

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, ANTHONY FUTIA, Jr.)

Plaintiffs)

v.)

STATE OF NEW YORK, ANDREW CUOMO,)

individually and in his official capacity as)

Governor of the State of New York; JOHN J.)

FLANAGAN, individually and in his former)

capacity as Majority Leader of the New York)

State Senate; ANDREA-STEWART COUSINS,)

individually, and in her former capacity as)

Minority Leader of the New York State Senate;)

CARL E. HEASTIE, individually and in his)

official capacity as Speaker of the New York)

State Assembly; BRIAN KOLB, individually and)

in his official capacity as Minority Leader of the)

New York State Assembly; THOMAS DINAPOLI,)

in his official capacity as Comptroller of New York)

State,)

Defendants)

JURY TRIAL REQUESTED

COMPLAINT

CASE No. 1:19-cv-56

Hon._GTS-TWD

Plaintiffs Robert L. Schulz and Anthony Futia, Jr. hereby file this Complaint pursuant to Article IV, Section 4 and the First Amendment of the Constitution for the United States of America and 28 U.S.C. Section 1331 and 28 U.S.C. 1343(a)(3).

STATEMENT OF THE CASE

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4. This Complaint arises from Defendants' violation of Article III of the New York State Constitution by transferring the power of the State Legislature to make law to a body located outside of the Legislative and Executive Branches – a Committee on Legislative and Executive Compensation.

RELIEF REQUESTED

13. Plaintiffs respectfully seek the entry of an Order:
 - c. Declaring Part HHH of S. 7509-C/ A. 9509-C of the Laws of 2018, and the 2018 Committee on Legislative and Executive Compensation and its recommendations to be unconstitutional, null and void; and
 - d. Directing the Defendant Comptroller to reduce the compensation of State Legislators and Executives commensurate with any increase in their compensation resulting from Part HHH of S. 7509-C/ A. 9509-C;

....

JURISDICTION AND VENUE

14. The claims arise under the Constitution of the United States of America. The controversy involves violations of the Constitution. The Court has subject matter jurisdiction under Article III, Section 2 of the federal Constitution, which reads in relevant part: “The judicial power shall extend to all cases, in law and equity, arising under this Constitution.”

15. This court has jurisdiction also under 28 U.S.C. Section 1331 which reads, “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

16. This court has jurisdiction also under 28 U.S.C. 1343(a)(3) which reads in relevant part: “The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person...To redress the deprivation, under color of any **State** law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States....”

17. This action is timely commenced.
18. Defendants and Plaintiff Schulz reside in this judicial district.

FACTUAL BACKGROUND

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II. Committee on Legislative and Executive Compensation

33. On January 18, 2018, defendant Cuomo introduced his executive budget for fiscal year 2018-2019 by twelve bills, #S.7500/A.9500 - #S.7511/A.9511. **None of the twelve budget bills provided for a compensation committee.**

34. One of the twelve budget bills was referred to by the Governor as “**Revenue Budget Bill**” (#S.7509/A.9509)

35. On February 16, 2018, defendant Cuomo introduced his 30-day amendments by amending eight of his original twelve budget bills.

36. The eight bills that defendant Cuomo amended resulted in no differences in the Senate and Assembly versions. Each retained the January 18, 2018 date, beneath the words “SENATE – ASSEMBLY”, but now added a suffix -A to their numbers.

37. **None of the Governor’s amended budget bills provided for a compensation committee – just as no such provision was contained in his initial set of budget bills.**

38. On March 12 and March 13, 2018, the Assembly and Senate “amended” seven of the eight budget bills that defendant Cuomo had amended, which now added a suffix -B to their number.

39. On or about March 30, 2018, by staff, culminating in the behind-closed-doors, “three-men-in-a-room” budget deal-making by defendant Cuomo, Heastie, and then Temporary Senate Leader Flanagan, Senate Revenue Bill #S.7509-B and Assembly Revenue Budget Bill #A.9509-B were “amended” to now produce a single newly-amended Revenue Budget Bill #S.7509-C/A.9509-C, marked “SENATE -ASSEMBLY”.

