

STATE OF NEW YORK  
SUPREME COURT COUNTY OF ALBANY

NEW YORK STATE UNITED TEACHERS,  
by its President, ANDREW PALLOTTA; SAMANTHA  
ROSADO-CIRIELLO, as President of the YONKERS  
FEDERATION OF TEACHERS, LOCAL 860, AFT, AFL-  
CIO; YONKERS FEDERATION OF TEACHERS, LOCAL  
860, AFT, AFL-CIO; JULIET BENAQUISTO, Individually  
and as President of the SCHENECTADY FEDERATION  
OF TEACHERS, LOCAL 803, AFT, AFL-CIO; TRACY  
CIMINO; and COPIAGUE TEACHERS' ASSOCIATION,  
by its President TIMOTHY GAVIN,

**SUMMONS**

Plaintiffs,

-against-

The STATE OF NEW YORK, HONORABLE ANDREW  
M. CUOMO, as Governor of the State of New York; THE  
NEW YORK STATE DIVISION OF THE BUDGET; and  
ROBERT F. MUJICA, as Budget Director for the New York  
State Division of Budget,

Index No. \_\_\_\_\_

Hon. \_\_\_\_\_

Defendants.

**PLEASE TAKE NOTICE**, that you are hereby summoned and required to serve upon plaintiffs' attorneys an answer to the complaint in this action within twenty days after the service of this summons, exclusive of the day of service, or within thirty days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint; and

**PLEASE TAKE FURTHER NOTICE**, that Albany County is designated as the venue of the proceeding as it is the County in which Defendants have their principal place of business, and in which the defendants engaged in the acts giving rise to this complaint.

Dated: Latham, New York  
September 15, 2020

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By:   
ROBERT T. REILLY

TO: GOVERNOR ANDREW M. CUOMO  
The Capitol  
Albany, NY 12224

NEW YORK STATE DIVISION OF THE BUDGET  
The Capitol  
Albany, NY 12224

ROBERT MUJICA, BUDGET DIRECTOR  
New York State Division of the Budget  
The Capitol  
Albany, NY 12224

HONORABLE LETITIA JAMES  
New York State Department of Law  
The Capitol  
Albany, NY 12224

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COMPLAINT

Plaintiffs,

Index No. \_\_\_\_\_

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The STATE OF NEW YORK, HONORABLE ANDREW  
M. CUOMO, as Governor of the State of New York; THE  
NEW YORK STATE DIVISION OF THE BUDGET; and  
ROBERT F. MUJICA, as Budget Director for the New York  
State Division of Budget,

Hon. \_\_\_\_\_

Defendants.

Plaintiffs, Samantha Rosado-Ciriello, Juliet Benaquisto, Tracy Cimino, New York State  
United Teachers, by its President Andrew Pallotta; Yonkers Federation of Teachers, by its  
President Samantha Rosado-Ciriello, Schenectady Federation of Teachers by its President Juliet  
Benaquisto; and Copiague Teachers Association, by its President Timothy Gavin, by their  
attorney, Robert T. Reilly, Esq., (Edward J. Greene Jr., and Gregory M. Ainsley, Esqs. of Counsel),  
respectfully allege:

PRELIMINARY STATEMENT

1. Plaintiffs bring this action for declaratory and injunctive relief to declare  
Defendants' 20 percent cut – approximately \$5.241 billion – to appropriated formula State aid to

New York State's kindergarten through grades 12 public schools ("K-12 public schools" or "public schools") under the enacted 2020-2021 New York State Budget (Chapter 53 of the Laws of 2020) ("2020-2021 State Budget") unconstitutional, illegal, and a violation of the separation and distribution of powers under the New York State Constitution ("the State Constitution").

