

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ROXANNE DELGADO, MICHAEL FITZPATRICK,
ROBERT ARRIGO and DAVID BUCHYN

Index No.

Plaintiffs,

Date filed:

v.

SUMMONS

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

Defendants.

To the above-named Defendant:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, serve a notice of appearance, on the Plaintiffs' Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates Albany County as the place of trial. The basis of venue is the Defendants are the State of New York and the New York State Comptroller.

Dated: Albany, New York
December 14, 2018

GOVERNMENT JUSTICE CENTER, INC.

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TO: State of New York
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Albany, NY 12224-0341

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 COUNTY OF ALBANY

ROXANNE DELGADO, MICHAEL FITZPATRICK,
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Index No.

Plaintiffs,

VERIFIED COMPLAINT

v.

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

Defendants.

Plaintiffs, Roxanne Delgado, Michael Fitzpatrick, Robert Arrigo, and David Buchyn, for their Complaint against Defendants the State of New York and Thomas P. DiNapoli, as Comptroller of the State of New York allege:

Introduction

1. Unwilling to face the potential political consequences of raising its pay directly, by law, in an election year, the New York Legislature passed a provision in a budget bill last March that improperly assigned the task to a five-member committee.¹

2. Rather than face the voters after implementing their own compensation decision, members of the Legislature pushed their responsibility on to a committee that proceeded to make its own law, redefine

¹ The chief judge of the state of New York declined to serve, and the remaining four members were the comptroller of the state of New York, the chairman of the State University of New York board of trustees and 52nd comptroller for the state of New York, the comptroller for the city of New York, and the chairman of the city university of New York board of trustees and 42nd comptroller for the city of New York.

the job of a legislator in New York, and establish a professional legislative class.

3. Such a major policy decision should have been made by members of the Senate and Assembly in legislation as required by the Constitution (giving voters a chance to evaluate their decision at the ballot box during an election). Instead it was unconstitutionally delegated to a committee by a Legislature that on multiple occasions in the past failed to pass laws on legislative compensation.

4. Not coincidentally, although formed in March this year, the committee could not manage to conduct its first meeting until a week after the general election—November 13, 2018. In less than four weeks, however, the committee managed to schedule four meetings and produce its report.

5. When Ms. Delgado asked at first committee meeting why the committee's decision process was being fast-tracked to its December deadline, NYC Comptroller Stringer snidely responded, "Well you know, you raise an interesting point. It is, it is a little fast. It's been like twenty years, so we could wait another decade."

6. On December 10, 2018, the committee produced a report containing its compensation recommendations for certain elected officials, certain public officers, and members of the Legislature. (A copy of the report is attached as **Exhibit A**).

7. Among other things, the report raises legislative pay drastically—by 63.5%—over the next three years (with the last two being contingent on timely passed budgets), limits stipends or allowances (also known as lulus),

and places restrictions on legislator outside income beginning in January 2020.

8. The committee plainly states that it is creating a new job description in New York: full-time state legislator.

9. Until now, nothing in the New York Constitution or its laws could be construed as describing a legislator's job as anything but part-time.

10. The Constitution establishes only one role for members of the Legislature—to pass laws.

11. Chief among the laws passed annually is the budget bill that appropriates funds to operate the government for the following fiscal year.

12. New York's fiscal year begins on April 1.

13. The Legislature convenes annually on the first Wednesday after the first Monday of January, and each year the Legislature does most of its lawmaking in the two months of each calendar year. (And, as has become habit, it usually packs its most significant new laws into a last minute, middle of the night, budget bill that needs to be passed by March 31.)

14. After the budget bill is passed, legislators come and go and perform light legislative housekeeping until a final push of last-minute lawmaking before adjourning in June.

15. Many legislators spend almost nine months per year performing constituent services, better known as campaigning for re-election.

16. Under the Constitution, legislators are not the ombudspersons, mediators, and connectors helping their constituents navigate and find favor with their state and local governments that they have made themselves to be.

17. Those are extra-constitutional tasks taken on by legislators in order to endear themselves to their districts, presumably to ensure re-election.

18. And New Yorkers have not consented to be governed by such full-time legislators under their Constitution.

19. What a legislator chooses to do with his or her time when the Legislature is not in session is that person's business, subject to proper disclosure rules and transparency.

20. It is not, however, the business of New Yorkers to be paying them for that time without having a say on the matter.

21. The Legislature and the committee have over-stepped their constitutional and legal bounds.

22. Nevertheless, the committee's recommendations regarding legislator and non-elected public officer compensation have the force of law beginning January 1, 2019, by operation of the 2018 budget bill establishing the committee.