40. The amendments that created unity Revenue Budget Bill #S.7509-C/A.9509-C, changed the content of Parts taken from the separate Senate and Assembly revenue bills, eliminated whole Parts entirely, and added new ones. Among the **newly added Parts was Part HHH**,^{fn3} whose content was summarized in the bill’s prefatory listing of Parts as:

“establishing a compensation committee to determine the appropriate salaries for members of the legislature and certain other state officials for members of the legislature and certain other state officials; and providing for the repeal of such provisions upon the expiration thereof”.

41. **Part HHH had nothing to do with taxes or revenues – or the rest of the budget bills.**

42. Part HHH did not enact into law “components of legislation...necessary to implement the state fiscal plan for the 2018-2019 state fiscal year.”

43. The Senate and Assembly website reflect that on April 2, 2018 the bill was delivered to defendant Cuomo, who signed it on April 12, 2018, when it became Chapter 59 of the Laws of 2018.

44. On April 27, 2018, defendant DiNapoli issued a “Report on the State Fiscal Year 2018-2019 Enacted Budget”, stating, in relevant part:

^{fn3} Schulz Affidavit of even date, Exhibit A.

“Although the Budget was enacted on time, most budget bills were rushed to passage with ‘messages of necessity,’ leaving very little time for review by legislators and the public. Ideally, important decisions on resources and policies should be made following robust participation, with ample opportunity for analysis and debate.” (at p. 2).

45. On December 10, 2018 the Committee on Legislative and Executive Compensation issued its Report with its recommendations for substantial increases in compensation, effective January 1, 2019 for members of the Legislature, statewide elected officials and Commissioners.^{fn4}

...

ARGUMENT

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SECOND CAUSE OF ACTION:

The Committee on Legislative and Executive Compensation

69. Article III, Section 1 of the New York Constitution mandates, “The legislative power of this state shall be **vested in the senate and assembly.**” (emphasis added).

70. Article III, Section 6 of the New York Constitution reads in relevant part, “Each member of the legislature shall receive for his or her services a like annual salary, **to be fixed by law.** He or she shall also be reimbursed for his or her actual traveling expenses in going to and returning from the place in which the legislature meets, not more than once each week while the legislature is in session. Senators, when the senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional per diem allowance, to be fixed by law. Any member, while serving as an officer of his or her house or in any other special capacity therein or directly connected therewith not hereinbefore in this section specified, may also be paid and receive, in addition, any allowance which may be fixed by law for the particular and additional services appertaining to or entailed by such office or special capacity. **Neither 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,** nor shall he or she be paid or receive any other extra compensation. The provisions of this section and laws enacted in compliance therewith shall govern and be **exclusively** controlling, according to their terms.” (emphasis added).

71. Article III, Section 13 of the New York Constitution reads in relevant part, “The enacting clause of all bills shall be “The People of the State of New York, represented in Senate and Assembly, do enact as follows, **and no law shall be enacted except by bill.**” (emphasis added).

^{fn4} Schulz Affidavit of even date, Exhibit B.

72. Article III, Section 14 of the New York Constitution reads in relevant part, “No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least **three calendar legislative days** prior to its final passage, unless the governor, or the acting governor, shall have certified, under his or her hand and the seal of the state, the facts which in his or her opinion necessitate an immediate vote thereon, in which case it must nevertheless be upon the desks of the members in final form, not necessarily printed, before its final passage; nor shall any bill be passed or become a law, except by the assent of a majority of the members **elected to each branch of the legislature**; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the ayes and nays entered on the journal.” (emphasis added).

73. The People have not given the Legislature the right to transfer its law making powers to anyone.

74. However, Part HHH of the Governor’s 2018 Revenue Bill S.7509-C/A^{fn16} effectively transfers to a Committee located outside of the State Legislature the power to make law.

