

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 18, 2021

529556

ROXANNE DELGADO et al.,
Appellants,

v

OPINION AND ORDER

STATE OF NEW YORK et al.,
Respondents.

Calendar Date: February 5, 2021

Before: Garry, P.J., Lynch, Aarons, Pritzker and Reynolds
Fitzgerald, JJ.

Government Justice Center, Inc., Albany (Cameron J.
Macdonald of counsel), for appellants.

Letitia James, Attorney General, Albany (Victor Paladino
of counsel), for respondents.

Holwell Shuster & Goldberg LLP, New York City (James M.
McGuire of counsel), for Andrew M. Cuomo, the Governor of the
State of New York, amicus curiae.

Cuti Hecker Wang LLP, New York City (Eric Hecker of
counsel), for Andrea Stewart-Cousins, the Majority Leader of the
New York State Senate, amicus curiae.

Orrick, Herrington & Sutcliffe LLP, New York City (Ethan
P. Fallon of Orrick, Herrington & Sutcliffe LLP, Washington, DC,
of counsel, admitted pro hac vice), for Carl E. Heastie,
Individually and in his Official Capacity as Speaker of the New
York State Assembly, amicus curiae.

Lynch, J.

Appeal from a judgment of the Supreme Court (Ryba, J.), entered June 7, 2019 in Albany County, which, among other things, partially granted defendants' motion to dismiss the amended complaint.

In 2018, the Legislature passed a budget bill – signed by the Governor – which created a compensation committee that was designated the Committee on Legislative and Executive Compensation (hereinafter the Committee) (see L 2018, ch 59, § 1, part HHH, § 1 [hereinafter the enabling statute]). The Committee was tasked with "determin[ing] whether, on January 1, 2019, the annual salary and allowances of members of the [L]egislature, statewide elected officials, and . . . [Executive Law § 169 commissioners] warrant an increase" (L 2018, ch 59, § 1, part HHH, § 2 [2]). The enabling statute set forth a non-exhaustive list of factors for the Committee to consider in guiding its analysis, including "the parties' performance and timely fulfillment of their statutory and [c]onstitutional responsibilities; the overall economic climate; . . . the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; . . . 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" (L 2018, ch 59, § 1, part HHH, § 2 [3]). The Committee was required to submit a report to the Governor and the Legislature by December 10, 2018 detailing its recommendations, if any, which would acquire the force of law and supersede inconsistent sections of Executive Law § 169 and Legislative Law §§ 5 and 5-a, "unless modified or abrogated by statute prior to January [1, 2019]" (L 2018, ch 59, part HHH, § 4 [2]). Such recommendations would remain effective unless overridden by a subsequent recommendation of the Commission on Legislative, Judicial and Executive Compensation (hereinafter the 2015 Commission) or by passage of a new statute (see L 2018, ch 59, § 1, part HHH, § 7).

After four public meetings, the Committee issued a report on December 10, 2018 detailing its findings. As relevant here, the Committee recommended increasing the base salaries of members of the Legislature, statewide elected officials and Executive Law § 169 commissioners, which would take effect on January 1, 2019 and be phased in over three years. The Committee also placed a 15% cap on outside earned income for members of the Legislature and prohibited their receipt of income in certain professions where a fiduciary duty was owed. Finally, the Committee recommended increasing the salaries of Executive Law § 169 commissioners and reducing the tier classification system governing such officials from six to four tiers.¹ The Legislature did not subsequently modify or abrogate any of the Committee's recommendations, thereby granting them the force of law (see L 2018, ch 59, § 1, part HHH, § 4 [2]).

Plaintiffs commenced this declaratory judgment action seeking, among other things, declarations that (1) the enabling statute was an unlawful delegation of legislative authority under the NY Constitution, (2) the Committee exceeded the scope of any authority lawfully delegated to it, (3) the disbursement of funds according to the Committee's report was unlawful under State Finance Law § 123, and (4) the Committee's report was void under the Open Meetings Law (see Public Officers Law art 7). Defendants filed a pre-answer motion to dismiss the complaint pursuant to CPLR 3211 (a) (7).