2. Governor Andrew Cuomo's proposed budget legislation, ultimately enacted into law as the 2020-2021 State Budget, created powers for the Budget Director for the New York State Division of the Budget ("Director of Budget"), under section 1(f) of the 2020-2021 State Budget, to unilaterally withhold appropriated State aid to localities based on budget imbalances attributed to the COVID-19 pandemic ("the Reduction Authority"). The Reduction Authority delegated to the Director of Budget, an unelected appointee of the Executive branch, who has no political accountability to the people of this State, the power to circumvent the budgetary process under the State Constitution and unilaterally withhold legislatively appropriated aid based upon his finding of an imbalanced budget whenever, "in his or her sole discretion" such action is necessary to respond to the COVID-19 pandemic. In this instance, the Director of Budget used the Reduction Authority to withhold approximately 20 percent of scheduled appropriated State aid to public schools.

3. The Governor has the constitutional responsibility and obligation to ascertain the financial needs of the various departments of the State government, and to submit all of the proposed appropriations and reappropriations to be included in the State's budget to the New York State Legislature ("the Legislature"). The State Constitution expressly limits the Governor's ability to amend or supplement the budget to 30 days after its presentation to the Legislature. Article VII of the State Constitution further confirms the shared roles between the Executive and Legislative Branches in creating and passing the State's budget into law.

4. The creation of the Executive Branch's Reduction Authority violated the separation of powers provided for in the State Constitution's budgetary process and was an unconstitutional delegation of the Legislature's constitutional oversight and policy making powers. The State's budgetary process is governed by the State Constitution, and the Legislature lacks any authority to make amendments to the State's budget after it becomes law, absent the passage of a new law. Thus, the Legislature lacked the ability to circumvent the State Constitution's appropriations process by delegating the Reduction Authority to the Director of Budget to withhold monies appropriated in the 2020-2021 State Budget.

5. Furthermore, the Executive Branch's withholding of appropriated State aid to public schools constituted an unconstitutional usurpation of the Legislature's power, in express violation of constitutional limitations on the Executive Branch's ability to make amendments to appropriations 30 days after it has been submitted to the Legislature.

6. Plaintiffs seek a declaration that defendants' actions were illegal and unconstitutional. Further, plaintiffs seek to permanently enjoin defendants from any future failure to timely disburse appropriated State aid to New York's public school systems.

#### JURISDICTION

7. This Court has jurisdiction to issue a declaratory judgment and injunctive relief pursuant to CPLR §3017.

#### VENUE

8. Venue is laid in the County of Albany, as it is the County where defendants have their principal place of business, and where the material events occurred.

9. No prior application for the relief requested in this complaint has been made in any forum.

PLAINTIFFS

10. Plaintiff New York State United Teachers is the state's largest union, representing approximately 600,000 teachers, school-related professionals, academic and professional faculty in higher education, professionals in education and health care and retirees. Plaintiff Andrew Pallotta is its duly elected President.

11. Plaintiff Yonkers Federation of Teachers ("YFT") is an unincorporated association with its principal place of business located in Westchester County. YFT is the recognized exclusive negotiating representative of all professional pedagogical personnel on tenure, on probation, and on terminal appointments including classroom teachers, attendance teachers, itinerant teachers, regular substitute teachers, teaching interns, teaching assistants, athletic directors, nurse teachers, occupational and physical therapists, librarians, guidance counselors, psychologists, per diem appointments, teachers in adult basic education, and summer and night school teachers employed by Yonkers City Schools. As of August 8, 2020, YFT represented more than 1884 active members.

12. Plaintiff Samantha Rosado-Ciriello resides in the Village of Ardsley, the State of New York, County of Westchester, where she is a homeowner and taxpayer. She is the President of the YFT. She is challenging defendants' actions as a citizen-taxpayer and in her representative capacity as the duly elected President of the SFT.

13. Plaintiff Schenectady Federation of Teachers ("SFT") is an unincorporated association with its principal place of business located in Schenectady County. SFT is the recognized exclusive negotiating representative of the various collective bargaining units consisting of teaching and support personnel, including the Teachers, Social Workers, Counsellors, Paraprofessional and School Related Personnel employed by the Schenectady City School District.

The SFT, prior to recent layoffs, represented approximately 900 teachers and 375 paraprofessionals.

14. Plaintiff Juliet Benaquisto resides in the Town of Rotterdam, the State of New York, County of Schenectady, and resides in the Schalmont Central School District, where she is a homeowner and taxpayer. She is the President of SFT. She is challenging defendants' actions as a citizen-taxpayer and in her representative capacity as the duly elected President of the SFT.

