

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED
AUG 13 2013
DOROTHY GARDNER CLERK

JOHN J. CULLERTON, individually and)
in his official capacity as President of the)
Illinois Senate, and)
MICHAEL J. MADIGAN, individually)
and in his official capacity as Speaker of)
the Illinois House of Representatives,)

Plaintiffs,)

v.)

No. 2013 CH 17921

PAT QUINN, Governor of the State of)
Illinois, in his official capacity, and)
JUDY BAAR TOPINKA, Comptroller)
of the State of Illinois, in her official)
capacity)

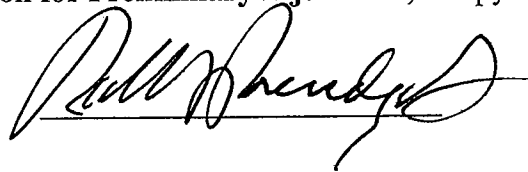
Hon. Neil Cohen

Defendants.)

NOTICE OF MOTION

TO: SEE SERVICE LIST

Please take notice that on **Tuesday, August 6, 2013, at 10:00 a.m.**, I shall appear in Room 2308, of the Richard J. Daley Center before the Honorable Neil Cohen, or any judge sitting in his stead, and present the attached **Motion for Preliminary Injunction**, a copy of which is hereby served upon you.



Richard J. Prendergast
Richard J. Prendergast, Ltd. (#11381)
111 W. Washington Street, Suite 1100
Chicago, Illinois 60602
312-641-3562

CERTIFICATE OF SERVICE

Richard J. Prendergast, an attorney, certifies that he caused a copy of the foregoing **Notice of Motion and Motion for Preliminary Injunction** to be served upon the following Service List, by Messenger Delivery, on this 5th day of August, 2013.

A handwritten signature in black ink, appearing to read "Richard J. Prendergast", written over a horizontal line.

SERVICE LIST

Cullerton, et al. v. Quinn, et al.
No. 13 CH 17921

Brent D. Stratton
Roger Flahaven
Office of Illinois Attorney General
100 W. Randolph St. 12th Floor
Chicago, Illinois 60601

John Schomberg
General Counsel
Office of the Governor
100 W. Randolph St., Suite 16-100
Chicago, Illinois 60601

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FILED - 5
JUL 11 2013
CLERK

JOHN J. CULLERTON, individually and)
in his official capacity as President of the)
Illinois Senate, and)
MICHAEL J. MADIGAN, individually)
and in his official capacity as Speaker of)
the Illinois House of Representatives,)
Plaintiffs,)

v.)

No. 2013 CH 17921

PAT QUINN, Governor of the State of)
Illinois, in his official capacity, and)
JUDY BAAR TOPINKA, Comptroller)
of the State of Illinois, in her official)
capacity)
Defendants.)

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs JOHN J. CULLERTON and MICHAEL J. MADIGAN, by their counsel, Richard J. Prendergast, Kevin Forde, Michael Kasper, Eric Madiar, and Heather Wier Vaught, move for the entry of a preliminary injunction requiring Defendants to pay plaintiffs and other Illinois legislators their lawful salaries for fiscal year 2014 (beginning July 1, 2013), as more specifically set forth in the Complaint for Declaratory and Injunctive Relief in this cause. In support of their motion for entry of a preliminary injunction, plaintiffs state as follows:

Introduction.

This is an action by the leaders of the Illinois General Assembly to remedy an attempt by Governor Quinn to punish legislators by eliminating their salaries through a line-item veto, contravening the separation of powers crafted by the framers of the 1970 Illinois Constitution and in direct violation of a specific provision of the Constitution. By this action, the leaders first

seek a declaration that, in fact, the line-item veto in question did *not* eliminate legislative salaries as prescribed by law, and thus the Comptroller should be required to pay those salaries based on the plain language of the appropriation bill and based on Illinois law. Second, and in the alternative, if the Court were to determine that the Governor's line-item veto did, in fact, eliminate legislative salaries, Plaintiffs seek both a declaration that the line-item veto violated the Illinois Constitution and an injunction ordering Comptroller Topinka to pay legislative salaries to remedy that constitutional violation.

1. Plaintiff John J. Cullerton is an elected State Senator from the 5th Legislative District, and the elected President of the Senate for the current term. Plaintiff Michael J. Madigan is an elected Representative in the General Assembly from the 22nd Representative District, and is also the Speaker of the Illinois House of Representatives for the current term.