Supreme Court dismissed plaintiffs' first, third and fourth causes of action in their entirety. In that respect, the court found that the enabling statute did not unlawfully delegate legislative authority to the Committee, and any violation of the Open Meetings Law was technical in nature and did not provide good cause to warrant nullification. With respect to the second cause of action, the court invalidated the 2020 and 2021 legislative salary increases, concluding that the

¹ For tier A and B commissioners, the Committee recommended specified salary increases for 2019, 2020 and 2021. For tier C and D commissioners, the Committee recommended a range of salaries for 2019, 2020 and 2021, and gave the Governor the authority to set the salaries within the applicable range.

Committee exceeded the scope of its authority in recommending a prohibition on certain outside employment activities and a cap on outside earned income, and finding that these invalid recommendations were intertwined with the salary increases for 2020 and 2021. It otherwise dismissed the remainder of the second cause of action. Plaintiffs appeal.

Plaintiffs argue that the Legislature unconstitutionally delegated its lawmaking authority to the Committee insofar as its recommendations were allowed to acquire the force of law and to supersede inconsistent provisions of various statutes (see NY Const, art III, § 1). We are unpersuaded. "'Legislative enactments enjoy a strong presumption of constitutionality and parties challenging a duly enacted statute face the initial burden of demonstrating the statute's invalidity beyond a reasonable doubt'" (White v Cuomo, 181 AD3d 76, 78-79 [2020], quoting Overstock.com, Inc. v New York State Dept. of Taxation & Fin., 20 NY3d 586, 593 [2013], cert denied 571 US 1071 [2013]; see Dalton v Pataki, 5 NY3d 243, 255 [2005], cert denied 546 US 1032 [2005]). "While the Legislature cannot delegate its lawmaking functions to other bodies, there is no constitutional prohibition against the delegation of power to an agency or commission to administer the laws promulgated by the Legislature, provided that power is circumscribed by reasonable safeguards and standards" (Center for Jud. Accountability, Inc. v Cuomo, 167 AD3d 1406, 1410 [2018] [internal quotation marks and citations omitted], appeal dismissed 33 NY3d 993 [2019], lv denied 34 NY3d 961 [2019]; see McKinney v Commissioner of N.Y. State Dept. of Health, 41 AD3d 252, 253 [2007], appeal dismissed 9 NY3d 891 [2007], lv denied 9 NY3d 815 [2007]). Although the NY Constitution vests in the Legislature the authority to "'determine its own compensation'" (Cohen v State of New York, 94 NY2d 1, 9 [1999], quoting Dunlea v Anderson, 66 NY2d 265, 268 [1985]; see NY Const, art III, § 6; New York Pub. Interest Research Group v Steingut, 40 NY2d 250, 256 [1976]), plaintiffs have proffered no persuasive authority supporting the proposition that the Legislature may not delegate such authority to an independent body in the manner done here, so long as the Legislature makes the basic policy choice and provides

reasonable standards and safeguards circumscribing the body's authority.

In fact, plaintiffs' arguments are foreclosed by our decision in Center for Jud. Accountability, Inc. v Cuomo (167 AD3d at 1409-1412), wherein we upheld a nearly identical delegation of authority regarding judicial compensation. In Center for Jud. Accountability, this Court rejected a constitutional challenge to an enabling statute – contained in a supplemental budget bill – that empowered the 2015 Commission to recommend salary increases for judges. Like the enabling statute at issue here, the supplemental budget bill at issue in Center for Jud. Accountability had a supersession clause providing that the recommendations of the 2015 Commission would "have the force of law and [would] supersede, where appropriate, inconsistent provisions of [Judiciary Law] article 7-B, . . . [Executive Law § 169], and [Legislative Law §§ 5 and 5-a], unless modified or abrogated by statute" (L 2015, ch 60, § 1, part E, § 3 [7]). Noting that the Legislature had "made the determination that judicial salaries must be appropriate and adequate" and had provided safeguards to guide the 2015 Commission's analysis, we rejected the plaintiffs' argument that the Legislature had unlawfully delegated its lawmaking authority over judicial compensation (Center for Jud. Accountability, Inc. v Cuomo, 167 AD3d at 1411). The same result applies here, as the Legislature enacted a law making the basic policy choice that the salaries of legislators, statewide elected officials and executive branch commissioners must be "adequate," and circumscribed the Committee's power by providing a list of factors to help guide its analysis (L 2018, ch 59, § 1, part HHH, §§ 1, 2 [3]). The Legislature then implemented a safeguard whereby it reserved the right to view a report of the Committee's recommendations, after which it could either modify them or grant them the force of law. In other words, it was the Legislature – not the Committee – that had the final say in determining whether the Committee's recommended changes would go into effect (see NY Const, art III, § 1; Center for Jud. Accountability, Inc. v Cuomo, 167 AD3d at 1411).

