

COPY

NO. CV-06-4010696 : SUPERIOR COURT
WILLIAM J. SULLIVAN : J. D. OF WATERBURY
VS. : AT WATERBURY
ANDREW J. MCDONALD :
ET AL : AUGUST 24, 2006

COMPLEX LITIGATION
400 GRAND ST
WATERBURY CT 06702
2006 AUG 24 P 2:35

MEMORANDUM OF DECISION

RE: DEFENDANTS' MOTIONS FOR REARGUMENT AND RECONSIDERATION

I. BACKGROUND

On July 13, 2006, Defendants, Senator Andrew J. McDonald and Representative Michael P. Lawlor, filed a Motion for Reargument and Reconsideration of this court's decision dated June 26, 2006, granting the plaintiff's Motion to Quash Subpoena and for the issuance of a temporary injunction. The court filed a Supplemental Memorandum of Decision dated June 30, 2006.

Pursuant to the court's direction, the parties have filed briefs in the matter and the defendants have filed a reply memorandum. Defendants have further requested the permission of the court to file a brief in excess of 35 pages, which the court has granted. In view of the fact that the defendants were unable to file a brief at the first hearing, but

requested the opportunity to do so at a later time, the court hereby grants the motion for reconsideration. The court established August 10, 2006, as the deadline for the filing of the reply memorandum. Defendants have complied with that schedule. The court will now consider the issues raised by the defendants in their request for reargument.

II. LAW

“The purpose of a reargument is . . . to demonstrate to the Court that there is some decision or some principal of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts.” Opoku v. Grant, 63 Conn. App. 686, 692 (2001). A motion to reargue “may also be used to address alleged inconsistencies in the trial court’s memorandum of decision as well as claims of law that the movant claims were not addressed by the court.” Id. At 692. “A motion to reargue, however, is not to be used as an opportunity to have a second bite of the apple or to present additional cases or briefs which could have been presented at the time of the original argument.” Id. At 692-693.

Defendants list five reasons why the court should grant reargument in this case. These reasons will be discussed *in seriatum*.

A. Proper Test for the evaluation of Separation of Powers Violations

Defendants argue that the court did not apply the correct

legal standard regarding a Separation of Powers inquiry. They argue that a two-part inquiry must be conducted, asking whether the conduct at issue constitutes either “(1) an assumption of power that lies exclusively under the control of the other branch; or (2) a significant interference with the orderly conduct of the essential functions of the other branch.” Seymour v. Elections Enforcement Commission, 255 Conn. 78, 107 (2000). The court has reconsidered its ruling in light of the Seymour case and finds that the proper inquiry was conducted. First, the Court held that, in the absence of an express constitutional mandate to the contrary, the legislature may not encroach upon judicial affairs. Second, the court held:

The independence of the Judicial Branch would be gravely undermined if a legislative body, in its discretion, possessed the authority, outside of constitutional authority, to compel the appearance of a judicial officer to answer questions relating to his official duties or the performance of judicial functions. The potential for harm under such a regimen is manifest, even assuming that the legislature utilizes such power to pursue otherwise legitimate objectives.

The requirements of the Seymour inquiry have been satisfied. There is no need for the court to hear reargument on this issue.

B. Focus of the Legislature’s Subpoena

Defendants, in their brief, state that “ the Judiciary Committee,... has embarked on a preliminary investigation to

determine, among other things, whether the initiation of formal removal or impeachment proceedings may be warranted." This statement is not supported by the record. The letters issued regarding this hearing described it as an informational hearing. The idea that the Subpoena was issued as part of a "preliminary investigation" into the removal or impeachment of Justice Sullivan is inconsistent both with the factual record before the court and the arguments made by the Attorney General on behalf of the defendants. The Attorney General argued that the proposed hearing was not disciplinary in nature, but rather related to "interference in a legislative power, specifically the power to appoint a member of the State Supreme Court" At one point the court inquired of the Attorney General:

I didn't hear anything that there was a consideration of either further proceedings of impeachment or anything along those lines in terms of censure or anything directed to Justice Sullivan that seems that, at least the argument is that this investigation is into-an interference with the process of the power to appoint which is constitutionally mandated.

The Attorney General replied " Your Honor has absolutely correctly characterized the nature of this inquiry." It is difficult to imagine how the court could have been so accurate in its characterization of the nature of the hearing at the time of oral argument, yet so " misconstrue the focus of the subpoena and the hearing" in its written opinion, as asserted in the Defendants' brief . Assuming, *arguendo*, that there was support in the record for the defendants' position, it would not change the court's ruling. The fact remains that the House has not authorized either

a Board of Inquiry or any committee to initiate an impeachment investigation.

