

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ROXANNE DELGADO, MICHAEL FITZPATRICK,
ROBERT ARRIGO and DAVID BUCHYN,

Plaintiffs,

-against-

STATE OF NEW YORK, and THOMAS P. DiNAPOLI
AS COMPTROLLER OF THE STATE OF NEW
YORK,

Defendants.

Index No.: 907537-18
Ryba, J.S.C.

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS'
MOTION TO DISMISS THE AMENDED COMPLAINT

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol
Albany, New York 12224

HELENA LYNCH
Assistant Attorney General
of Counsel
Bar Roll No. 4383642
Tel: (518) 776-2580



C. Plaintiffs Fail to State a Claim that the Committee Exceeded its Mandate by Recommending Re-Grouping of Salaries in Executive Law § 16920

D. Plaintiffs Fail to State a Claim that the Committee Exceeded its Mandate by Recommending Limitations on Outside Income21

POINT III: PLAINTIFFS LACK STANDING TO CHALLENGE THE COMMITTEE’S RECOMMENDATIONS REGARDING STIPENDS, OUTSIDE INCOME, AND GROUPING OF SALARIES IN EXECUTIVE LAW § 16924

POINT IV: PLAINTIFFS FAIL TO STATE A CLAIM OF AN OPEN MEETINGS LAW VIOLATION27

POINT V: PLAINTIFFS FAIL TO STATE A CLAIM OF A SAPA VIOLATION32

CONCLUSION34

it does not provide for when it shall end. *See* N.Y. Const. Art. XIII, § 4 (“The political year and legislative term shall begin on the first day of January; and the legislature shall, every year, assemble on the first Wednesday after the first Monday in January.”). Accordingly, to the extent that any of the Committee’s recommendations, including the restrictions on outside income, have the effect of converting the job of legislator to a full-time position, that change is not in violation of any constitutional provision, statute, or policy, and is not outside the scope of the Committee’s mandate.

Moreover, as with all of the Committee’s recommendations, Plaintiffs fail to take into account that the limitations on outside income are subject to the safeguard, set forth in Part HHH, of legislative approval. *See* Part HHH, § 4.2. Plaintiffs fail to state a claim that the Committee exceeded its mandate in recommending limitations on outside income.

POINT III: PLAINTIFFS LACK STANDING TO CHALLENGE THE COMMITTEE’S RECOMMENDATIONS REGARDING STIPENDS, OUTSIDE INCOME, AND GROUPING OF SALARIES IN EXECUTIVE LAW § 169

Plaintiffs assert their claims pursuant to State Finance Law § 123, as citizen-taxpayers. *See* Compl. ¶¶ 95-99. State Finance law § 123 provides that citizen taxpayers have an “interest in the proper disposition of state funds.” Therefore, pursuant to State Finance Law, a taxpayer may challenge only a “wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property.” State Fin. Law § 123-b. Taxpayers do not have

standing to challenge state statutes that result in reduced or no expenditures. Plaintiffs, therefore, lack standing to challenge the constitutionality of the Committee's recommendations regarding stipends, outside income, and categorization of salaries in Executive Law § 169, because none of those recommendations results in increased expenditures of state revenues.⁶

Courts have characterized taxpayer standing as a question of whether the claims at issue were related to fiscal activities. *See Rudder v. Pataki*, 93 N.Y.2d 273, 281 (1999) (claims that "essentially seek[] to obtain judicial scrutiny of the [State's] nonfiscal activities" are not actionable (internal quotation marks omitted)); *Cheevers v. State of New York*, No. 7306-01, 2002 WL 1559722, at *2 (Sup. Ct. Albany County, July 10, 2002) ("[A] plaintiff may not maintain an action to scrutinize nonfiscal activities."). "Fiscal activity," in the context of taxpayer standing, means disbursement of state revenues. *See Wein v. Comptroller*, 46 N.Y.2d 394, 398 (1979) (State Finance Law § 123-b "only grants taxpayer standing with respect to State expenditures and does not include revenue raising."); *Cheevers*, 2002 WL 1559722, at *2 (holding portion of Legislative Law

⁶ The Departments of the Appellate Division lack unanimity as to whether the question of standing implicates a court's subject matter jurisdiction. *Compare Murray v. State Liquor Auth.*, 139 A.D.2d 461, 461 (1st Dep't 1988) ("A party's standing constitutes a question of subject matter jurisdiction."), with *HSBC Bank USA, N.A. v. Ashley*, 104 A.D.3d 975, 976 (3d Dep't 2013) ("[A] lack of standing does not implicate subject matter jurisdiction."). However, regardless of whether standing is a question of subject matter jurisdiction, Plaintiff's lack of standing is fatal to a their claims. *See, e.g., Ellison v. Stanford*, 147 A.D.3d 1122, 1123 (3d Dep't), *leave to appeal denied*, 29 N.Y.3d 908 (2017) (affirming dismissal for lack of standing).

§ 5-a concerning appointments of new special committee members bore “a sufficient nexus to fiscal activities of the State to allow for section 123-b standing” solely because the additional appointments would result in *increased* expenditures for allowances). Therefore, taxpayer standing does not exist to challenge actions that result in decreased or no expenditures.

Plaintiffs cannot reasonably allege that the Committee’s recommendations regarding stipends result in increased financial disbursements. *See* Report at 14 (recommending that stipends be “folded into the base salary and set at \$0,” with the exception of a limited list of positions for which stipends would continue at the same level). Nor do the limitations on outside income for legislators result in increased revenue expenditures. *See* Report at 14-16. Finally, the recommended re-categorization of salaries listed in Executive Law § 169 does not result in increased revenue expenditures. That recommendation merely simplifies, from six categories to four categories, the salaries in the statute. *See* Report at 20-21. Accordingly, taxpayer standing does not exist to challenge any of these recommendations.

To the extent Plaintiffs assert that they have standing because the foregoing recommendations have a nexus to revenue expenditures, the Court should reject, as the New York Court of Appeals has done, such an overly broad view of taxpayer standing. As the Court of Appeals has explained, “[s]ince most activities can be viewed as having some relationship to expenditures . . . too broad a reading of section 123-b would create

standing for any citizen who had the desire to challenge virtually all governmental acts." *Rudder*, 93 N.Y.2d at 281.

POINT IV: PLAINTIFFS FAIL TO STATE A CLAIM OF AN OPEN MEETINGS LAW VIOLATION

The Open Meetings Law requires that "[e]very meeting of a public body shall be open to the general public." Public Officers Law § 103(a).⁷ To state a claim of a violation of the Open Meetings Law, a plaintiff must allege, with sufficient factual support, that "a quorum of a public body [held] a private meeting for the purpose of transacting public business, thus making unavailable for public scrutiny that body's deliberative process." *MCI Telecomms. Corp. v. Pub. Serv. Comm'n*, 231 A.D.2d 284, 290 (3d Dep't 1997). Even where a plaintiff can demonstrate an Open Meetings Law violation, a court will not annul a public body's related actions unless good cause is shown. Public Officers Law § 107(1); *New York Univ. v. Whalen*, 46 N.Y.2d 734, 735 (1978) ("Judicial relief is warranted only upon a showing of good cause.").

Plaintiffs make the conclusory allegation that the Committee's Report "contains materials and determinations that were not part of any public meeting." Compl. ¶ 106. The Complaint fails to identify any such "materials and determinations." Plaintiffs

⁷ A meeting is defined as "the official convening of a public body for the purpose of conducting public business." Public Officers Law § 102(1). A public body is defined as "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof . . . or committee or subcommittee of other similar body of such public body." Public Officers Law § 102(2).