

Compensation Committee Public Statement

James Coll November 30, 2018

Thank you for the opportunity to speak at this forum. If the New York State Legislature wants to “encourage more people to run for public office, participate in the political process and promote democracy,” as stated by the Assembly Speaker in his testimony today as justification for increased compensation, they can immediately achieve this objective not by spending more taxpayer money on their salaries but by implementing laws that make the process for candidates to gain ballot access easier than it currently stands in our state. In addition to lulus and outside income, laws that reform our election system to encourage competitive contests should also be part of the conversation about compensation.

My testimony today, however, is not a judgement on whether Albany officials should get a pay raise. It is, instead, a criticism of the device being used by lawmakers and Gov. Cuomo to reach into the pockets of hard-working taxpayers in a way that is in sharp contrast to the spirit and letter of the New York State Constitution they each took an oath to uphold.

I also previously took an oath to uphold the New York Constitution when I was sworn in as a New York City police officer at age 24. For 21 years I took that oath—and the powers and limitations it bestowed—very seriously. I took it so seriously, in fact, that in 2013 I started a not-for-profit called ChangeNYS.org to promote civic education and the importance of constitutional study in our state.

In addition to me and countless others, each member of this committee has taken an oath to uphold the state constitution. With that in mind, it was alarming to read after this committee’s Albany hearing earlier this week that Chairman McCall stated “If someone wants to challenge the committee’s constitutionality they should, but we did not make the decision.” Once again, each member before us today took an oath to uphold the constitution, which makes it more than the responsibility of our judges. It makes it each of your responsibility as well.

You cited the judiciary as the only resource in determining constitutionality, Chairman McCall. That is unfortunate. While many of our jurists work hard to uphold the law, I can attest that the courts may not always be the best remedy for an engaged and informed citizen even with the law on his or her side. I filed a suit against the near-identical power grant of this pay raise committee that had been given to a pay raise commission established in 2015. The case did not see the light of day after it was answered with a one-page dismissal by Judge George Peck in Nassau County, who admitted the conflict that “this court has a financial interest in the outcome of the case.”

It is interesting to note that the only person who was to represent the legal interest of this committee by appointment, our state’s chief judge, recused herself shortly after being appointed.

So what are the constitutional clauses in question today? We start with the fact that this committee has been authorized with the ability to magically have their recommendations transformed into the “force of law,” as authorized by the April Budget. The false premise that the legislature and governor can give away their constitutionally-allocated role in lawmaking to a hand-picked committee should be so obviously unconstitutional that it need no further explanation. New York’s Constitution is crystal clear on who has the ability to make law...and it makes no reference to a committee such as the one before me today.

Article III Section 7: “*No money shall ever be paid out of the state treasury or any of its funds...except in pursuance of an appropriation by **law**...*” This clause mandates that money spent by the government is appropriated by law not by other means.

Article III Section 6: “*Each member of the legislature shall receive for his or her services a like annual salary, to be fixed by **law**.*” We continue in this clause the theory that money spent—even on the salary of lawmakers—is appropriated by law not by other means.

Article III Section 13: “*...no **law** shall be enacted except by bill.*” This clause mandates that every law—even the ones described above detailing how money is spent on the salary of lawmakers—are enacted by bill not by other means.

Article III Section 14 requires specific affirmation of a bill in order for it to become law: “*...no[] bill [shall] be passed or become a **law**, except by the assent of a majority of the members elected to each branch of the legislature...*” This clause mandates that no bill—and there is no wiggle room here—becomes law unless it go through both houses of the legislature.

If the legislature and the governor can delegate away their lawmaking power on the specific issue of compensation and the spending of taxpayer monies, what other areas of lawmaking is the legislature and governor authorized to delegate power to other forums such as this? When the state legislature gave away its power to redistrict following the results of the next constitutionally-mandated census to a commission, it required a constitutional amendment, which was approved in two sessions of the legislature and by the voters in 2014, as required by the state constitution. The power delegated here needs to go through the same process in order to empower this committee.

Do we, the voters, have the right and power to hold our elected officials responsible for anything? The constitution is clear that we do and committee members present today must know that your work has the potential to absolve them of the very responsibility and accountability that is mandated in the state constitution.

Another issue is the presence of the state comptroller on this committee. The comptroller, under Article V Section 1 of the NYS Constitution, is constitutionally barred from participating.

“The legislature shall assign to [the comptroller] no administrative duties, excepting such as may be incidental to the performance of [his or her] functions...” Nothing in those duties outlined in the constitution include lawmaking.

One other matter: The timeframe under which a pay raise may take effect for Albany lawmakers is a serious flaw in our state constitution.: In contrast, the US Constitution mandates in the 27th Amendment that *“No law varying the compensation for the services of the Senators and Representatives shall take effect, until an election of Representatives shall have intervened.”*

Our state constitution mandates that *“Each of the state officers named in this constitution shall...receive a compensation...which shall not be increased or diminished **during the term** for which he or she shall have been elected or appointed...”* This allows for the current situation, where a raise can be implemented in December and take effect less than three weeks later in January without the voters evaluating it until 22 months later. It was unseemly to make the deadline for this committee’s recommendation a month and two days following. Our state should change the state constitution’s Article 13 Section 7 clause to allow voters to have a say before a pay raise takes effect. Not two years after.

As I stated at the start of my testimony, I am not passing judgement on whether Albany officials should get a pay raise. I am critical of the device being used by lawmakers, Gov. Andrew Cuomo and now this committee to reach into the pocket of hard-working taxpayers in a way that is in sharp contrast to the spirit and letter of the NYS Constitution you each took an oath to uphold.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. GEORGE R. PECK
Supreme Court Justice

_____ X TRIAL/JAS, PART 21
NASSAU COUNTY

JAMES COLL,

Plaintiff,

INDEX NO. 2598-2016
MOTION SEQ. 001
MOTION DATE 8-25-16

-against-

NYS COMMISSION ON LEGISLATIVE;
JUDICIAL AND EXECUTIVE COMPENSATION;
NYS LEGISLATURE; NYS GOVERNOR,

Defendants.

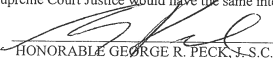
-----x

The plaintiff, James Coll, by means of Summons and Complaint brings this action against The New York State Commission on Legislative, Judicial and Executive Compensation, The New York State Legislature and The New York State Governor to declare that the Commission on Legislative, Judicial and Compensation acted in an unconstitutional manner.

The court has examined the opposition papers of the Attorney General and credits the factual assertions and legal conclusions contained therein accordingly, the motion to dismiss is GRANTED.

Although this court has a financial interest in the outcome of this case, recusal is not necessary because every New York State Supreme Court Justice would have the same interest.

Dated: September 1, 2016
Mineola, New York


HONORABLE GEORGE R. PECK, J.S.C.

ENTERED
SEP 01 2016
NASSAU COUNTY
COUNTY CLERK'S OFFICE