of reappropriations under the heading "SCHEDULE" were pretty barren. Most referred to chapter 51, section 2 of the laws of 2016, 2015, 2014, 2013, 2012 and also chapter 51, section 3 of the laws of 2016 – which are the enacted budget bills for the Judiciary for those years, its appropriations and reappropriations, respectively. Yet they were completely devoid of specificity as to their purpose other than a generic "services and expenses, including travel outside the state and the payment of liabilities incurred prior to April 1..."; or "Contractual Services" (at pp. 13-14).

141. Missing from the Judiciary's two-part budget presentation, including in its Executive Summary, was:

- (a) any reference to the Judiciary's compliance with Article 7-D (§249), entitled "Internal Control Responsibilities of the Judiciary", whose section c requires "independent audits" every three years. Plaintiffs' FOIL requests to the Judiciary for documents establishing compliance therewith have not resulted in ANY production.
- (b) any reference to the judicial salary increase that would take effect by "force of law" on April 1, 2017 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – unless overridden by the Legislature. Plaintiffs' FOIL requests for documents pertaining to the cost of that judicial salary increase have not resulted in ANY production by the Judiciary.
- (c) any reference to the judicial salary increase that had taken effect "by force of law" on April 1, 2016 based on the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – including its cost, and how the Judiciary had paid for it, inasmuch as defendants CUOMO and SENATE and ASSEMBLY had not appropriated monies to the Judiciary to fund it;
- (d) the Chief Administrative Judge's approvals of increases, decreases, and interchanges pursuant to the §2 text of the legislative/judiciary budget bill for fiscal year 2016-2017 – particularly the approvals that "enabled the Judiciary to fund the 'force of law' judicial salary increases for 2016-2017

recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation – and, additionally, to fund the increases in general state charges resulting therefrom”. Plaintiffs’ FOIL requests to the Judiciary for documents pertaining thereto have not resulted in ANY production.

A New Legislative Session

(Facts Pertaining to a Reiterated Fourth Cause of Action (¶¶48-53))

142. Pursuant to Article III, §8 of the New York State Constitution, all members of the New York State Legislature were elected/re-elected on the Tuesday following the first Monday in November 2016. Pursuant to Article XIII, §4, the new legislative session commenced six weeks later, on January 4, 2017, with each house beginning by swearing in its members by the oath of office, prescribed by Article XIII, §1:

“I do solemnly swear that I will support the constitution of the United States, and the constitution of the State of New York, and that I will faithfully discharge the duties of the office of, according to the best of my ability”.

143. Additionally, and pursuant to Article III, §9, defendant SENATE chose “a temporary president”, defendant FLANAGAN, and defendant ASSEMBLY chose “a speaker”, defendant HEASTIE, thereupon adopting rules for the 2017-2018 legislative session.

144. Inasmuch as the December 1, 2016 proposed budgets of both the Legislature and Judiciary already replicated ALL of the constitutional and statutory violations of their prior budgets, laid out by the pleadings in plaintiffs’ instant and prior citizen-taxpayer actions – as to which plaintiffs’ summary judgment entitlement, *as a matter of law*, is established by the record – plaintiff SASSOWER reached out to defendants FLANAGAN, HEASTIE, and to Senate Minority Leader Stewart-Cousins and Assembly Minority Leader Kolb, the chairs and ranking members of appropriate Senate and Assembly committees, as well as their rank-and-file members, especially those who are lawyers. Such outreach efforts, by phone and e-mail, commenced on January 9, 2017.

~~“Legislature: The Legislature proposes a 3% increase, its first budget increase since 2011.” (at p. 111)~~

175. The Assembly Minority’s “Green Book” was only slightly more expansive:

~~“Significant increases include:~~

~~* \$226.1 million for the Legislature, \$6.2 million more than last year.~~

~~This represents a 2.7% increase in spending.”~~

Yet these figures from the “Green Book” were different from the figures in the budget narrative that defendants FLANAGAN and HEASTIE transmitted to defendant CUOMO, which were, as follows:

~~“The recommended General Fund appropriation of \$224,380,145 for FY 2017-18 for the Legislature represents an increase of 3% or \$6,535,344 from the amount appropriated for FY 2016-17.” (at p. 1).~~

✓ **With respect to the Judiciary’s proposed budget:**

(Facts Pertaining to Reiterated Second Cause of Action (¶¶34-39))

176. The Senate Minority’s “Blue Book” omitted any information about the Judiciary’s proposed budget, notwithstanding its two sections entitled “Public Protection, Legislature and Judiciary Fact Sheet” (pp. 111-112) and “Public Protection, Legislature and Judiciary Agency Details” (pp. 113-123).