23. The committee's recommendations are unconstitutional and unlawful and must be enjoined because the Legislature cannot delegate its lawmaking power in this way and the committee unlawfully exceeded any authority it may have had.

Unlawful Delegation and Unauthorized Lawmaking

24. The legislation delegating compensation determinations violates the New York Constitution, Article III, Section 6 and Article XIII, Section 7.

25. Moreover, the committee illegally exceeded the authority unconstitutionally delegated to it by the Legislature by implementing its own

policy prescriptions in setting compensation levels and limiting outside income.

26. Nothing in the 2018 law gave it the authority to limit outside income, eliminate allowances, or re-classify public officer salaries.

27. The committee had a limited, but unconstitutional, directive to “determine whether, on January 1, 2019, the annual salary and allowances of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law, warrant an increase.”

28. This directive abrogates the Legislature’s obligation to set its own salary and those of statewide elected officials by law.

29. Even if such a delegation was lawful, the committee overstepped its authority and proposes to implement major policy changes not within its mandate.

30. Under New York law, it can be constitutionally lawful for agencies to be tasked with filling in the details, or interstices, of policies in laws passed by the Legislature.

31. However, the task of setting the over-arching policy, like compensating legislators as if the job is full-time, falls to the Legislature.

32. Prior to the committee’s report, the legislative law provided for legislative salaries compensating members in the amount of \$79,500 for their part-time work-in a legislative session that runs from January to June each year—typically with only 60-65 calendared session days, roughly half the business days in that period.

33. Under Article III, Section 6 of the New York Constitution, the Legislature, by law, also fixed certain allowances for officers to compensate them for their extra work despite their part-time status.

34. The law further did not restrict legislator outside income.

35. For public officials, Section 169 of the Executive Law established six pay scales, but the committee has determined to re-arrange it to four.

36. The committee report unlawfully re-writes each of those legislative policies.

37. It further unlawfully purports to increase legislative salaries during the legislative term upon the Legislature timely passing the prior year's budget, contrary to Article III, Section 6 of the New York Constitution.

History

38. Prior to 1947, any change to legislative compensation required a constitutional amendment.

39. In 1947, the people of New York voted to amend their Constitution to allow legislators to adjust their salaries by law.

40. The Legislature most recently passed a law to raise its annual salary to \$79,500 in 1998.

41. Since 1998, legislators introduced bills to raise the legislative salary on multiple occasions, but none passed.

42. The 2015 budget bill established a special quadrennial commission on legislative, judicial and executive compensation.

43. The law provided that quadrennial commission until November 15, 2016 (unsurprisingly **after** that year's general election) to make

recommendations regarding legislative, judicial and executive compensation that would have the force of law on January 1, 2017.

44. Among other things, the Legislature tasked the quadrennial commission with determining whether “annual salaries and allowances of members of the Legislature, and salaries of statewide elected officials and state officers referred to in section 169 of the executive law warrant an increase.”

45. The 2015 law further provided that the commission should take into account:

“all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state’s ability to fund increases in compensation and non-salary benefits.”

46. The quadrennial commission’s time expired without recommendations made on legislative and executive compensation because the executive appointees to the commission refused to vote on a report that did not make legislators effectively full-time and limit outside income (11/15/16 transcript, p. 9, excerpt attached as **Exhibit B**).

47. The quadrennial commission is set to reconvene under the 2015 law beginning June 1, 2019. However, the 2018 budget bill contained a provision creating a new committee to “determine whether, on January 1, 2019, the annual salary and allowances of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law, warrant an increase.”

48. Word for word except for one addition at the beginning, the Legislature in the 2018 law required the committee to take into account:

all appropriate factors including, but not limited to: the parties' performance and timely fulfillment of their statutory and Constitutional responsibilities; the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by comparable professionals in government, academia and private and nonprofit enterprise; the ability to attract talent in competition with comparable private sector positions; and the state's ability to fund increases in compensation and non-salary benefits.

49. The 2018 law also permits the committee to “implement cost-of-living adjustments that apply annually and/or phase-in salary adjustments annually for 3 years” except that “any phase-in of a salary increase or cost of living adjustment will be conditioned upon performance of the executive and legislative branch and upon the timely legislative passage of the budget for the preceding year.”

50. The committee did not convene until November 13, 2018, and then with only four of five members agreeing to serve.

51. One of the four, the state comptroller tasked with auditing the state's finances, was appointed and served despite the Constitution's Article V, Section 1 prohibition on the Legislature assigning him administrative duties.

The Report and Recommendations

52. On December 10, 2018, the committee issued a report recommending increasing legislative salaries over three years, culminating in a \$130,000 annual salary for legislators as of January 1, 2021, eliminating most stipend

or allowances, capping outside income at 15% of the legislative salary and prohibiting certain types of income beginning January 1, 2020.

