

COURT OF APPEALS OF THE STATE OF NEW YORK

Silver v. Pataki

96 N.Y.2d 532, 755 N.E.2d 842, 730 N.Y.S.2d 482 (2001) · Decided July 10, 2001

SUMMARY

The New York Court of Appeals considered whether Sheldon Silver, as a member and Speaker of the New York State Assembly, had capacity and standing to challenge the Governor's line-item vetoes of provisions in non-appropriation budget bills. The court held that Silver had capacity and standing to sue as an Assembly member because the alleged vetoes nullified the effectiveness of his legislative vote, but lacked special authority to sue as Speaker on behalf of the Assembly. The court modified the Appellate Division's order to permit the action insofar as it was brought in Silver's capacity as an Assembly member.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Per Curiam; Chief Judge Kaye; Judge Smith; Judge Levine; Judge Ciparick; Judge Wesley; Judge Rosenblatt; Judge Graffeo
JURISDICTION	New York
DECIDED	July 10, 2001
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an Appellate Division order reversing Supreme Court's denial of the Governor's motion to dismiss. The Court of Appeals considered whether Silver had legal capacity and standing, as a Member or Speaker of the Assembly, to challenge the Governor's line-item vetoes.
STANDARD OF REVIEW	De novo review of the threshold legal issues of capacity to sue and standing on a motion to dismiss, accepting the pleaded allegations as true for purposes of the standing analysis.
PRECEDENTIAL VALUE	Published opinion of the New York Court of Appeals; precedential.
PARTIES	Sheldon Silver, as Member and Speaker of the New York State Assembly v. George E. Pataki, as Governor of the State of New York

TOPICS

- standing
- separation of powers
- constitutional law
- state action
- civil procedure

PRACTICE AREAS

constitutional law

civil procedure

state government

separation of powers

QUESTIONS PRESENTED

1. Whether an individual Member of the New York State Assembly has legal capacity to sue to vindicate the effectiveness of his vote when the Governor allegedly acts unconstitutionally to nullify that vote.
2. Whether an individual Assembly Member has standing based on an alleged injury in fact resulting from unconstitutional nullification of his vote.
3. Whether the Speaker of the Assembly has inherent authority to sue on behalf of the Assembly without an Assembly resolution or other authorization.
4. Whether the existence of a legislative override procedure defeats standing.

HOLDINGS

1. An individual Member of the Assembly has capacity to maintain an action to vindicate the effectiveness of his vote when he alleges that executive conduct unlawfully usurped or nullified that vote.
2. The Speaker of the Assembly lacks special authority to maintain the action on behalf of the Assembly absent constitutional, statutory, or Assembly authorization.
3. An Assembly Member who voted with the majority in favor of budget legislation has standing to challenge an allegedly unconstitutional veto that nullified the effectiveness of his vote.
4. The availability of a legislative procedure to override the Governor's veto does not negate the legislator's injury in fact or defeat standing to challenge an allegedly unconstitutional veto.

KEY QUOTATIONS

“A procedure that nullifies a legislator's vote is as harmful as one that precludes it.” (96 N.Y.2d at 538)

“A plaintiff has standing to maintain an action upon alleging an injury in fact that falls within his or her zone of interest.” (96 N.Y.2d at 539)

“The existence of other possible political remedies, however, does not negate the injury in fact.” (96 N.Y.2d at 541)

FACTUAL BACKGROUND

In January 1998, Governor Pataki submitted an executive budget and related bills to the New York Legislature. The Legislature passed six appropriation bills and three non-appropriation bills, and the Governor exercised his line-item veto power 55 times to remove provisions from the non-appropriation bills. Silver, who had voted with the Assembly majority and sued in his official capacities as an Assembly Member and Speaker, alleged that the vetoes unconstitutionally nullified his vote because the Governor lacked line-item veto authority over non-appropriation bills.

PROCEDURAL HISTORY

Governor Pataki moved to dismiss Silver's complaint in Supreme Court, arguing that Silver lacked standing and legal capacity. Supreme Court denied the motion. The Appellate Division reversed and concluded that Silver lacked both capacity and standing. The Court of Appeals modified the Appellate Division's order by denying the motion to dismiss insofar as the action was brought by Silver as a Member of the Assembly, and affirmed the order as modified.

DISPOSITION

affirmed

CASES CITED

- Community Bd. 7 v. Schaffer, 84 N.Y.2d 148, 155-156
- Matter of City of New York v. City Civ. Serv. Comm'n, 60 N.Y.2d 436, 443-445
- Matter of Thirty-Fourth St. Ry. Co., 102 N.Y. 343, 350-351
- Anderson v. Regan, 53 N.Y.2d 356
- