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Aug 26

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

JAMES COLL. Plaintiff,

Index No. 16 / 2598

- against -

COMPLAINT

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

NEW YORK STATE LEGISLATURE; and

ANDREW CUOMO, GOVERNOR OF NEW YORK. Defendants.

TO THE SUPREME COURT OF THE STATE OF NEW YORK

The complaint of the plaintiff, James Coll, alleges as follows:

1. The plaintiff herein, James Coll, is a lifelong citizen of the State of New York.
2. A defendant herein, the New York State Commission on Legislative, Judicial and Executive Compensation (hereafter referred to as the "Commission"), is an appointed body with powers and limitations as defined by the New York State Budget Act passed on April 1, 2015.
3. A defendant herein, the elected members of the New York State Legislature, is the lawmaking body of the government of the State of New York with powers and limitations as prescribed by the New York State Constitution.
4. A defendant herein, Andrew Cuomo, the Governor of the State of New York, is an elected official in the State of New York with powers and limitations as prescribed by the New York State Constitution.
5. Plaintiff Coll alleges that the authority of the Commission to be empowered with the force of law to approve pay raises for the legislature, the judiciary and the executive branches is a violation of the New York State Constitution. By possessing and exercising such authority, as approved in a delegation of power by both chambers of our state's legislature and our state's governor, the defendants are in violation of the letter and the spirit of the New York State Constitution in regards to how laws are passed, how public monies are allocated and how elected representatives are accountable for the expenditure of public funds.
6. On April 1, 2015, the New York State budget (hereafter referred to as the "Budget") was signed into law by NYS Governor Andrew Cuomo. Part E of the statute (which begins on page 93 and ends on page 95 of the Budget) mandates the formation of a Commission every four years that will make recommendations relating to salary increases of the legislative, judicial and executive branches.
7. The Commission, according to the Budget, "*shall consist of seven members to be appointed as follows: three shall be appointed by the governor; one shall be appointed by the temporary president of the senate; one shall be appointed by the speaker of the assembly; and two shall be appointed by the chief judge of the state...*"
8. In forming the commission, the Budget authorizes the commission's "*recommendations*" to have the "*force of law*" to approve pay increases, applicable without any further approval of the defendants.
9. Part E of the law is an unconstitutional delegation of power by the defendants because it (1) allocates what is the defendant's constitutional power/responsibility in making law to another body that is not elected and does not have the constitutional authority to make law and/or set expenditures and (2) circumvents individual members of the State Legislature (including the plaintiff's elected Assembly and Senate representatives) recording their approval or disapproval of the spending of public money.
10. The NYS Constitution requires that "*any act which...makes...any appropriation of public...money...the question shall be taken by yeas and nays...*" (Article III, Section 23)
11. The circumvention of the legislature's vote on public expenditures, as required by the NYS Constitution, and the placement of this power in the hands of the Commission neither the plaintiff nor his state senator and assemblyman have a direct voice in appointing, affects the plaintiff in the case by making the plaintiff unable to hold his elected state senator and/or assemblyman accountable on the matter of public expenditure related to salary compensation as required by the NYS Constitution. This circumvention is a denial of the plaintiff's representative/constituent relationship as defined by the NYS Constitution.
12. The plaintiff, since he does not reside in the districts of the temporary president of the State Senate or the speaker of the Assembly—the only two public officials of the state legislature empowered by the Budget to make appointments to the Commission—has effectively lost any and all legislative voice in the "force of law" the Commission has been prescribed in deciding salary compensation for legislative, judicial and executive officers.
13. In addition, the Budget allows the legislature only the power to negative the "*force of law*" of the Commission's report but does not require the legislature's consent. This is a violation of the NYS Constitution, which requires the "*assent*" of the legislative body in the passage of every law.

14. The Budget's deadline for both the issuance of the Commission's report (November 15 following an election) and the legislature's ability to negative the Commission's findings (January 1 following) are periods within which the legislature is traditionally and continuously out of session. In order to effectuate the legislative power to negative the law—according to the Budget, the legislature's only way to prevent the increase designated by the Commission—they would have to be called into special session. A special session is a high hurdle. When those who have the power to call one are getting a benefit if they don't, the special session is an implausible remedy.

15. The NYS Constitution requires that “[e]ach member of the legislature shall receive for his or her services a like annual salary, to be fixed by law.” (Article III, Section 6)

16. The NYS Constitution requires that no bill shall pass into law “except by the assent of a majority of the members elected to each branch of the legislature...” (Article III, Section 14)

WHEREFORE, the plaintiff demands judgement that the granting of authority to create law by the Legislature and the Governor to the Commission relating to salary increase and the ongoing Commission's role in exercising this authority be declared unconstitutional.

Dated: April 5, 2016

James Coll