

STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

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, 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.

ORDER TO SHOW CAUSE

BEFORE: HON. ROGER D. McDONOUGH,
Acting Supreme Court Justice

For the Plaintiff: ELENA RUTH SASSOWER
10 Stewart Place, Apartment 2D-E
White Plains, NY 10603
Self-Represented Litigant

For the Defendants: HON. ERIC T. SCHNEIDERMAN, ESQ.
New York State Attorney General
The Capitol
Albany, NY 12224
By: ADRIENNE J. KERWIN, ESQ.
Assistant Attorney General

TRANSCRIPT OF PROCEEDINGS in the above matter held in Albany County Supreme Court, Albany County Courthouse, 16 Eagle Street, Albany, New York, on Friday, September 2, 2016.

1 (Proceedings commenced at approximately
2 2:27 p.m. as follows:)

3 THE COURT: Be seated please. We're on the
4 record in the request for an order to show cause with a
5 stay and temporary restraining order under the caption
6 Center for Judicial Accountability, Inc., et al, against
7 Andrew M. Cuomo, et al. I'll first have counsel for the
8 petitioner identify yourself for the record please.
9 Actually, you're a self-represented litigant. Please
10 identify yourself for the record.

11 MS. SASSOWER: This is -- I'm sorry. This is a
12 citizen-taxpayer action brought under the --

13 THE COURT: I just need you to --

14 MS. SASSOWER: -- commenced by verified
15 complaint. The plaintiffs are the unrepresented Center
16 for Judicial Accountability and myself, Elena Sassower,
17 individually and as the director of the Center for
18 Judicial Accountability. Both of us are unrepresented and
19 our position is that we are entitled to the intervention
20 and representation of the Attorney General as contemplated
21 by the citizen-taxpayer action statute.

22 THE COURT: Okay. Counsel for the Attorney
23 General's office please.

24 MS. KERWIN: Adrienne Kerwin from the Attorney
25 General's office.

1 THE COURT: All right. Ms. Sassower, you can
2 make whatever argument you'd like to make to the Court in
3 regards to your TRO request.

4 MS. SASSOWER: Your Honor is the part one judge
5 and as such I am appearing before you. However, this
6 order to show cause is not on for injunctive relief but to
7 disqualify you from any contact with this case. I
8 understand that you're the duty judge.

9 THE COURT: That's the same recusal request you
10 made in similar lawsuits in the past; correct?

11 MS. SASSOWER: Your Honor did not address ever
12 the financial interest that you have, the serious, not
13 alleged or appearance. Your Honor has a \$60,000 a year
14 financial interest, salary interest.

15 THE COURT: As does every judge in the State of
16 New York; correct?

17 MS. SASSOWER: But as I identified at the outset
18 of this case -- I'm sorry, the predecessor case more than
19 two years ago, the rule of necessity is that when all are
20 disqualified, none are disqualified. However, where a
21 judge cannot rise above his conflict of interest and
22 manifests his bias, as this Court has done by decisions
23 that upend all cognizable, adjudicative, evidentiary
24 standards that are in every respect fraudulent decisions,
25 then that judge must recognize his bias and step aside or

1 be disqualified.

2 THE COURT: Okay. Let's see if we can direct
3 your comments towards the actual TRO that you're
4 requesting, because it is the Court's intention to sign
5 the order to show cause. The question becomes whether or
6 not I'm going to strike or leave in the temporary
7 restraining order request --

8 MS. SASSOWER: Thank you.

9 THE COURT: -- understanding that the standard
10 for TROs is what is. I'll first have you address whether
11 or not the CPLR prohibits TROs against a public officer or
12 municipal corporation in restraining them from their
13 statutory duties.

14 MS. SASSOWER: Yes, sir. We have been around
15 that block before and this is a citizen-taxpayer action
16 under State Finance Law Article 7A, and Section 123-e(2)
17 reads as follows:

18 The Court, at the commencement of an action
19 pursuant to this article, or at anytime subsequent thereto
20 and prior to entry of judgment, upon application by the
21 plaintiff or the Attorney General on behalf of the People
22 of the state, may grant a preliminary injunction and
23 impose such terms and conditions as may be necessary to
24 restrain the defendant if he or she threatens to commit or
25 is committing an act or acts which, if committed or

1 continued during the pendency of the action, would be
2 detrimental to the public interest.

3 And it continues, a temporary restraining order
4 may be granted pending a hearing for a preliminary
5 injunction notwithstanding the requirements of
6 Section 6313 of the Civil Practice Law and Rules, where it
7 appears that immediate and irreparable injury, loss or
8 damage will result unless the defendant is restrained
9 before a hearing can be held.

10 Now, we have here the disbursement of huge
11 amounts of taxpayer money. Unless it is possible to claw
12 back that amount of money, represents a dissipation of
13 public resources, taxpayer money, and it is for that
14 reason that the statute provides for a TRO.

15 THE COURT: Are you prepared to offer an
16 undertaking in that regard?

17 MS. SASSOWER: Yes. Absolutely.

18 THE COURT: What about?

19 MS. SASSOWER: I think the undertaking is
20 limited as to \$2,500.

21 THE COURT: To \$2,500?

22 MS. SASSOWER: I believe so.

23 THE COURT: Based on what?

24 MS. SASSOWER: \$2,500. Section 123-d is
25 entitled security for costs. Quote, at any stage of the

1 action, upon motion by the defendant, or upon its own
2 initiative, the Court may order the plaintiff to give an
3 undertaking for costs and taxable disbursements not to
4 exceed the sum of \$2,500. If plaintiff shall not have
5 given such undertaking by the expiration of 60 days from
6 the date of service of the order upon him or her, the
7 Court may, upon motion of a defendant, dismiss the action
8 and award costs to the defendant. This section shall not
9 apply to any action commenced by the Attorney General in
10 the name of and on behalf of the people of the state.

11 I would just point out that this
12 citizen-taxpayer action is being brought by myself and the
13 Center for Judicial Accountability not only on our own
14 behalf but expressly on behalf of the People of the State
15 of New York and the public interest here which, as I
16 said --

17 THE COURT: Do you want to speak to the
18 presumption of constitutionality that goes along with the
19 state's action in this regard that you're seeking to
20 preclude?

21 MS. SASSOWER: Yes.

22 THE COURT: Go ahead.

23 MS. SASSOWER: I think it is quite fortuitous,
24 all things considered, that Your Honor happens to be the
25 part one judge because nobody would know the truth of the

1 record here better than Your Honor, notwithstanding your
2 decisions. As you know, the -- when Your Honor rendered
3 the amended decision of August 1, you stated that with
4 respect to causes of action 13 through 16 a separate
5 action should be brought. So that's why we're here today,
6 bringing that separate action.

7 You are familiar already with the serious and
8 substantial nature of those causes of action with respect
9 to the statute, as written and as applied, establishing
10 the commission on legislative, judicial and executive
11 compensation which was a rider in violation -- it was an
12 unconstitutional rider inserted into budget legislation.
13 It had no connection to the budget and it was -- so it was
14 violative of Article 7, Section 6. It was also, as
15 pointed out in I believe it was cause of action 13, it was
16 also untimely because it was introduced and amended on the
17 same day, being March 31, 2015, and under the Constitution
18 it could not be submitted at that point of time. It could
19 have been submitted up until I believe it's 30 days and
20 then afterward with leave. It was not. It was on the eve
21 of the new fiscal year. It was presented as an entirely
22 new bill and it was the subject -- it was advanced through
23 fraud and I have a cause of action setting this forth
24 including the video of the Senate Finance Committee
25 meeting at which Senator Squadron asked about when it was

1 amended. He knew nothing about this. And there was
2 colloquy by Senator DeFrancisco, who was chairing, who
3 purported, pretended that it had been introduced long ago,
4 sometime long ago. In fact, that was a lie to a fellow
5 senator without which that bill --

6 THE COURT: Is that your phone, ma'am?

7 MS. SASSOWER: I'm sorry.

8 THE COURT: Can you turn it off? It's the
9 second time it's gone off.

10 MS. SASSOWER: I tried.

11 THE COURT: Could you turn it off please?

12 MS. SASSOWER: Yes.

13 THE COURT: Thank you.

14 MS. SASSOWER: In any event, this is all laid
15 out in the 13th cause of action and I would respectfully
16 say that that cause of action is so serious and
17 substantial, so on its face concerning as to require the
18 TRO. This is apart from the unconstitutionality of the
19 statute as applied. Okay. We're just now talking about
20 how it was procured, how it was procured.