15. Plaintiff Tracy Cimino and her family reside in the City of Schenectady, the State of New York, County of Schenectady, and also reside within the Schenectady City School District, where she is a taxpayer. Plaintiff Cimino's son is a high school student in Schenectady City School District. She is challenging defendants' actions as a citizen-taxpayer and in her individual capacity.

16. Plaintiff Copiague Teachers' Association is the recognized exclusive representative of all classroom teachers, school attendance teachers, psychologists, guidance counselors, librarians, speech therapists, and social workers employed by the Copiague Union Free School District. Timothy Gavin is Copiague Teachers' Association's duly elected president.

17. Each of the individual plaintiffs is specifically aggrieved by the actions of defendants in illegally withholding state aid from the State's K-12 public schools. Each plaintiff also has standing, as a citizen who has paid or is paying state income or sales taxes, to bring this action for equitable and declaratory relief under Article 7-A of the State Finance Law.

#### DEFENDANTS

18. Defendant Honorable Andrew M. Cuomo is the Governor and Chief Executive Officer of the State pursuant to Article IV of the State Constitution. His principal place of business is located at the Capitol in Albany, New York.

19. Defendant New York State Division of the Budget is a part of the Executive Branch and is responsible for advising the Governor regarding the State Budget pursuant to Executive Law §100 and State Finance Law , Article III and Article IV.

20. Defendant Robert F. Mujica, is the duly appointed Budget Director for the Division of the Budget. As such he is the Chief Executive Officer of the Division of the Budget pursuant to the Executive Law.

### FACTUAL BACKGROUND

#### **A. Public Schools' Continued Obligation to Provide Essential Services During the COVID-19 Pandemic**

21. Since March 7, 2020, the State of New York has remained under a continuous State disaster emergency due to the COVID-19 pandemic.

22. On March 16, 2020, Governor Cuomo issued Executive Order 202.4, which required all schools in the State to close for in person instruction for a two-week period by March 18, 2020.

23. Executive Order 202.4 also required all school districts to develop plans for alternative instructional options to submit to New York State Education Department.

24. Executive Order 202.4 was extended five times, by Executive Orders 202.11, 202.14, 202.18, 202.28 and 202.45 to prohibit in person instruction through the end of the 2019-2020 school year.

25. In order to comply with Executive Order 202.4, *et seq.*, New York's public school districts were required to develop and implement plans for alternative instruction options, and districts did not have any in person instruction between March 16, 2020 through the end of the 2019-2020 school year.



26. On September 4, 2020, Governor Cuomo issued Executive Order No. 202.60, which authorized New York's schools to reopen, but required reopening school districts to adhere to Department of Health issued guidance and directives, and provided further that school districts must continue plans to ensure the availability of meals, and the availability of child care for health care and emergency response workers, for any school district that is conducting its operations remotely and provided further that for any district which closes to in-person instruction, a contingency plan to immediately provide such services must be maintained.

27. In the midst of this COVID-19 pandemic, public schools, their teachers and support staff are compelled to provide essential services and modify or add school infrastructure, resources, transportation, instructional models and procedures to safely reopen and to be prepared to implement contingency plans if they are required to close.

28. Many of New York's schools have historically struggled, and some have failed, to provide the minimal opportunity for students to receive the sound, basic education mandated by Article XI §1 of the New York State Constitution due to a lack of resources and, in particular, sufficient funding. *See Campaign for Fiscal Equity, Inc. v. State of New York*, 86 N.Y.2d 307 (1995), 100 N.Y. 2d 893 (2003), 8 N.Y. 3d 14 (2006).

29. Nonetheless, in the midst of this pandemic and unprecedented upheaval in New York's public school districts regarding their operations, their delivery of services, and their financial burdens, as well as those of their teachers and support staff, the State has withheld, and has announced it will continue to withhold, essential state funding to public schools as mandated in the 2020-2021 New York State Budget and in New York's Education Law.

**B. Separation of Powers**

30. The New York Constitution establishes that governmental powers are distributed among three co-equal branches of government. (New York Constitution, Art. III, §1; Art. IV, §1; Art. VI).