75. Without a separate vote by the Legislature, a Committee on Legislative and Executive Compensation was established with the adoption of the Governor’s Budget to “examine, evaluate and 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.”^{fn17}

76. The Committee was required by Part HHH to complete its work and submit its recommendation to the Governor and Legislature by December 10, 2018.^{fn18}

77. “Each recommendation... shall have the force of law and shall supersede, where appropriate, inconsistent provisions of section 169 of the executive law, and sections 5 and 5a of the legislative law, unless modified or abrogated by statute prior to January first of the year as to which such determination applies to legislative and executive compensation.”^{fn19}

78. The Committee’s Report recommended substantial and significant increases in compensation for legislators **effective January 1, 2019**.^{fn20} Those increases have not been “fixed by law”, much less a law “enacted by bill.”

^{fn16} Schulz Affidavit of even date, Exhibit A.

^{fn17} Schulz Affidavit of even date, Exhibit A, Part HHH, Section 1.

^{fn18} Schulz Affidavit of even date, Exhibit A at Sections 4.1.

^{fn19} Schulz Affidavit of even date, Exhibit A at Section 4.2.

^{fn20} Schulz Affidavit of even date, Exhibit B at page 14.

79. The Committee’s Report recommended substantial and significant increases in compensation for Statewide Elected Officials **effective January 1, 2019**.^{fn21} Those increases have not been “fixed by law”, much less a law “enacted by bill.”

80. The Committee’s Report recommended substantial and significant increases in compensation for Commissioners **effective January 1, 2019**.^{fn22} Those increases have not been “fixed by law”, much less a law “enacted by bill.”

81. Any argument that Part HHH was intended to provide the legislature time to receive the Committee’s report on December 10, 2018, study and digest it, and call a special session of the Legislature to modify or abrogate its recommendations by statute prior to January first of 2019 is **untenable and not able to be maintained or defended** against this attack on the constitutionality of Part HHH.

82. That the vote of the Legislature in passing Part HHH was intended to be anything other than its final word on the subject of an increase in their compensation in 2019 is a **material fact not in genuine dispute**.

83. That the Legislators were anything but wholeheartedly receptive to and biased in favor of increases in their compensation, along with similar increases in executive compensation...is a **material fact not in genuine dispute**.

84. The scheme violates the Letter and Spirit of certain provisions of the New York State Constitution, including:1) the mandate that the “legislative power of this state shall be vested in the Senate and Assembly (Article III, Section 1); 2) the mandate that compensation of members of the legislature “shall be fixed by law,” (Art. III, Section 6); 3) the mandate that “no law shall be enacted except by bill” (Art. III, Section 13); 4) the mandate that “No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members [of the legislature], in its final form, at least three calendar legislative days prior to its final passage,” (Article III, Section 14); 5) the mandate that 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” (Art. III, Section 14); and 6), the prohibition against an increase in compensation of the members “during, *and with respect to*, the term for which he or she shall have been elected,” (Art. III, Section 6) (emphasis added).

...

CONCLUSION

WHEREFORE, plaintiffs respectfully request a final Order:

...

c. Declaring Part HHH of S. 7509-C/ A. 9509-C of the Laws of 2018, and the 2018 Committee on Legislative and Executive Compensation and its recommendations to be unconstitutional, null and void; and

^{fn21} Schulz Affidavit of even date, Exhibit B at pages 16-17

^{fn22} Schulz Affidavit of even date, Exhibit B at page 17

INDIVIDUAL VERIFICATION

STATE OF _____)
)
COUNTY OF _____)

Anthony Futia, Jr., being duly sworn, says: I am a Plaintiff in the action herein; I have read the foregoing Verified Complaint dated January 15, 2019, and know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief and as to those matters I believe them to be true.

Anthony Futia, Jr.

Sworn to before me this
_____ day of January, 2019

Notary Public