21 Now, I would like to briefly, because Your Honor
22 is familiar with this since it was before the Court back
23 in March -- I would address the further injunctive relief
24 which is addressing the aid to locality budget.

25 THE COURT: I want you to address the temporary

1 relief because that's what we're here to decide today. I
2 will tell you, quite frankly, I intend to sign the order
3 to show cause so that you can have a response from the
4 state, but it's a question of really whether or not the
5 temporary restraining order is an appropriate remedy at
6 this time. So if you address those issues, I'll give the
7 Assistant Attorney General a chance to respond.

8 MS. SASSOWER: All right. The money -- the huge
9 amount of taxpayer money is being funneled somewhere from
10 the judiciary budget from the re-appropriations and the
11 now second cause of action here reviews the serious and
12 substantial issue with respect to the re-appropriations.
13 Firstly, there is a question whether the re-appropriations
14 of the judiciary were certified. Then there is a problem
15 as to whether or not those re-appropriations actually are
16 proper re-appropriations. And one of the issues is that
17 there is a transfer provision and it appears that through
18 the transfer interchange provision that is part of the
19 re-appropriation section, as well as the appropriation
20 section, the money for the judicial salary increases is
21 somewhere being funneled out from the re-appropriations.
22 It's completely unidentified.

23 THE COURT: All right. Thank you, Ms. Sassower.
24 Let me hear from the Assistant Attorney General.

25 MS. KERWIN: Your Honor, as we did last

1 go-around on this, the state still believes that CPLR
2 6313(a) prohibits a TRO here. However, notwithstanding
3 that, even if the regular standard for TRO was applied,
4 there's nothing before the Court to show any merit to the
5 underlying claims. There's nothing before the Court that
6 shows any type of irreparable harm to be suffered by the
7 plaintiffs or the citizen-taxpayers, if the Court views it
8 that way. All that is before the Court is an affirmation
9 by Ms. Sassower and exhibits that include papers from our
10 last lawsuit and the things that she has written. So
11 based on the evidence before the Court, the TRO should be
12 denied.

13 THE COURT: Ms. Sassower, I'll give you a last
14 chance to respond if you'd like.

15 MS. SASSOWER: The pleadings are verified, as I
16 believe is required in citizen-taxpayer actions. It
17 alleges all manner of unconstitutionality, statutory and
18 rule violations and fraud, larceny of taxpayer dollars.
19 It is particularized, meeting the standards required in
20 pleadings alleging fraud and it is substantiated by
21 evidence.

22 The records of the predecessor citizen-taxpayer
23 action shows unequivocally that plaintiffs were entitled
24 to some thought and were entitled to summary judgments as
25 a matter of law. For Ms. Kerwin to get up here and say

1 there's nothing, that there's some question as to the
2 merit of this case is contemptuous of the Court.

3 I would respectfully request one minute to
4 address the further relief with respect to the counties
5 because under county law 700.11 distribution of moneys for
6 District Attorney salary reimbursement to the counties is
7 in the month of September and I have tried to ascertain
8 when in the month of September and from what I see, it is
9 continuously throughout and includes the first week of
10 September.

11 I don't know how that money passes to the
12 counties, whether it is actually disbursed from the
13 comptroller or from the Division of Criminal Justice
14 Services -- I tried to ascertain that information -- but I
15 will tell you that that money will be disbursed. And, as
16 I said, there are problems, including certification
17 problems, with respect to -- this is what we're talking
18 about, the aid to localities budget, and 60 pages that are
19 the Division of Criminal Justice Services budget in which
20 is the aid to counties for District Attorney salary
21 reimbursement.