2. Defendant Patrick Quinn is the Governor of the State of Illinois and is charged with the duty of upholding the Illinois State Constitution. Defendant Judy Baar Topinka is the Comptroller of the State of Illinois and is charged with the duty to pay each legislator the full salary to which he or she is legally entitled by law. Defendant Topinka failed to pay plaintiffs and other elected legislators the first payment of the salaries to which they are legally entitled, which should have been paid on August 1, 2013, and has indicated that she will not make any future salary payments to legislators until ordered to do so by a court.

3. Article IV, § 11 of the Illinois Constitution of 1970 entitles legislators to receive a salary:

Section 11. Compensation and Allowances

A member shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.

4. The salary amount and payment method are set forth in the General Assembly Compensation Act, which provides that the amount of legislators' salaries will be "\$28,000 or as

set by the Compensation Review Board, whichever is greater”, and be paid in “12 equal monthly installments.” 25 ILCS 115/1. The Act also enumerates the additional compensation to be paid to party leaders, including plaintiffs, and committee officers. *Id.*

5. On May 28, 2013, the Illinois House of Representatives passed House Bill 214, appropriating the necessary funds to pay Illinois legislators’ salaries for the current fiscal year. (A copy of the enrolled version of House Bill 214 is attached to the Complaint as Exhibit A.) The Senate passed the bill on May 31, 2013, and the bill was sent to the Governor.

6. On July 10, 2013, the Governor issued what purported to be a line-item veto (hereinafter “the line-item veto”) eliminating lines 6 through 10 and 15 through 25 of Page 75 of House Bill 214 and lines 1 through 10 of Page 76 of House Bill 214. (A copy of the Governor’s Message is attached to the Complaint as Exhibit B.)

Count I – The Legislation Directs the Comptroller to Pay Legislative Salaries.

7. As set forth in the Complaint, the line-item veto eliminated the following text concerning the base salaries of legislators:

For salaries of the 118 members Of the House of Representatives at a base salary of \$67,836	7,766,100
For salaries of the 59 members Of the Senate at a base salary of \$67,836	<u>3,947,800</u>

8. As a result of the Governor’s actions, the remaining provisions of House Bill 214 went into law as Public Act 98-64 pursuant to Section 9(d) of the Illinois Constitution. Ill.Const.1970, Art. IV, § 9(d)(“Portions of a bill not reduced or vetoed shall become law.”).

9. Following the Governor’s line-item veto, Public Act 98-64 provides for the following lump-sum appropriation, among others, as follows:

Section 15. The following named sums, or so much thereof as may be necessary, respectively, are appropriated to the State Comptroller to pay certain officers of the Legislative Branch of the State Government, at the various rates prescribed by law:

Officers and Members of General Assembly

Total..... \$11,713,900

10. Likewise, in regard to the payment of additional compensation to party leaders and committee officers, *i.e* the additional compensation for the Speaker and President, the majority and deputy majority leaders, caucus and conference chairs, committee chairs and minority spokespersons, etc., the Governor's line-item veto eliminated lines pertaining to these individual leadership positions but did *not* veto the total amount appropriated for additional salaries, once again resulting in a lump-sum appropriation for these leadership positions:

For additional amounts, as prescribed by law, for party leaders in both chambers as follows:

Total \$2,138,800

11. Public Act 98-64 sufficiently directs Defendant Topinka to issue payment of both the base salaries to the members and the additional compensation to party leaders and committee officers. The final appropriation provides a lump-sum amount for payment of base salaries and a separate lump-sum amount for payment of additional salaries to party leaders and committee officers. Public Act 98-64 states that the base salary paid to legislators shall be as "at the various rates as prescribed by law," and further states that the additional payments to party leaders and committee officers shall be "as prescribed by law." The "law" referenced in Public Act 98-64,

the General Assembly Compensation Act, 25 ILCS 115/1, prescribes the base salary that each legislator should receive, the additional compensation that various party leadership positions should receive, and how often (monthly) that compensation should be received. That Act further provides for slight adjustments to legislators' salaries to account for unpaid furlough days, *see* 25 ILCS 115/1.9, and salary requirements imposed in the event of the death or resignation of a legislator. *See* 25 ILCS 115/1.