31. The legislative power of New York State is vested in the Senate and the Assembly. (New York Constitution, Art. III, §1).

32. The Governor is the Executive Officer of the State (New York Constitution, Art. IV).

33. The Legislature makes the critical policy choices and the Governor implements those policy choices.

**C. The Budget Process**

34. The State's budget process is primarily governed by Article VII of the State Constitution.

35. Article VII requires the Governor to submit a budget detailing a plan of expenditures and an estimate of revenues for the upcoming fiscal year, bills containing all proposed appropriations and reappropriations, and other legislation needed to implement the Executive Budget.

36. The Governor must submit a proposed budget to the Legislature, which includes revenue bills or other legislation necessary to provide moneys to meet the proposed expenditures. (New York Constitution, Art. VII, §§ 2 & 3).

37. Within 30 days after submission of proposed appropriations to the Legislature, the Governor may amend or supplement the budget and submit amendments to any bills submitted by him or supplemental bills. (New York Constitution, Art. VII, § 3).

38. The New York State Legislature is empowered to review the budget and take action, depending on the nature of the appropriation. (New York Constitution, Art. VII, §4).

39. The Legislature may not alter an appropriation bill submitted by the governor except to strike out or reduce items therein. New York Constitution, Art. VII § 4).

40. Every appropriation made by the Legislature must specify the object or purpose to which the appropriated sum shall be applied. (New York Constitution, Art. VII, §7).

41. Once such an appropriations bill is passed by both houses of the Legislature, it immediately becomes law.

42. The Governor is not obligated to maintain a balanced budget throughout the fiscal year. (New York Constitution, Art. VII, §2).

43. The State Constitution does not provide authority to either the Legislative or Executive Branch to alter or amend an appropriations bill after it becomes law.

**D. The Reduction Authority Created in the 2020-2021 State Budget**

44. On or about April 3, 2020, the 2020-2021 State Budget was passed into law.

45. Section 1(f) of the 2020-2021 State Budget states as follows:

Notwithstanding any provision contained herein or any other law to the contrary, if, during the 2020-21 fiscal year, the budget is deemed unbalanced, the budget director is hereby authorized to withhold all or some of the amounts appropriated herein, including amounts that are to be paid on specific dates prescribed in law or regulation if, in his or her sole discretion, such action is necessary to respond to the direct and indirect economic, financial, and social effects of the COVID-19 pandemic. Prior to withholding any amounts, the director shall consider whether other means are available for accomplishing the purposes of this provision, and the impact of such withholding on the affected aid recipient.

46. Under this provision, the budget shall be deemed unbalanced if the Actual State Operating Fund Tax Receipts are less than ninety-nine percent of Estimated State Operating Funds

Tax Receipts, or Actual State Operating Funds Disbursements are more than one-hundred and one percent of Estimated State Operating Funds Disbursements, or both.

47. This section further provides that “no later than five days prior to the beginning of each month, the director of budget shall provide notification of payments that are expected to be withheld in such month pursuant to this provision to the president pro tempore of the senate and the speaker of the assembly.”

48. Additionally, “[n]o later than seven days after month end, the director of budget shall provide notification of payments that have been withheld... to the president pro tempore of the senate and the speaker of the assembly.”

49. Significantly, Section 1(f) provides that for any amount withheld, the State’s obligation to make payment “shall be reduced commensurate with such payments withheld by the director of budget.”

50. Thus, pursuant to section 1(f) of the 2020-2021 State Budget, these withholdings or reductions in payments are not just a delay in a payment, but are permanent reductions in the funds that were appropriated.

51. Accordingly, once a payment is withheld, there is no longer a claim to those withheld funds.

#### **E. The Appropriations and Scheduled Payments in the 2020-2021 State Budget**

52. The 2020-2021 State Budget enacted multiple appropriations for the 2020-21 state fiscal year for the “General Support of Public School” that totaled approximately \$27.2 billion of State aid to fund public schools throughout the State for both formula school aid and various grant programs for educational institutions

53. These appropriations covered the remaining payments for the 2019-20 school year due after April 1, 2020 and all payments due for the 2020-21 school year that are due by the end of the 2020-21 state fiscal year.