22 THE COURT: Anything else, Ms. Sassower?

23 MS. SASSOWER: No, Your Honor.

24 THE COURT: All right. I do find, having heard
25 oral argument as well as my review of the papers, that it

1 is this Court's measured opinion that CPLR 6313 forbids
2 the granting of a TRO against a public officer in this
3 case in regards to restraining that public officer from
4 the performance of statutory duties. Regardless, even if
5 such a TRO was permitted, I find that the plaintiffs in
6 this case have failed to demonstrate a likelihood of
7 success on the merits, particularly in regards to the
8 strong presumption of constitutionality and the fact that
9 parties challenging constitutionality must demonstrate a
10 statute's invalidity beyond a reasonable doubt, citing
11 State United Teachers ex rel Magee, M-A-G-E-E, versus
12 State. That's a Third Department case from this year,
13 2016. The cite is 140 AD3d 90.

14 Additionally, I find that the plaintiffs have
15 failed to make out and demonstrate irreparable harm and
16 upon a balancing of the equities, all of these measures
17 preclude the Court from ordering a TRO.

18 As such, in the proposed order to show cause
19 I'll strike the emergency relief which is on the third
20 page under the heading sufficient cause appearing thereto.
21 I'm initialing that ~~strikeout~~ and dating it with today's
22 date.

23 I will, however, sign the order to show cause
24 and I'll ask counsel for the defendants first have you
25 accepted personal service or have you received the papers?

1 MS. KERWIN: I received one copy and I'm
2 authorized to accept service for the Assembly, the
3 Attorney General and the Comptroller only.

4 THE COURT: Does that leave any parties who
5 you're not entitled to accept?

6 MS. KERWIN: The Chief Judge, the Senate and the
7 Governor.

8 THE COURT: How long would you would like me to
9 give you, Ms. Sassower, to effectuate service?

10 MS. SASSOWER: I will do that immediately.

11 THE COURT: How about I give you until next
12 Tuesday.

13 MS. SASSOWER: Perfect.

14 THE COURT: That's the 6th day of September.

15 MS. SASSOWER: Yes.

16 THE COURT: I'm making it returnable on the
17 16th, which is two weeks from today.

18 MS. SASSOWER: Appearances?

19 THE COURT: I'll mark it as appearances not
20 necessary unless you want to make a request to the
21 contrary. I'm assuming this is going to be marked as a
22 connected case to the cases I previously adjudicated. It
23 might be sent to me. I don't know how it's going to be
24 marked, but regardless, I'm going to leave it to the IAS
25 judge to decide whether or not he'd like to have

1 appearances. Anything else, Counsel?

2 MS. SASSOWER: This is a citizen-taxpayer
3 action. It is entitled to expedition. Can we --

4 THE COURT: I put it on for the 16th, ma'am.
5 That's two weeks.

6 MS. SASSOWER: Two weeks. Okay. Okay.

7 MS. KERWIN: Does that make my papers due the
8 day before?

9 THE COURT: I don't think, the way the order to
10 show cause is written, it spells out when the papers are
11 due, but from the Court's perspective that will be
12 appropriate.

13 MS. KERWIN: Thank you.

14 THE COURT: I'll mark the order to show cause to
15 that effect. Defendant response not later than 9/15.

16 MS. SASSOWER: And 9/16 will be a hearing?

17 THE COURT: That's the return date. I'm not
18 marking it as appearance, ma'am. You can contact the
19 clerk's office and find out who the assigned IAS judge is
20 and make a request for personal appearances if you think
21 it's appropriate. Anything else?

22 MS. KERWIN: No, thank you.

23 THE COURT: Anything else?

24 MS. SASSOWER: Thank you, Your Honor.

25 THE COURT: You can go in my chambers and get a

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signed copy of the TRO from Erin. Have a good weekend,
everyone.

(Proceedings concluded at approximately
2:51 p.m.)

C E R T I F I C A T I O N

I, AMY E. MACKENZIE, a Court Reporter and Notary Public
in and for the State of New York, do hereby certify that
the foregoing transcript in the above-entitled matter
is a true and accurate transcript to the best of my
knowledge and belief.

DATED: _____