53. The committee asserts that its legislative compensation recommendations will have the force of law on January 1, 2019.

54. Effective January 1, 2019, over the course of three years, the Attorney General and State Comptroller salaries will rise to \$220,000.

55. As of January 1, 2019, salary levels for Executive Law 169 state officials will be adjusted upwards and re-grouped into four tiers, with two tiers having salary ranges, and certain positions reclassified from the six tiers in the current executive law.

56. The committee uses as its predicate to make sweeping changes, especially as to the Legislature, the introductory section to the 2018 law to “make recommendations with respect to **adequate levels of compensation, non-salary benefits, and allowances** pursuant to section 5–a of the legislative law, for members of the Legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law” (emphasis in original).

57. Section 2.2 of the 2018 law, however, limits the committee’s scope to just one determination as to “whether, on January 1, 2019, the annual salary and allowances of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the Executive Law warrant an increase.”

58. Under Section 4.2 of the law, only the determination whether the annual salary and allowances of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the

executive law, warrant an increase can have the force of law and supersede other laws.

59. The committee did not merely determine that legislative salaries and allowances warranted an increase, but instead re-defined the job description for legislators in New York, making it a full-time position with fewer positions awarded allowances while capping and prohibiting outside income.

60. Further, the committee report violates the Constitution by putting in place a financial incentive for legislators to increase their salaries during their term by passing an on-time budget.

61. By its operation, the report makes phased-in increases of legislator salaries conditional upon the “timely legislative passage of the budget for the preceding year.”

62. Specifically, on January 1, 2020, legislators can expect a salary increase from \$110,000 to \$120,000 if they legislatively pass a budget by March 31, 2019, regardless of its contents and its fiscal impact on New Yorkers.

63. This determination directly contravenes the Constitution, which provides that “[n]either the salary of any member nor any other allowance so fixed may be increased or diminished during, and with respect to, the term for which he or she shall have been elected . . .”

64. Under the same provision of the Constitution, “[e]ach member of the Legislature shall receive for his services a like annual salary, to be fixed by law.”

65. This unseemly \$10,000 cash incentive for legislators to pass a timely budget “un-fixes” their salaries through an unconstitutional *quid pro quo*

mechanism by increasing or decreasing (depending upon one's perspective) those salaries during the term for which the legislators are elected.

66. The Committee's recommendation to increase legislator salaries based upon the Legislature timely passing a budget violates the Constitution.

67. Moreover, there is no evidence that the committee fulfilled its mandate, as unconstitutional as it was, to examine and evaluate **compensation, non-salary benefits, and allowances.**

68. The Committee's records contain no evidence that the Committee examined or evaluated total compensation, including non-salary benefits such as health benefits and pensions.

69. State by state comparisons of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the executive law only compare salary levels.

70. Comparisons of public and elected officials to their private-sector counterparts did not address non-salary compensation.

71. Nothing in the record on the committee's website indicates that it examined or evaluated all the elements of compensation, making any state by state, or position by position comparisons.

72. The committee member biographies included in the report do not indicate that any of them possesses particular expertise in evaluating and establishing executive compensation across wide fields of expertise.

Open Meetings Law

73. The committee conducted four public meetings and acknowledged at the first meeting that the Open Meetings Law applied.

74. Four of the five appointed members attended each of the four public meetings.

75. At the fourth and final public meeting on December 6, 2018, the committee conducted minimal deliberations and voted on certain issues to be included in its report.

76. The committee did not deliberate or vote on a draft report at any public meeting.

77. The committee issued its final report on December 10, 2018.

78. The final report contains materials and determinations that were not part of any public meeting.

79. If the final report is the product of deliberations by the committee, the committee violated the terms of the Open Meetings Law by voting on its contents out of public sight.

Parties

80. Plaintiff Roxanne Delgado is an individual residing in Bronx County, New York.

81. Plaintiff Michael Fitzpatrick is an individual and Assembly member residing in Suffolk County, New York.

82. Plaintiff Robert Arrigo is an individual residing in Saratoga County, New York.

83. Plaintiff David Buchyn is an individual residing in Saratoga County, New York.

84. Defendants are the State of New York and Thomas P. DiNapoli in his official capacity as the Comptroller of the State of New York.

Venue

85. Venue is proper in this Court under CPLR 503.

Count 1: Declaratory Judgment – 2018 Budget Bill

86. Plaintiffs repeat and re-allege the foregoing paragraphs as if the same were fully set forth at length herein.

87. The New York Legislature delegated to a committee its legislative power under Article III, Section 1 of the New York Constitution to set legislative and statewide elected official compensation by law under Article III, Section 6.