12. Thus, in order to comply with her Constitutional and statutory duties, Defendant Topinka need only rely on the lump-sum appropriations and the above provisions of the General Assembly Compensation Act, incorporated into that appropriation, to calculate the amounts owed to legislators. To calculate the base salaries, she merely needs to divide the lump sum appropriation by the total number of legislators ($\$11,713,900 / 177 = \$66,180.22$). The additional amounts due to party leaders and committee officers is similarly calculable by simply applying the stipends set forth in the General Assembly Compensation Act to the total appropriation in Public Act 98-64. In order to pay each legislator his or her monthly salary, the Comptroller need only add any stipend to the base salary of that legislator and divide by 12.

13. Defendant Topinka is thus provided specific and adequate direction, by Public Act 98-64 and the General Assembly Compensation Act, to pay legislative salaries on a monthly basis in specified amounts. Her refusal to do so is a violation of State law.

Count II – The Line-item Veto is Unconstitutional and Unenforceable.

14. Pursuant to Article IV, Section 11 of the Illinois Constitution, a General Assembly member “shall receive a salary and allowances as provided by law, but changes in the salary of a member shall not take effect during the term for which he has been elected.” Ill.Const.1970, Art. IV, § 11. The Constitution contains similar salary protection provisions for executive branch

officers (Ill.Const.1970, Art. V, § 21), and members of the judiciary. (Ill.Const.1970, Art. VI, § 14).

15. Thus, if contrary to plaintiff's claims in Count I, the Governor's line-item veto effectively eliminated legislators' salaries for the entire fiscal year, then the Governor's line-item veto of House Bill 214 violates Article IV, Section 11. There can be no dispute that eliminating a legislator's current annual pay thwarts his or her "right to receive a salary" and "changes" his or her salary "during the term" to which he or she "has been elected." Ill. Const.1970, Art. IV, § 11.

16. The Governor's line-item veto of House Bill 214, if construed by this Court to have eliminated, or in any way changed, the salaries of members and officers of the Illinois General Assembly, violates the Illinois Constitution.

17. The Governor's authority to issue a line-item veto derives from Article IV, Section 9 of the Constitution, which provides that "[t]he Governor may reduce or veto any item of appropriations in a bill presented to him." Ill.Const.1970, Art. IV, § 9(d). However, this authority is not unfettered or without any limitation whatsoever.

18. The Supreme Court has previously held that the Governor's veto authority over appropriations cannot be used in a manner that violates another Constitutional provision. *Jorgensen v. Blagojevich*, 211 Ill. 2d 286, 299, 811 N.E.2d 652 (2004). In *Jorgensen*, the Supreme Court considered, and soundly rejected, the argument that the Governor's veto authority was "not subject to judicial oversight", when it unanimously invalidated the Governor's attempted reduction veto of judicial salaries:

The executive branch, no less than the legislative branch, is bound by the commands of our constitution. The judicial power of the State of Illinois is vested in the courts (Ill. Const.1970, art. VI, § 1), and it is the duty of the judiciary to construe the constitution and determine whether its provisions have been disregarded by either of the other branches of government.

Id. at 310-311, 811 N.E.2d at 666.

19. The *Jorgensen* decision left little doubt that the Governor's veto actions were subject to judicial review: "If officials of the executive branch have exceeded their lawful authority, the courts have not hesitated and must not hesitate to say so." *Id.* at 311, 811 N.E.2d at 666. This principle applied to the judicial compensation provision because "[w]hat is at stake is the very independence of the judiciary and the preservation of separation of powers." *Id.* at 314, 811 N.E.2d at 668. In this case, the Governor has publicly claimed that this line-item veto is retribution for the legislature's failure to pass pension related legislation to his liking, a coercive misuse of the line-item veto that violates the Constitution's mandate that a legislator "receive a salary" and prohibition against "changes" to legislative salaries as well as disregards the fundamental precept of separation of powers. *See People ex rel. Holdom v. Sweitzer*, 280 Ill 436, 442 (1917) (explaining in the context of the 1870 Illinois Constitution's salary provisions that "[t]he acts of officers of each branch, while such officers are in power, should not be made to depend upon or be influenced by the acts of another branch, or be influenced by the acts of another branch, nor should there by anything in the conduct of either that would even give rise to a suspicion of such a thing as coercion by reducing salaries, or a reciprocal interchange of favors by increasing salaries; hence the reason for the constitutional provision putting it beyond the power of the Legislature to increase or diminish the salaries of state officers in office and in power").

