

ER

Commonwealth of Massachusetts
Superior Court

Suffolk, ss.

James Lyons

v.

Docket No. _____

Secretary of State William Galvin, Clerk of the
House Steven James, Clerk of the Senate
Michael Hurley and Attorney General
Andrea Campbell in their official capacities

Complaint for Injunctive & Declaratory Relief

Introduction

This Complaint seeks injunctive relief alleging that a recent vote of the House contains a provision altering legislation recently adopted by the voters at the ballot box, in derogation of the separation of powers and the rights of the voters. The named defendants, sued in their official capacity only, have enforcement and enabling authority over an unconstitutional law which must be enjoined.

Parties

1. James Lyons is a voter, resident and taxpayer in Massachusetts. He owns a business which operates in this state. He was formerly the chairman of the Massachusetts Republican Party and a member of the legislature. He supported Question 1 on the 2024 General Election ballot and voted for it. He has the right to have his vote respected and count.
2. Secretary William Galvin is the chief election official of the Commonwealth and also keeps its official records, the Great Seal, and the records of the officially passed and promulgated laws and regulations.
3. Attorney General Andrea Campbell is the chief law enforcement officer of the Commonwealth. She holds not only enforcement authority over many laws but is also empowered by law to interpret statutes upon the request of the executive and legislative agencies of the Commonwealth.
4. Clerk Steven James is the Clerk of the Massachusetts House of Representatives.
5. Clerk Michael Hurley is the Clerk of the Massachusetts Senate.

Background

6. In 2022, State Senator Diana Dizoglio, a public servant with a well-earned reputation as a maverick, announced that instead of seeking re-election she would seek election to the post of State Auditor.
7. One of her signature campaign issues was a promise to audit the Legislature.
8. Her promise was widely panned by insiders, including the outgoing Auditor Suzanne Bump. Commentators felt it was unlikely, impossible, improbable, and unconstitutional.
9. Senator Dizoglio quickly pointed out, in public for all to see, that audits of the Legislature had been conducted in the past. She produced public records, from decades ago, in which the State Auditor reviewed financial expenditures and finances of the Legislature.
10. This promise, and her platform, saw Senator Dizoglio in good stead. She triumphed against an insider candidate, Christopher Dempsey, in the Democratic Primary (54%-45%). She also triumphed commandingly against the Republican candidate, Anthony Amore, despite personal backing by the Commonwealth's outgoing popular Republican Governor Charlie Baker.
11. Newly elected, Auditor Dizoglio sought to begin auditing the Legislature. She sent a formal letter seeking documents to begin her review.
12. Officials from both houses of the Legislature refused to cooperate with the proposed audit, claiming it violated the separation of powers.
13. Auditor Dizoglio made a formal request to the newly elected Attorney General, seeking enforcement of her authority to access records through a court action.
14. After meditating on the proposal, without taking a political position on its wisdom, the Attorney General declined to assist Auditor Dizoglio in enforcing her authority in Court. The Attorney General declined to bring any court action to support the Auditor against the assertions of the Legislature.
15. The Attorney General did not take a position on the constitutional assertions of the Legislature, only noting that the statutes as currently written were probably not broad enough to support the outcome Auditor Dizoglio sought.
16. Stymied, Auditor Dizoglio refused to give up. Auditor Dizoglio took her case to the people, literally. Auditor Dizoglio wrote, supported and pressed for the passage of an initiative petition law granting her authority.
17. This initiative petition law would become Question 1 on the 2024 general election ballot.