Defendants reliance upon Nixon v. U.S., 506 U.S. 224, 235 (1993), is misplaced. Defendants cite Nixon for the proposition that a court should not define the scope of a legislative hearing. However, Nixon, a former Federal Judge, had already been impeached and removed from office. He sued for a Declaratory Judgment and reinstatement. The United States Supreme Court held that the Court could not constitutionally involve itself in the impeachment process. The statement in Nixon that a court should not define the scope of a legislative hearing related to the scope of an impeachment investigation, after the House had initiated impeachment proceedings. The matter was held to be nonjusticiable. This court has not mischaracterized the purpose of the hearing regarding Justice Sullivan. It has relied upon both the statements of counsel and the evidence offered at the hearing.

Under Article Ninth, Section 1, of the Connecticut Constitution, impeachment can only be initiated by the House, with a trial conducted in the Senate. Historically, all prior impeachment investigations in Connecticut were carried out by a Select Committee of Inquiry specifically created by the House, consisting solely of members of the House. See Office of Governor v. Select Committee of Inquiry, 271 Conn 540, 547, (2004), Kinsellav. Jaekle, 192 Conn. 704, 706 (1984). No Select Committee of Inquiry has been established in this case. Any committee conducting an impeachment investigation, without the express appointment of the House, would do so at it's constitutional peril. The court declines to hear reargument on this ground.

C. Legislative Authority

Defendants claim that the court mischaracterized and effectively ignored the judicial infringement of legislative authority at issue in this case. The court appreciates the defendants' position and comprehends the thrust of their argument. However, their position that Justice Sullivan interfered with the appointment process and therefore, that they are entitled to subpoena Justice Sullivan, cannot be sustained. There is no constitutionally mandated appointment process in place at the present time. Further, there is no constitutionally mandated board of inquiry established by the House for the purpose of investigating a potential impeachment proceeding.

However odious or reprehensible defendants claim Justice Sullivan's actions may have been, the fact remains that the issuance of a judicial decision is part of a judge's function. The mere fact that Justice Sullivan may have delayed the issuance of a judicial decision for an allegedly improper purpose (i.e. to benefit another judge's promotion) does not alter the fact that the issuance of a judicial decision is part and parcel of his judicial functions. Von Drake v. Liberty Mutual Automotive Ins. Co. No. 05:06CV24, 2006 WL 107 5244, at 3 (E.D. Tex. Apr. 21, 2006). The Constitutional mandate of the Separation of Powers Doctrine forbids the issuance of this subpoena without a showing of constitutional justification for same. The court declines to hear reargument on this ground.

D. Office of Governor v. Select Committee of Inquiry

Defendants argue that the court erroneously distinguished the case of Office of Governor v. Select Committee of Inquiry, 271 Conn. 540 (2004). In that case the Motion to Quash the subpoena for Governor Rowland was denied because it would “interfere with the legislature’s core impeachment power”. In this case a Board of Inquiry was never established by the House. There is no impeachment investigation, constitutionally established by the House, pending. It is the central difference between these two cases. There is simply no constitutional authority for the Judiciary Committee to have issued this subpoena. The court declines to hear reargument on this issue.

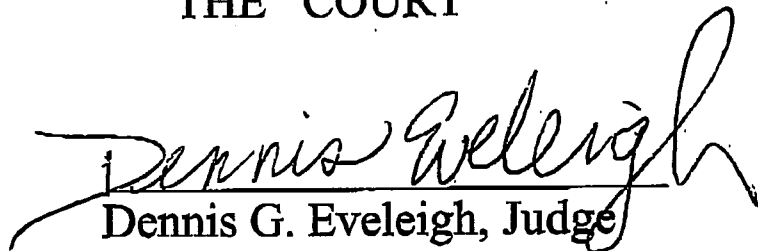
E. Scope of Relief

Defendants argue that the court should have narrowed the scope of its relief since it had issued a temporary injunction. The scope of relief in this case was as narrow as the court could constitutionally make it. The subpoena could not be constitutionally sustained. It had to be quashed. “[A] breach of the separation of powers principle is, contemporaneously, a constitutional violation and a tangible harm. In other words, action by one branch of government that violates a separation of powers is, in and of itself, a harm, in that the branch whose sphere of authority has been encroached upon has remained neither independent nor free from the risk of control, interference or intimidation by other branches.” Office of the Governor, Id., at 558. The court declines to hear reargument on this issue.

III. CONCLUSION

Defendants' request to file a brief in excess of 35 pages is granted. Defendants' request for Reconsideration is granted. Defendants request for Reargument is denied. The Court finds that the legal grounds for reargument have not been satisfied. The Court has reconsidered the matter and decided that the original ruling of the court, in which the court quashed the subpoena and entered a temporary injunction, will stand. Therefore, the relief requested by way of a reconsideration or reargument is denied.

THE COURT



Dennis G. Eveleigh, Judge