88. Under CPLR 3001 *et seq.*, Plaintiffs seek a declaration from this Court that Part HHH of Chapter 59 of the Laws of 2018 regarding legislative and statewide elected official compensation is unlawful, invalid, and unenforceable.

Count 2: Declaratory Judgment – Committee Report

89. Plaintiffs repeat and re-allege the foregoing paragraphs 1-84 as if the same were fully set forth at length herein.

90. The New York Legislature delegated the task of determining whether the annual salary and allowances of members of the Legislature, statewide elected officials, and salaries of state officers referred to in section 169 of the Executive Law, warrant an increase.

91. The committee exceeded its authority by making a policy determination that legislators should be compensated for full-time service and then making salary and allowance determinations purporting to be consistent with that determination.

92. The committee exceeded its authority by making a policy determination that salaries of state officers referred to in section 169 of the Executive Law should be re-classified from six to four tiers.

93. The committee failed to fulfill its assigned task by not adequately examining and evaluating compensation and non-salary benefits for legislators, statewide elected officials, and state officers referred to in section 169 of the Executive Law.

94. Under CPLR 3001 *et seq.*, Plaintiffs seek a declaration from this Court that the determinations in the committee's reports to be made effective on January 1, 2019, regarding compensation for legislators, statewide elected officials, and state officers referred to in section 169 of the Executive Law, under Section 2 of Part HHH of Chapter 59 of the Laws of 2018 are unlawful, invalid, and unenforceable.

Count 3: Declaratory Judgment – State Finance Law

95. Plaintiffs repeat and re-allege the foregoing paragraphs as if the same were fully set forth at length herein.

96. The determinations in the committee's reports regarding compensation for legislators, statewide elected officials, and state officers referred to in section 169 of the executive law are to be made effective on January 1, 2019 under Section 4.2 of Part HHH of Chapter 59 of the Laws of 2018.

97. Those determinations are unconstitutional and unlawful.

98. Under State Finance Law § 123, Plaintiffs seek a declaration from this Court that any disbursement of state funds regarding compensation for legislators, statewide elected officials, and state officers referred to in section

169 of the executive law as determined by the committee under Section 2 of Part HHH of Chapter 59 of the Laws of 2018 are unconstitutional and illegal.

99. Under State Finance Law § 123, Plaintiffs seek this Court to enjoin disbursement of any state funds regarding compensation for legislators, statewide elected officials, and state officers referred to in section 169 of the executive law as determined by the committee under Section 2 of Part HHH of Chapter 59 of the Laws of 2018.

Count 4: Declaratory Judgment - Open Meetings Law

100. Plaintiffs repeat and re-allege the foregoing paragraphs as if the same were fully set forth at length herein.

101. The committee is a public body that conducted public business and deliberations in violation of the Open Meetings Law.

102. Under Public Officers Law § 107, Plaintiffs seek a declaration from this court that the committee violated the Open Meetings Law and that the December 10, 2018 committee report is void in its entirety.

Relief Requested

103. Plaintiffs respectfully request that this Court issue an order:

- a. Declaring that Part HHH of Chapter 59 of the Laws of 2018 is unlawful, invalid, and unenforceable, in violation of New York law;
- b. Declaring that the report of the Committee on Legislative and Executive Compensation dated December 10, 2018 unlawfully usurps the legislative power of the New York Senate and Assembly;

- c. Declaring under State Finance Law § 123 that any disbursement of state funds regarding compensation for legislators and state officers referred to in section 169 of the executive law as determined by the committee under Section 2 of Part HHH of Chapter 59 of the Laws of 2018 are unconstitutional and illegal;
- d. Declaring under Public Officers Law § 107 that the committee report dated December 10, 2018 is void;
- e. Enjoining Defendants from disbursing state funds in accordance with this Court's declarations of law; and
- f. Granting such other and further relief as this Court may deem just and proper.

Dated: Albany, New York
December 14, 2018

Respectfully submitted,



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Counsel for Plaintiffs

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) :SS

Cameron J. Macdonald, being duly sworn, deposes and says:

I am the attorney for Roxanne Delgado, Michael Fitzpatrick, Robert Arrigo, and David Buchyn, Plaintiffs in the above-captioned action.

I have reviewed the foregoing Complaint and know its contents to be true to my knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Plaintiffs because the Plaintiffs reside outside Albany County where I maintain my office.

[Handwritten signature of Cameron J. Macdonald]

Cameron J. Macdonald

Sworn to and subscribed before me this 14 of December 2018

[Handwritten signature of Notary Public]

Notary Public

YAIKA DAVILA MENDOZA
NOTARY PUBLIC STATE OF NEW YORK
RENSSELAER
LIC. #01DA6373374
COMM. EXP. 04/09/2022