18. The Attorney General, again without commenting on the wisdom of the proposal, cleared the way for Question 1 by certifying it under the initiative petition process contained in Article 48 of Amendments to the State Constitution (as amended).
19. Contrary to common political wisdom, and prevailing thinking, Auditor Dizoglio put her money where her mouth was. Betting very big on Question 1, not only did Auditor Dizoglio secure the necessary tens of thousands of voter signatures to qualify for the ballot, she also significantly emptied her political campaign coffers to support the measure.
20. The public rewarded Auditor Dizoglio with its continued confidence. Auditor Dizoglio's Question 1 passed overwhelmingly. According to the Associated Press, Question 1 passed by 71.6% of the voter with 2,282,333 votes.
21. This margin of success is commanding. Amongst the 200 statewide questions the voters have reviewed in the 105 years since Article 48 was adopted, its margin of victory is record high. Only three binding questions have had a higher margin of victory in the history of the Commonwealth: 1998's Question 3 (72%), 2012's Question 1 (74%), and 2016's Question 3 (75%).
22. Having passed, Question 1 has become law. The Constitution prescribes that a measure passed shall become law 30 days after the people vote. In any event, the Governor and Council certified the election results on November 27, 2024.
23. Question 1 is entitled "A Law Expressly Authorizing The Auditor To Audit The Legislature." The initiative petition amends G. L. c. 11 §12 by deleting the first sentence and replacing it with:

Section 12. The department of the state auditor shall audit the accounts, programs, activities and functions directly related to the aforementioned accounts of all departments, offices, commissions, institutions and activities of the commonwealth, including those of districts and authorities created by the general court and the general court itself, and including those of the income tax division of the department of revenue, and for such purposes, the authorized officers and employees of the department of the state auditor shall have access to such accounts at reasonable times and the department may require the production of books, documents, vouchers and other records relating to any matter within the scope of an audit conducted under this section or section 13, except tax returns.

24. This amendment to the statute substantially addresses the concerns raised by the Attorney General in declining to bring a court action to enforce the Auditor's authority to obtain records and documents from the Legislature.

The Rules Vote

25. On November 14, 2024 the House voted to undermine the text of Question 1, before it even goes into effect.
26. This came in the form of the adoption of H.5105 and H.5106, which amended Rule 85A of the Rules of the House.
27. The Amendment to House Rule 85A does not allow the Auditor to audit the Legislature. Instead it directs the administrative officials of the House to request an audit from the Auditor, who is then allowed to select a neutral private firm which the House will thereafter employ to conduct an audit. The Rule Amendment does not anticipate or allow the Auditor to directly review financial information about or from the Legislature.
28. The Rules Vote was done by a roll call vote of the House, with 135 in favor and 10 opposed.
29. This directly undermines the intent of the voters in allowing the Auditor to directly audit the Legislature and expressly confirming her authority to do so.
30. Being a Rules vote of a single legislative house, the action is complete. No review by the Governor or other house is allowed. The matter is complete.

Count I – Buckley claim---For Declaratory and Injunctive Relief against all defendants

31. Article 48 of Amendments to the Constitution, as amended, allows the people to legislate directly for themselves in opposition to the Legislature. Describing Article 48 the Supreme Judicial Court has written:

There can be no doubt that it created a people's process. It was intended to provide both a check on legislative action and a means of circumventing an unresponsive General Court. **It presented to the people the direct opportunity to enact statutes regardless of legislative opposition.** It projected a means by which the people could move forward on measures which they deemed necessary and desirable without the danger of their will being thwarted by legislative action.

Buckley v. Secretary of the Commonwealth, 371 Mass. 195, 198 (1976) (emphasis added).

32. In Buckley, the SJC found that voters and proponents of a measure have a right in preventing the Legislature from emasculating the process. Emasculation may come in the form of offering an insincere non-relevant legislative substitute, as in Buckley. It may also come in the form of trashing the carefully laid out steps in the Article 48 process.
33. The House Rules vote offers the Auditor, after her victory in obtaining the voters' confidence, half-a-loaf.