We are also unpersuaded by plaintiffs' contention that the enabling statute is invalid insofar as the Governor did not have veto power over the Committee's recommendations (see NY Const, art IV, § 7).² By signing the enabling statute, the Governor consented to giving the Committee a broad grant of authority to determine whether legislative and executive branch compensation should be increased through a process that allowed its recommendations to acquire the force of law. The Committee's recommendations did not evade gubernatorial review, as the Committee was required to submit a report to the Governor detailing its findings (see L 2018, ch 59, § 1, part HHH, § 4 [1]).³

Plaintiffs also contend that the delegation of authority was unlawful because, under the NY Constitution, legislative compensation is required to be "fixed by law" (NY Const, art III, § 6) – a phrase that plaintiffs interpret to mean codified in a published statute passed by the Legislature itself. We do not interpret the term so narrowly (see e.g. Molina v Games Mgt. Servs., 58 NY2d 523, 529 [1983]; Matter of Mutual Life Ins. Co. of N.Y., 89 NY 530, 533 [1882]; Albert v City of New York, 250 App Div 555, 556 [1937], affd 275 NY 484 [1937]; Hanley v City

² We note that the Governor has filed an amicus curiae brief in support of defendants' position that the delegation process was lawful.

³ Contrary to plaintiffs' contention, this process is not clearly inconsistent with the intent of the drafters of the 1948 amendment to the NY Constitution that now governs legislative compensation. A 1946 joint legislative committee report conceived of a process whereby the Legislature would be vested with the authority to adjust the salaries of its members subject to the "consent of the Governor" (Final Rep of the Joint Legislative Commn on Legislative Methods, Practices, Procedures and Expenditures, 1946 NY Legis Doc No. 31 at 171). Nothing in the 1946 report indicated an intent to limit the Legislature's ability to delegate its authority on this issue to an independent committee, and the Governor gave his consent in this case by signing the 2018 budget bill granting the Committee broad authority.

of New York, 250 App Div 552, 553-554 [1937], affd 275 NY 482 [1937]; see also New York Pub. Interest Research Group v Steingut, 40 NY2d at 256), and note that the NY Constitution contains a concomitant provision requiring judicial compensation to be "established by law" (NY Const, art VI, § 25 [a]) – a process which was satisfied in Center for Jud. Accountability, Inc. v Cuomo (167 AD3d at 1411) when the Legislature delegated its authority over judicial compensation to an independent commission through the same procedure that plaintiffs challenge here. The Committee's recommendations acquired the force of law on January 1, 2019 pursuant to the procedure set forth in duly enacted legislation passed by both houses of the Legislature and signed by the Governor. Accordingly, in our view, the 2019 legislative salary increases were properly "fixed by law" within the meaning of the NY Constitution (NY Const, art III, § 6; see generally Pressler v Simon, 428 F Supp 302, 305 [D DC 1976], affd sub nom. Pressler v Blumenthal, 434 US 1028 [1978]).

