

STATE OF NEW YORK
SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of an Article 78 Proceeding

NADIA CORTES, VIRGIL DANTES, ANNMARIE
HESLOP, CURTIS WITTERS, on behalf of
themselves and their Children

Petitioners-Respondents,

-against-

ROBERT MUJICA, Director, New York State
Division of Budget, NEW YORK STATE DIVISION
OF BUDGET, MARRYELLEN ELIA, New York State
Commissioner of Education, NEW YORK STATE
EDUCATION DEPARTMENT

Respondents-Appellants.

**AFFIDAVIT OF
ROBERT F. MUJICA**

Appellate Division No.: _____

Albany County Supreme
Court Index No.: 05102-16

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

ROBERT F. MUJICA, being duly sworn, deposes and says:

1. I am currently the Director of the New York State Division of Budget (“Budget Director”) and a named Respondent in this proceeding, as well as an appellant in this appeal before the Appellate Division, Third Department. I was appointed Budget Director by Governor Andrew Cuomo and began serving in that capacity on January 14, 2016.

2. I submit this Affidavit in support of my, and Respondent-Appellant Division of Budget’s (collectively “Appellants”), opposition to Petitioners-Respondents (“Respondents”) motion to vacate the automatic stay governing this appeal.

3. In my capacity as Budget Director, I am aware that if this Court vacates the stay currently barring the enforcement of the lower court’s Decision and Order/Judgment, requiring

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Appellants to release the Transformation Grant funds to the New York State Education Department ("SED"), which would then release funds to the schools at issue in this proceeding, the State's standard processes for the disbursement of public funds would be disrupted and Appellant Division of the Budget ("DOB") would be unable to retrieve, or recover, those funds in the event it were to prevail on this appeal. In light of the position taken in this case by Appellant the New York State Education Department, I do not believe that it would retrieve or recover these funds in the event Appellant DOB were to prevail on this appeal.

4. Pursuant the Transformation Grant appropriation (see Affirmation of Karl J. Sleight ("Sleight Aff."), at Ex. 4), Transformation Grant funds are to be disbursed by SED for the reimbursement of specific expenses which must occur *prior* to disbursement.

5. Once Transformation Grant funds are released by DOB to the New York State Education Department ("SED") and those monies are released to the eligible school districts, Appellant DOB has no ability to recall or recover those funds.

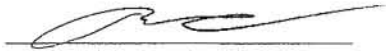
6. Accordingly, if this Court vacates the stay currently prohibiting Respondents from enforcing the challenged judgment and Appellants are forced to release the Transformation Grant funds, a victory on appeal by Appellants would be meaningless as the Appellants would have already dispersed the funds at issue and (i) in the case of Appellant DOB, it would have no way thereafter to retrieve the same, and (ii) I believe, in the case of Appellant SED, it would not seek to retrieve such funds.

7. Such a result would cause turmoil for Appellants, would disrupt the proper functions of government and would jeopardize millions of dollars of public funds.



ROBERT F. MUJICA

Sworn to before me this
16th day of March, 2017.



Notary Public
TERRANCE N. PRATT
Notary Public State of New York
Qualified in Schenectady County
#02PR6319350
Commission Expires 2/17/2019