

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

JAMES COLL.

Plaintiff,

Index No. 16 / 2598

- against -

NEW YORK STATE COMMISSION ON LEGISLATIVE,
JUDICIAL AND EXECUTIVE COMPENSATION; and

NEW YORK STATE LEGISLATURE; and

ANDREW CUOMO, GOVERNOR OF NEW YORK. Defendants.

Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss

This suit is an action on behalf of the Plaintiff alleging that the power allocated to the commission created in the Budget Act of April 2015 ("Budget") to decide on legislative, executive and judicial pay compensation is unconstitutional. The complaint seeks judgement in the NY Supreme Court to declare one feature of the Budget, which allows the recommendation of the commission to be treated with the "force of law," as contrary to the Constitution of the State of New York and, therefore, null and void.

Arguments

In pursuant to the theory that we, the people, give power to the government, it is natural and right for a citizen to challenge an exercise of power believed to be unlawful. The Defendant's Motion raised concern to the Claim's description of this Plaintiff as a citizen of NY. Let me be more complete in my personal details. In addition to being a lifelong citizen of New York State, I am a taxpayer, a voter, a public servant, a homeowner and a father of two children both of whom are also lifelong citizens of New

York State. I am not a lawyer so my arguments to the Court, while genuine and legitimate, are not provided in the language of anything but a parent concerned about the potential for even more grievous encroachment by the state legislature regarding the future liberties of my children.

The Defendant's Motion to Dismiss ignores two important features of state constitutional theory promoted by every state in the nation—including New York. The first theory is the premise that the legislature works for the people. An even cursory reading of our state's constitution would remind us that our state's fundamental law of the land was constructed to protect the people from an oppressive, corrupt or, in this case, self-serving legislature. Few examples of this misrepresentation can be more illustrative than the action of our elected representatives to create a commission designed to empower an unaccountable, unelected body to make decisions that may be unpopular with the electorate. The reoccurring theme in the Defendant's Motion to Dismiss can only be summarized as promoting a contrasting theory that the NYS Constitution was designed to protect our state legislature from interference by the people.

The second governmental theory ignored by the Defendant's Motion would serve reminds us that statutes passed by the legislature and signed by the governor must conform to constitutional mandates. This principle is based upon the general understanding that if given unfettered and unrestrained power, lawmakers would inevitably operate out of self-interest so their powers are checked by a constitution that

supersedes their authority and limits it. This claim is not an effort to “legislate through the courts,” as maintained by the Defendants. It instead seeks to restore proper legislative power and responsibility as prescribed by the NYS Constitution.

In the instance outlined in this claim, the Budget removed power from a minority of NY legislators who voted against the measure—some of whom even addressed concern regarding the commission’s constitutionality in the floor debate over the Budget—and placed it in the full power of the majority who decided to establish the commission. While laws generally reflect majoritarian support, the Constitution is, in part, designed to protect the minority from being overrun in every instance by the will of any group equalling more than fifty percent of the legislature.

The Defendant’s Motion would have us believe that the reverse is true on both counts, creating a new reality where the legislature is an entity immune from citizen influence and control and the constitution can be overridden at the will of lawmakers.

This claim has not been filed based on issue of whether elected officials deserve a pay raise, as the Defendant’s Motion states, but instead on the commission’s power to decide such an issue as granted unconstitutionally by the governor and the legislature.

The Motion to Dismiss offers that the petitioner's claim is not ripe until the commission decides to unilaterally actually authorize a raise. This is inaccurate. The commission has had the power in question in this claim since the Budget was signed into law. They

are holding meetings and issuing public statements. The claim is to the constitutionality of the Budget to cede the power over this decision—exercised or not—to the commission. Lawmakers ceding the lawmaking power provided solely to them in the NYS constitution to the commission by statute to do as they decide is the question this Petitioner is asking the Court to consider.

Legislative deference is important and also a fundamental feature of constitutional theory. But when the legislature—in concert with the executive—is acting contrary to the law in a way that promotes an interest of the legislators and executive themselves, a heavy burden should be on those who stand to personally benefit from a dismissal of this constitutional challenge.

The law passed in the Budget act relating to the pay raise commission is different than other laws passed to promote a public regard. This commission is empowered with the ability to assist the very legislators who established the commission, clearly creating a way for the legislators and governor to avoid the very decisions the constitution of NY requires them to address.

The premise put forward in the Defendant's Motion that an injury effecting all of those living in New York diminishes the injury to this Plaintiff makes little sense. What other remedy is afforded to an individual who is arguing blatant subversion of the constitution if not judicial review? Individual citizens must be afforded access to our courts—at the

very least—if a citizen is raising a question about whether the other branches are working in contrast to our state’s fundamental law.

The standing for my claim is more than a “deep concern,” as alleged in the Defendant’s Motion to Dismiss. The commission device established in the Budget was created specifically to avoid any input I would have through my specific legislators. Others affected by my injury do not mitigate that I have standing to file a suit through the lack of a clear and defined role by my individual legislators before a law has any force.

Our state capital officials are well aware of an alternate way to grant their constitutionally-mandated power and responsibility to “independent” commissions. When Albany lawmakers sought to alleviate their own responsibility to redraw district lines following deca-annual census computations, a change was made to the constitution by actually going through the process required to change the constitution. This amendment process, requiring affirmative votes in two sessions of the legislature followed by approval of the voters, was achieved relating to the creation of an independent redistricting commission after a referendum on the issue in November 2014 (*see NYS Constitution Article 3, section 5-b*). This process was not followed in the legislature creating the pay raise commission, which utilized a simple majority vote in one legislative session and no referendum by the voters. Short-circuiting the process for amending the state constitution—which Albany lawmakers know exists because they used them so recently to create the redistricting commission—shows their motive to serve themselves instead of the state’s fundamental law.

The powers of our state government are limited by constitutional controls the governor, every member of the NYS legislature and every member of the judiciary take an oath to adhere to. The expectation of any of our elected officials when exercising power is first and foremost that they act with legitimacy. In a time when far too often citizens are feeling neglected by their representatives, a challenge to that legitimacy deserves a fair and complete hearing not a dismissal. By prohibiting the challenge in this claim to proceed, the Court would be saying the restraints outlined in our state constitution either don't exist and the words on paper are meaningless or the legislature and governor are unrestrained by them.

Conclusion

For the foregoing reasons, the Plaintiff respectfully requests that the Court denies the Defendant's Motion in its entirety.

August 17, 2016

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