54. Upon the passage of the State Budget, in the Governor's April 3, 2020 "New York State Fiscal Year 2021 Fact Sheet," he advised that "[d]ue to the extraordinary challenges from our COVID-19 health crisis, creating a \$10 billion loss in revenue to the State, support for schools will remain nearly flat for a total of \$27.9 billion in school aid."

55. Further, New York State Assembly Speaker Carl Heastie announced, upon passage of the 2020-2021 State Budget, "the approved State Fiscal Year (SFY) 2020-21 allocates \$27.9 billion in school aid. Through the combination of state support and funding from the recently passed federal stimulus package, an agreement was reached to hold the line on school funding, despite uncertain fiscal times."

56. Notwithstanding the Governor and Speaker Heastie's announcement in April regarding the budget agreement to hold the line on school funding, on August 13, 2020, the Division of Budget issued a Fiscal Year 2021 First Quarterly State Budget Financial Plan Update, which noted that in the absence of Federal action since the enactment of the 2020-2021 State Budget, the Division of Budget began withholding 20 percent of most local aid payments in June, and that these "withholdings" may be converted to permanent reductions, contingent on the timing and size of any potential Federal aid.

57. On September 15, 2020, the State is required to make a payment to the New York State Teachers' Retirement System ("TRS") on behalf of public school districts. Education Law § 3609-a(1)(a)c.

58. This payment is used to make a portion of district's mandated payments to TRS for pension liabilities. The TRS payments are required to be made by the State to TRS directly on behalf of school districts in three equal installments on September 15, October 15 and November 15. Education Law § 3609-a(1)(a).

59. The next payment of State aid to public schools, in the amount of approximately \$2.5 billion, is scheduled for September 30, 2020.

**F. Realized State's Withholding of Aid to Public Schools**

60. Education Law § 3609-a(1)(b)(3)(vi) requires the State to make payments to districts to reimburse districts for their costs incurred on debt service related to school construction projects ("Deferred July Building Aid") during the prior school year, on or before the last State business day of July 2020.

61. Upon information and belief, the State reduced and withheld 20 percent from its payments of "Deferred July Building Aid" to local school districts in July of 2020.

62. Education Law § 3609-b(2)(a)(4) requires the State to reimburse districts for a portion of the additional costs ("Excess Cost Aid") of providing mandated services to students with disabilities on or before August 15, 2020.

63. Upon information and belief, the State reduced and withheld 20 percent from its payments of "Excess Cost Aid" to local school districts in August of 2020.

64. Education Law § 3609-d(1) requires the State to make BOCES Aid payments to the BOCES on behalf of the component school districts participating in each regional BOCES, as partial reimbursement for services provided to local districts and their students by the regional BOCES.

65. The September 2020 payment mandated by the Education Law marks the last payment for the 2019-20 school year for BOCES Aid and this September payment represents 45 percent of the total annual payment of this aid category.

66. The September BOCES Aid payment is required to be made on the first business day of September.

67. Upon information and belief, the State reduced and withheld 20 percent from its payments of "BOCES Aid" to BOCES and local school districts in September of 2020

**G. The State's Rainy Day Reserves are Accessible to Avoid Draconian Cuts to Public Education**

68. New York State Finance Law Section 92-cc establishes the State's "Rainy Day Reserve Fund" ("RDRF").

69. This fund consists of moneys mostly made up of excess revenues from previous fiscal years, which are segregated into this fund and administered by the Comptroller.

70. According to the State's Fiscal Year 2020-21 First Quarterly Update, the current balance of the RDRF is currently approximately \$1.218 billion.

71. New York State Finance Law Section 92 establishes the State's Tax Stabilization Reserve, for the purpose of offsetting delays or shortfalls in anticipated revenues in, or at the conclusion of, a fiscal year.

72. The Tax Stabilization Reserve currently amounts to approximately \$1.258 billion.

73. The State collectively refers to the RDRF and Tax Stabilization Reserves as the State's "Rainy Day Reserves."

74. According to the State's First Quarter Update, collectively, the Rainy Day Reserves (RDRF plus Tax Stabilization Reserves) amounted to approximately \$2.5 billion.