34. Article 48's process is intricate and the Court will give great heft to the voters' right to legislate. The Legislature has been repeatedly told over the years that it cannot frustrate the people's will. *See Opinion of the Justices*, 370 Mass. 869 (1976) (holding that the legislative substitute must be completed by the deadline otherwise the legislature has no power to act); *Opinion of the Justices*, 318 Mass. 793, 795 (1945) (the adoption by the legislature of a legislative substitute after deadline is without effect); *Buckley v. Secretary of the Commonwealth*, 371 Mass. 195, 201-203 (1976) (legislative substitute must be a real alternative not a second approach or a vaguely related piece of legislation).
35. If the Legislature does not act on time, within the window it was constitutionally authorized to have input into Question 1, then it has forfeited its right to act on the topic. It remains true that, in the next session and after the vote on Question 1 has been certified, the Legislature might choose to hazard the voters' ire by amending the adopted law. However such an act must occur through the legislative process with the input of the Governor, not by a vote of a single house of the Legislature.
36. Wherefore the Court should enter a declaration and injunction according the voter-adopted Question 1 primacy over the Rules Vote of H.5105. The Court should hold the proposed amendment invalid.
37. The Court should hold that, once the vote is certified, that the Auditor has the statutory authority to audit the Legislature in accordance with Question 1.

Count II—Paisner Claim—For Declaratory Relief against All Defendants

38. One of the seminal cases in this area is *Paisner v. Attorney General*, 390 Mass. 593 (1983) which distinguishes the power of a legislative house to determine its rules in a unilateral and unicameral fashion as opposed to a law.
39. *Paisner* involved an attempt to legislate, by the people at the ballot box, what amounted to legislative rules, internal procedure of the house, which was not a proper or legal subject for an Article 48 initiative petition.
40. The subject matter of Question 1 is not legally or constitutionally a subject of the internal workings of the Legislature. It does not define the decorum or behavior of its members, or limit their rights or privileges. It is instead a statutory manifestation of the constitutional policy of the voters to subject all the branches of government to a review by the Auditor.
41. The Auditor's office, a constitutional office of distinguished historical pedigree, is a peculiar one. It is an office which does nothing but assist the voters, serving as their eyes and ears, to bring transparency. The Auditor does not guard the treasury, make laws, govern policies, enforce laws, keep official records and oversee elections. The Auditor simply digs to ensure the voters are kept informed about the workings of government, so that the electorate can make well-informed and considerate choices, about cost, about

policies, about the trustworthiness of individual public servants, and the efficacy of individual public policies.

42. In this regard the Auditor's office is a constitutional policy to transparency embedded in the executive. It is a constitutional policy crossing the branches, because there is no remedy or enforcement in it—simply the informational directive to learn and examine on behalf of the voters. An audit of the legislature does not threaten the independence of the Legislature, the way a prosecution or lawsuit against its members might. It does not violate the legislative evidentiary privilege of a representative to keep legislative correspondence with constituents private. It simply allows an official not invested in policy choices to uphold the efficiency and economy of the public tax dollars. The auditor is independently elected, answerable only the voters, to serve as their fearless watchdog.
43. It does not violate Article 30, or the legislative privileges of the House including its rule-making power, to have the Auditor review the Legislature in accordance with the text of Question 1.
44. The policy embodied in Question 1 is a policy stretching across all branches of government. It does not single out the Legislature. It does not have the capacity to undermine the Legislature's independence or authority.
45. The topic of auditing the Legislature is not an internal organizational matter of the house, properly subject to its rules. It is by text of the statute and by constitutional structure, and history, a cross-governmental matter.
46. The Court should rule, as a matter of law, that the statute which has now been amended to reflect the Attorney General's statutory concerns is constitutional, in the face of the Legislature's assertions.

Miscellaneous

47. This Court has proper subject matter jurisdiction.
48. This Court has personal jurisdiction.
49. Venue is proper.
50. Mr. Lyons has standing to bring these claims. Amongst other things, he has the right to have his vote counted and not be nullified. He has the right to have a law he supported and campaigned for, which passed the ballot commandingly, become law in accordance with Article 48. He has the right to not have his vote nullified by legislative machinations.

Conclusion

Wherefore Mr. Lyons asks for any and all relief this Court deems just and proper.

Respectfully Submitted,
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