21. In this case, similar to *Jorgensen*, what is at stake is the very independence of the legislature, a co-equal branch of government, and the preservation of the separation of powers.

Plaintiffs are Entitled to a Preliminary Injunction.

22. To be entitled to preliminary injunctive relief, plaintiffs must demonstrate that they (1) possess a protectable right; (2) will suffer irreparable harm without the protection of an injunction; (3) have no adequate remedy at law; and (4) are likely to be successful on the merits of her action. *Rodrigues v. Quinn*, 2013 IL App (1st) 121196, 2013 WL 1952744 (1st Dist., 2013).

23. Plaintiffs' have a protectable right in the salary that they are entitled to as elected members of the General Assembly and the leaders of their respective legislative chambers pursuant to both the Illinois Constitution (Ill.Const.1970, Art. IV, § 11) and the General Assembly Compensation Act. 25 ILCS 115/1.

24. Plaintiffs, and other members of the General Assembly, will suffer irreparable harm if an injunction is not issued because their constitutional rights to undiminished salaries will continue to be violated as long as the line-item veto in question continues to be recognized as a basis to withhold their lawful salaries. Moreover, every day that passes in which the Governor is permitted to trample on the independence of a co-equal branch of government further compromises the separation of powers among the three branches of government, crafted by the framers of the Constitution *not* for the protection of those officers but as a structural safeguard essential to the freedom and liberty of Illinois citizens. *See Jorgensen*, 211 Ill. 2d at 299 (“For checks and balances to work properly in protecting individual liberty, each of the three branches of government must be kept free from the control or coercive influence of the other branches.”).

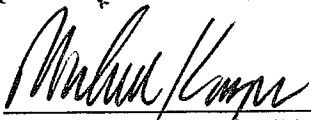
25. Plaintiffs have no adequate remedy at law, because, although they are the presiding officers in their respective chambers, they cannot themselves override the Governor's actions. Ill.Const.1970, Art. IV, § 9 (requiring 3/5s vote of both chambers to override a line-item veto).

26. Plaintiffs are likely to succeed on the merits because, as stated above, Public Act 98-64 adequately directs Defendant Topinka to pay legislators the salaries to which they are legally entitled and because, if she cannot do so, due to the Governor's actions as alleged, the line-item veto is unconstitutional and unenforceable.

WHEREFORE, for the foregoing reasons and the reasons to be set forth in the Memorandum of Law supporting this Motion, Plaintiffs respectfully pray for the following relief:

- (a) That this Court declare that Public Act 98-64 authorizes the payment of salaries to Officers and Members of the Illinois General Assembly, notwithstanding the Governor's line-item veto of that legislation;
- (b) In the alternative, that this Court declare that the Governor's line-item veto of House Bill 214 is null and void because it violates Article IV, § 11 of the Illinois Constitution of 1970, and;
- (c) That this Court declare that Public Act 98-64, if interpreted to eliminate or otherwise change the salaries of members and officers of the Illinois General Assembly, is in violation of Article IV, § 11 of the Illinois Constitution of 1970;
- (d) That this Court enter an Order directing Defendant Topinka to pay members and officers of the Illinois General Assembly the full salaries to which they are entitled in accordance with the General Assembly Compensation Act, plus interest on any amounts that have been withheld; and
- (e) That this Court order such other and further relief as the Court shall deem just.

Respectfully submitted,

By: 
One of the Attorneys for Plaintiffs

Richard J. Prendergast
Special Asst. Attorney General
Richard Prendergast, Ltd. (#11381)
111 W. Washington, Suite 1100
Chicago, IL 60602
(312) 641-0881

Kevin Forde
Special Asst. Attorney General
Forde Law Offices, LLP
111 W. Washington, Suite 1100
Chicago, IL 60602
(312) 641-1441

Michael Kasper
Special Asst. Attorney General
222 N. LaSalle St., Suite 300
Chicago, IL 60601-1013
(312) 704-3292

Eric Madiar
Special Asst. Attorney General
605 State Capitol Building
Springfield, IL 62706
(217) 782-2156

Heather Wier Vaught
Special Asst. Attorney General
402 State Capitol Building
Springfield, IL 62706
(217) 782-3392

VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the factual statements set forth in in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

John J. Cullerton
John J. Cullerton

Sworn to me and subscribed before
me this 5 th day of August, 2013

Jill M Yudow
Notary Public