75. Revenue shortfalls attributed to the COVID-19 pandemic constitute an event that would permit the Executive Branch to access this approximately \$2.5 billion in the Rainy Day Reserves to partially offset the withholding of State aid to public education.

76. In addition to the approximately \$2.5 billion in the State's Rainy Day Reserve, the State has an additional \$4.5 billion in cash reserves and monetary settlements from previous fiscal years that when combined with the Rainy Day Reserves, provides the State with a total of approximately \$7 billion in its General Fund Cash Balance to offset cuts to public schools.

**H. The Legislature's Mandate for "a Sound Basic Education"**

77. The State Constitution mandates that "[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." (Art. XI, § 1).

78. This Article guarantees students the opportunity to achieve a sound basic education.

79. Although decisions regarding the allocation of public funds for education fall within the purview of the legislature, not the courts; here, the Legislature essentially has abandoned its role, ceding significant budgetary powers to the Executive.

80. As demonstrated elsewhere in this complaint, the Legislature's actions were not only irrational, but also unconstitutional.

81. Acknowledging that public schools are funded through a mixture of state and local funds, and that the Education Article enshrined in the Constitution a state-local partnership in which people with a community of interest and a tradition of acting together to govern themselves make the basic decisions on funding and operating their own schools, this notion for many districts is illusory.



82. Some districts, however, have no more local resources to tap and are dependent on State funding and, as a practical matter for these districts, there is no state-local partnership, but dominance by the State.

83. Of course, a 20 percent cut to State aid is a cut of unprecedented magnitude, and it would be difficult for any district in the State to absorb and, when the State cuts, these districts can only cut those programs that would otherwise provide an opportunity to achieve a sound basic level of education.

84. In response to the State's reductions in aid payments to Yonkers City Schools, for example, the District discontinued its Universal Pre-Kindergarten program and closed eight classrooms, resulting the elimination of eight teaching positions.

85. Yonkers City Schools subsequently laid off thirty-six teachers and teacher assistants in response to the State's announcement that State aid payments would be reduced to 80 percent of the budgeted payments, and recently has announced additional layoffs.

86. In response to the State's reductions in aid payments to Schenectady City School District: on August 31, 2020, the District rescinded the appointments of fifteen teachers hired over the summer; on September 4, 2020, the District terminated another twenty-four positions of teachers employed as building substitutes and teachers in the process of finalizing certification; and, also on September 4, 2020, the District laid off another eighty-one teachers. These actions resulted in a loss of 120 teaching positions, which constituted a cut of more than ten percent of the district's teachers.

87. In further response to the State's reductions in aid payments to Schenectady City School District: on September 2, 2020, the District also eliminated the positions of fifty lunch monitors and 29 paraprofessionals; and on September 4, 2020, the District laid off another 201

paraprofessionals, for a total loss of 280 of the District's 376 paraprofessionals, which constituted a cut of more than seventy-four percent of the District's paraprofessionals.

88. Plaintiff Tracy Cimino is one of the paraprofessionals formerly employed by Schenectady City School District, who was notified on the afternoon of Friday, September 4, 2020 that her position had been eliminated due to a decrease in State aid payments to the District, and that she had been laid off from her position as a Special Education Paraprofessional in a District elementary special education classroom.

89. Plaintiff Cimino is also the parent of a son enrolled as a Schenectady City School District high school student. Her son receives special education services, mandated by law pursuant to his Individualized Education Plan, including counselling services provided by a school social worker.

90. Plaintiff Cimino's son had achieved significant progress in recent years and had worked his way back into mainstream classes, with the support of education professionals and paraprofessionals, which provided him the opportunity to experience and further benefit from socialization with other students.

91. The Ciminis chose the "hybrid" instruction model, which included in-person instruction, from the options initially offered by the district for the 2020-2021 school year, in hopes of allowing their son to continue to socialize and progress educationally, socially and emotionally.