177. The Assembly Minority’s “Green Book” furnished the following, which was the sum total of its presentation, on its “Legislature and Judiciary” page,

“Judiciary:

Significant increases include:

\$2.2 billion for the Judiciary, \$64.3 million more than last year. This represents a

2.9% increase in spending.” (underlining added).

178. The Senate Majority’s “White Book” stowed four paragraphs about the Judiciary’s proposed budget in its section entitled “Public Protection”. It opened with a one-sentence paragraph:

“THE FY 2018 Executive budget proposes All Funds spending of \$2.97 billion, an increase of \$119.7 million, or 4.2 percent.” (Exhibit GG, at p. 86)⁸

The limited detailing of the three further paragraphs, while referencing the judicial salary increase, made it appear inconsequential and not requiring any action by legislators:

“The increase in personal service is primarily driven by the Judiciary’s plan to add 200 new Full Time Equivalent (FTE) positions, and incremental salary increases for Judges and other employees... Spending for Judicial salaries would increase by \$2.4 million, or 1 percent.” (at p. 86, underlining added).

179. The Assembly Majority’s “Yellow Book” contained a 1-1/3 page section entitled “Judiciary” (pp. 155-156) stating:

“The Judiciary’s proposed budget request recommends All Funds appropriations of \$2.98 billion, which is an increase of \$98.7 million, or 3.43 percent, from the State Fiscal Year (SFY) 2016-17 level.” (underlining added)⁹

The limited detailing that followed, in four paragraphs that were each highlighted by a subject title, included one entitled “Judicial Compensation”. Its two sentences gave the appearance that the judicial salary increase was required – and that nothing need be, nor could be, done:

“The proposed budget includes \$2.4 million to support a salary increase for State Supreme Court Judges recommended by the Commission on Legislative, Judicial and Executive Compensation. Per the Commission, salaries must be fixed at 95 percent of the salary of a Federal District Court Judge effective April 1, 2016, and 100 percent effective April 1, 2018, with the salaries of all other state judges adjusted accordingly.” (at p. 156, underlining added)

~~**With respect to district attorney salary reimbursement to the counties in the Governor’s Aid to Localities Budget Bill #S.2003/A.3003: (Facts Pertaining to a Reiterated Tenth Cause of Action (¶¶85-110))**~~

180. The Assembly Minority’s “Green Book” omitted it entirely.

⁸ This information was reflected, as well, in a chart of “Proposed Disbursements – All Funds” (p. 88).

⁹ This is followed by two tables. The first, of “Appropriations” essentially repeats in chart form, the above-quoted narrative statement by identifying the Judiciary’s 2017-2018 request as “2,976.20” millions, representing a “98.70” millions change and a percentage change of “3.43. The second chart, “Disbursements”,

✓
**As to the Second Cause of Action (¶¶34-39),
Reiterated for Fiscal Year 2017-2018**

The Judiciary's Proposed Budget for 2017-2018,
Embodied in Budget Bill #S.2001/A.3001, is Unconstitutional & Unlawful

That the Judiciary's proposed budget for fiscal year 2017-2018, embodied in Legislative/Judiciary Budget Bill #S.2001/A.3001, is a wrongful expenditure, misappropriation, illegal and unconstitutional – and fraudulent – because [as chronicled by ¶¶130-141, 176-179, *supra* and discussed by plaintiffs' second cause of action herein (¶¶34-39) and its incorporated corresponding second, sixth, and tenth causes of action from plaintiffs' prior citizen-taxpayer action (Exhibits B, C, A)]: (1) the Judiciary budget is so incomprehensible that the Senate majority and minority and Assembly majority and minority cannot agree on its cumulative cost and percentage increase; (2) its §3 reappropriations were not certified, including as to their suitability for that purpose, and violate Article VII, §7 and Article III, §16 of the New York State Constitution and State Finance Law §25; (3) the transfer/interchange provision in its §2 appropriations, embracing its §3 reappropriations, undermines the constitutionally-required itemization and violates Judiciary Law §215(1), creating a "slush fund" and concealing relevant costs; (4) it conceals and embeds funding for judicial salary increases that are statutorily-violative, fraudulent, and unconstitutional, *to wit*, the judicial salary increases recommended by the December 24, 2015 report of the Commission on Legislative, Judicial and Executive Compensation.

~~**As to the Third Cause of Action (¶¶40-47),
Reiterated for Fiscal Year 2017-2018**~~

~~Budget Bill #S.2001/A.3001 is Unconstitutional & Unlawful
Over & Beyond the Legislative & Judiciary Budgets it Embodies
"Without Revision"~~

That Legislative/Judiciary Budget Bill #2001/A.3001 is a wrongful expenditure, misappropriation, illegal, unconstitutional – and fraudulent – because [as chronicled by ¶¶148-163, *supra* and discussed by plaintiffs' third cause of action herein (¶¶40-47) and its incorporated