

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

NEW YORKERS FOR STUDENTS' EDUCATIONAL RIGHTS (NYSER), RUBNELIA AGOSTINE, MIRIAM ARISTY -FARER, KATHRYN BARNETT, AVA CAPOTE, MILAGROS ARICA, G. CHANGLERTH, MONA DAVIDS, ROLANDO GARITA, SARA HARRINGTON, SONJA JONES, NICOLE IORIO, HEIDI MOULLESSEAU-KUNZMAN, GRETCHEN MULLINS-KIM, ELLEN TRACHTENBERG, HEIDI TESKA-PRINCE, ANDY WILLARD, NATASHA CAPERS, JACQUELINE COLSON, HAWA JAGANA, NICOLE JOB, HECTOR NAZARIO, CHRIS OWENS, SAM PRIOZZOLO, PATRICIA PADILLA, LYNN SANCHEZ and ROBERT JACKSON,

Index No. A00750/2014

**AFFIDAVIT OF
CHARLES SZUBERLA
IN OPPOSITION TO
PLAINTIFFS' MOTION
FOR A PRELIMINARY
INJUNCTION**

Plaintiffs,

-against-

THE STATE OF NEW YORK, ANDREW M. CUOMO, as Governor of the State of New York, NEW YORK STATE BOARD OF REGENTS, and JOHN B. KING, Jr., as President of the University of the State of New York, and Commissioner of Education,

Defendants.

STATE OF NEW YORK)
) ss.:
COUNTY OF ALBANY)

CHARLES SZUBERLA, being duly sworn, deposes and says:

1. I am the Assistant Commissioner for School Operations at the New York State Education Department ("NYSED") and have held that position for 3 years. In that position, I am responsible for advising school districts and BOCES (Boards of Cooperative Educational Services) on educational management services, including the requirements of New York Education Law § 2023-a, which Plaintiffs refer to as the "property tax cap." Prior to my

appointment as Assistant Commissioner, I served as Executive Director of Management Services for approximately 14 years at NYSED and performed similar duties and responsibilities. I make this affidavit upon personal knowledge, including documents that I reviewed.

2. Education Law § 2023-a was adopted as part of chapter 97 of the Laws of 2011. The Sponsor's Statement in Support noted that "New York property owners pay among the highest taxes in the nation ... [which has a] devastating impact ... on homeowners throughout New York. ... Other states have property tax caps, including Massachusetts, Illinois, California and Michigan. New Jersey was the most recent state to enact a property tax cap." See S.5856-2011.¹ The statute requires that a proposed budget which increases taxes in excess of the statute's threshold be approved by a sixty percent majority of the voters.

3. Education Law § 2023-a does not reduce a school district's education funding. Rather, the statute places additional control in the hands of the qualified school district voters to determine whether to raise the property tax burden above a certain point, by establishing a levy threshold beyond which a school district must engage in certain procedures to adopt a budget.

4. Education Law § 2023-a is not a "hard cap," i.e., one that is absolute and cannot be exceeded. In fact, there is no cap if a district's budget obtains at least a 60% voter approval in accordance with the procedural requirements of Education Law § 2023-a. In addition, the statute contains several exclusions from the tax levy limit, including:

a. a tax levy necessary for expenditures resulting from court orders or judgments against the school district arising out of tort actions for any amount that exceeds five percent of the total tax levied in the prior school year;

¹ <http://open.nysenate.gov/legislation/bill/s5856-2011>.

b. in years in which the state and local employees retirement system average actuarial contribution rate increases by more than two percentage points from the previous year, a tax levy necessary for expenditures for the coming fiscal year for school district employer contributions to the state and local employees retirement system caused by growth in the system average actuarial contribution rate minus two percentage points;

c. in years in which the normal contribution rate of the state teachers' retirement system increases by more than two percentage points from the previous year, a tax levy necessary for expenditures for the coming fiscal year for school district employer contributions to the state teachers' retirement system caused by growth in the normal contribution rate minus two percentage points; and


d. a capital tax levy. Education Law § 2023-a [2][i] (i)-(iv).²

5. Furthermore, the statute allows an adjustment to the tax levy due to growth in the tax base based upon qualitative and quantitative changes to the district's real property values. Education Law § 2023-a [2-a], [3][a][2].

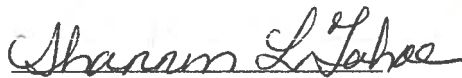
6. Education Law § 2023-a also permits a "carry-over" on a year-to-year basis; i.e., a district is permitted to carry over the amount by which the tax levy for the prior school year was below the applicable tax levy limit for that school year, if any, up to an amount that equals one and one-half percent of the tax levy limit for that prior school year. Education Law § 2023-a [2][b] and [3][a][7]."

² Educ. Law § 2023-a does not apply to the school districts in New York City, Buffalo, Rochester, Syracuse or Yonkers. The Legislature enacted Gen. Mun. Law § 3-c, which applies to municipalities which include the school districts of Buffalo, Rochester, Syracuse and Yonkers, and which requires passage of a local law by a 60 percent vote of the total voting power of those cities' governing bodies in order to raise the real property tax levy above the levy limit. Neither Educ. Law § 2023-a nor Gen. Mun. Law § 3-c apply to New York City.

7. Moreover, in accordance with Education Law § 2023-a, if the budget is defeated in the first effort to pass such a budget, a school district can re-submit the same budget, or a revised budget, to district voters. Education Law § 2023-a [7]. Only after two defeats does Education Law § 2023-a limit the board's options, and require adoption of a budget with the same tax as was levied in the prior school year. Education Law § 2023-a [8]. Thus the statute allows a school district two chances to pass a budget with a levy less than, equal to, or in excess of the tax cap. If unsuccessful in both efforts, the district is permitted to adopt a budget supported by a tax levy up to last year's tax levy.


CHARLES SZUBERLA

Sworn to before me this
25th day of August, 2014.


Notary Public

SHANNON L. TAHOE
NOTARY PUBLIC-STATE OF NEW YORK
No. 02TA6086750
Qualified in Saratoga County
My Commission Expires February 03, 2015