92. On September 2, 2020, Schenectady City School District subsequently revised its reopening plan to eliminate the hybrid instruction model for grades 7-12 general education and mainstreamed students. The District's Board Resolution to provide online instruction only to students in grades 7-12 expressly provided as its justification, the District's receipt of "notice that New York State is withholding 20 percent of payments that were due to the District, amounting to

a loss in revenue of \$600,000, with anticipated additional cuts projected to be an anticipated \$28.5 million.”

93. As a result, Plaintiff Cimino’s son will receive all of his instruction online from his home, and will be provided with no opportunity for socialization in the school environment. The District has yet to inform the Ciminis how his other mandated IEP services will be provided.

94. The Copiague Union Free School District announced cuts to approximately 54 staff positions, including the elimination of approximately 25 teaching positions, as a result of funding shortfalls attributed to the State’s withholding of funds. State aid is believed to make up to close to 50 percent of the district’s overall revenue budget.

95. In any event, mandated by Executive Order, school budgets were proposed, presented to voters and, ultimately, approved by voters in most districts on June 9, 2020.

96. Local school districts developed their budgets and presented them to voters based upon the appropriations in the budget, the anticipation of flat funding for K-12 public schools, and before the instant 20 percent cuts were implemented.

97. The Combined Wealth Ratio (CWR) is a measure of relative wealth, indexing each district against the statewide average on a combination of two factors, property wealth per pupil and income wealth per pupil.

98. Similarly, students’ eligibility for free or reduced-price lunch is a measure of school-level economic disadvantage.

99. Districts, for example, in the bottom decile in terms of both CWR and free and reduced-price lunch are almost wholly dependent on state aid.

100. At least for these districts, a 20 percent reduction in State aid could be catastrophic, and certainly would lead to a “gross and glaring inadequacy.”

AS AND FOR A FIRST CAUSE OF ACTION

101. The State Constitution establishes a system in which governmental powers are distributed among three co-ordinate and coequal branches (*see* State Constitution, Art III, § 1; art IV, § 1; art VI).

102. The budgetary process under the State Constitution is set forth under Article VII.

103. Under the State Constitution, the Governor is obligated to submit a complete budget plan to the Legislature for its consideration (NY Const, art VII, § 2).

104. Once a budget is passed by the Legislature, it becomes law and cannot be changed or varied according to the whim or caprice of any officer, board or individual, unless repealed or amended by the Legislature.

105. The laws and policies of the State are established by the lawmaking powers, and once appropriations are approved, the Governor and his subordinates are duty bound to faithfully execute them.

106. Under the New York Constitution, Article III, the legislative power of this State is vested in the New York State Legislature.

107. While the separation of powers doctrine grants the Legislature considerable leeway in delegating its regulatory powers, a legislative grant of authority must be construed so that it is no broader than that which the separation of powers doctrine permits.

108. The separation of powers doctrine requires that the Executive Branch, which includes the Governor and the Division of the Budget, not impair the Legislature in the performance of its constitutional duties, or otherwise usurp the Legislature's constitutional powers.

109. The 2020-2021 State Budget established Reduction Authority for the Director of Budget “to withhold all or some of the amounts appropriated herein” if “in his or her sole discretion,” such action is necessary to respond to the effects of the COVID-19 pandemic.

110. Such withholding further effects a permanent reduction in the funds owed to districts, in that Section 1(f) of the State Budget provides that for any amount withheld, the state’s obligation to make payment “shall be reduced commensurate with such payments withheld by the director of budget.”

111. The State’s budgetary process under Article VII of the State Constitution does not provide either the Legislature or the Executive with the constitutional power to make unilateral budget reductions after a budget has been passed and becomes law.

112. The State’s budgetary process under Article VII of the State Constitution does not provide any appointed official, in this case the Director of Budget in his sole discretion, with the constitutional power to make unilateral budget reductions after a budget has been passed and becomes law.

113. Amendments to any approved appropriations require legislative action by both houses of the State’s Legislature before it can be implemented by the Executive Branch.

114. The State’s budgetary process is based on express constitutional powers granted to the Legislature and Executive, and the Legislature lacked the power to make unilateral amendments to the budgetary process, therefore, it could not delegate or create the Reduction Authority power for an official in the Executive Branch.