Plaintiffs further contend that, even if the Legislature lawfully delegated to the Committee the power to fix legislative compensation, the Committee exceeded the scope of its authority with respect to the 2019 legislative salary increases and the changes to the Executive Law § 169 compensation tiers. Where a body acts beyond the scope of authority granted to it by the Legislature, "it usurps the legislative role and violates the doctrine of separation of powers" (Matter of LeadingAge N.Y., Inc. v Shah, 32 NY3d 249, 260 [2018]). The Committee, "as a creature of the Legislature, is clothed with those powers expressly conferred by its [enabling statute], as well as those required by necessary implication" (Matter of City of New York v State of N.Y. Commn. on Cable Tel., 47 NY2d 89, 92 [1979]; see Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d 600, 608 [2015]). "The separation of powers doctrine commands that the [L]egislature make the primary policy decisions but does not require that the [Committee] be given rigid marching orders" (Matter of LeadingAge N.Y., Inc. v Shah, 32 NY3d at 260; see Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d at 609). Where enabling legislation confers a broad grant of authority, a body may "fill in the details, as long as reasonable safeguards and guidelines

are provided" by the Legislature, and as long as those details are consistent with the Legislature's policy choices (Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d at 608; see Matter of Medical Socy. of State of N.Y. v Serio, 100 NY2d 854, 864 [2003]; Dorst v Pataki, 90 NY2d 696, 699 [1997]; see also Boreali v Axelrod, 71 NY2d 1, 11-14 [1987]).

Turning to the 2019 legislative salary increases, plaintiffs take issue with the Committee's finding that this state's Legislature functions more as a full-time body when compared to other state legislatures, characterizing this finding as a "policy decision [made] outside the scope of whatever lawful mandate the [C]ommittee possessed." This argument is unpersuasive, as the enabling statute expressly directed the Committee to consider "the parties' performance and timely fulfillment of their statutory and [c]onstitutional responsibilities," as well as "the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states" (L 2018, ch 59, § 1, part HHH, § 2 [3]). Nor did the Committee exceed the scope of its delegated authority with respect to its recommendations for statewide elected officials and executive branch commissioners. The enabling statute granted the Committee broad authority to review whether the salaries of these individuals warranted an increase and to write recommendations that superseded conflicting parts of Executive Law § 169 (see L 2018, ch 59, § 1, part HHH, § 4 [2]). Implied within that authority was the power to consider the tier system governing executive branch commissioners, which the Committee did through careful consideration of the factors set forth in the enabling statute (see L 2018, ch 59, part HHH, § 2 [3]). In sum, the Legislature set the overarching policy goal that the salaries of these individuals must be adequate, and the Committee acted within the scope of its broad grant of authority by filling in the details in a manner consistent therewith (see generally Greater N.Y. Taxi Assn. v New York City Taxi & Limousine Commn., 25 NY3d at 608; Matter of Medical Socy. of State of N.Y. v Serio, 100 NY2d at 866; Dorst v Pataki, 90 NY2d at 699).


Finally, Supreme Court did not abuse its discretion in declining to nullify the Committee's report under the Open Meetings Law. The Committee held four public hearings on the matter, during which multiple interested parties expressed their views, and its members discussed and voted on recommendations that would be included in the final report to the Governor and the Legislature. The purported violations identified by plaintiffs were technical in nature, did not amount to "good cause" for nullifying the Committee's actions, and there was no showing that any such violations were intentional (Public Officers Law § 107; see Matter of Oakwood Prop. Mgt., LLC v Town of Brunswick, 103 AD3d 1067, 1070 [2013], lv denied 21 NY3d 853 [2013]; Matter of MCI Telecom. Corp. v Public Serv. Commn. of State of N.Y., 231 AD2d 284, 291 [1997]; Town of Moriah v Cole-Layer-Trumble Co., 200 AD2d 879, 881 [1994]).

Plaintiffs' remaining contentions, to the extent not expressly discussed herein, have been considered and found lacking in merit. As a final matter, as this is a declaratory judgment action, Supreme Court should have made a declaration in defendants' favor on plaintiffs' first cause of action, rather than dismissing it (see Inter-Power of N.Y. v Niagara Mohawk Power Corp., 208 AD2d 1073, 1075 [1994]; Einbinder v Ancowitz, 38 AD2d 721, 721 [1972], lv denied 30 NY2d 485 [1972]). We modify the judgment accordingly.

Garry, P.J., Aarons, Pritzker and Reynolds Fitzgerald, JJ., concur.

ORDERED that the judgment is modified, on the law, without costs, by declaring that the Laws of 2018, chapter 59, § 1, part HHH has not been shown to be unconstitutional, and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court