115. Accordingly, the Reduction Authorization violates the separation of powers doctrine as it relates to the State Constitution’s budgetary process, constitutes an unconstitutional

delegation of legislative power to the Executive Branch, and its utilization by the Director of Budget constitutes an unlawful usurpation of legislative powers.

AS AND FOR A SECOND CAUSE OF ACTION

116. Article VII, section 3 of the New York State Constitution requires that the governor submit a bill containing all proposed appropriations and re-appropriations included in the budget.

117. Within 30 days thereafter, with the consent of the legislature, the governor may, amend or supplement the budget and submit amendments to any bills submitted by him or submit supplemental bills.

118. Article VII, section 4 prohibits the legislature from altering an appropriation bill submitted by the governor, “except to strike out or reduce items therein, as well as add items of appropriation provided that such additions are stated separately and distinctly from the original items of the bill and refer to a single object or purpose.”

119. The State Constitution does not permit the legislature to alter an appropriation bill submitted by the governor, except to strike out or reduce items therein.

120. The Governor chose to sign the 2020-2021 New York State Budget, which contained the appropriations for aid to localities that allocated funds to K-12 public schools.

121. The Governor did not veto the appropriations that are set forth in Chapter 53 of the Laws of 2020, the education, labor and family assistance budget, which he approved and which became effective on April 1, 2020.

122. The defendants lack any legislative, statutory or constitutional basis to order that these statutorily required funds not be disbursed in conformity with the statute.

123. The defendants’ actions in ordering and effecting the withholding of funds properly allocated to education in the New York State Budget and required to be paid to New York’s K-12

public schools in July, August, and September, 2020 violated Chapter 53 of the Laws of 2020 and was illegal and *ultra vires*.

AS AND FOR A THIRD CAUSE OF ACTION

124. The State Constitution expressly limits the Executive Branch's ability to make amendments to the proposed Executive Budget.

125. In particular, Article VII, section 3 of the State Constitution, in pertinent part, provides as follows:

At the time of submitting the budget to the legislature the governor shall submit a bill or bills containing all the proposed appropriations and reappropriations included in the budget and the proposed legislation, if any, recommended therein.

The governor may at any time within thirty days thereafter and, with the consent of the legislature, at any time before the adjournment thereof, amend or supplement the budget and submit amendments to any bills submitted by him or her or submit supplemental bills.

126. After the Governor's submission of the budget to the legislature, the Governor is expressly limited to 30 days to make amendments to the appropriations bill.

127. The Reduction Authority grants the Executive Branch, through the Director of Budget, the power to unilaterally amend any appropriation of aid to localities beyond the time frame constitutionally proscribed.

128. The creation and use of the Reduction Authority, therefore, violates the State Constitution's express amendment procedure as it applies to the Executive Branch.

WHEREFORE, Plaintiffs respectfully request that an order and judgment be entered:

- 1) declaring that the defendants' actions were unconstitutional, as violative of the New York Constitution's doctrine of the separation of powers;

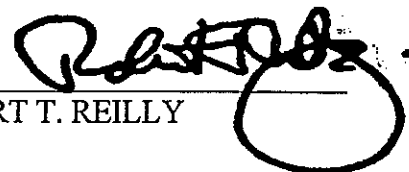
- 2) declaring that the defendants' creation of the Reduction Authority in the 2020-2021 State Budget, and any withholdings made pursuant to the Reduction Authority violated the State Constitution;
- 3) declaring that the defendants' actions in ordering and effecting the withholding of money allocated to education by the New York State Legislature in the 2020-2021 State Budget is unconstitutional and otherwise contrary to law;
- 4) Ordering the Director of Budget to release funds withheld from the July, August and September 2020 payments to local K-12 public school districts and BOCES;
- 5) enjoining the Governor and the Director of Budget from any future withholding or delayed payment of monies that have been appropriated to public schools in the 2020-2021 State Budget;
- 6) awarding attorneys fees to plaintiffs; and
- 7) granting the plaintiffs such other, further and different relief as this Court may deem just and proper, together with the costs and disbursements of this proceeding.

Dated: Latham, New York  
September 15, 2020

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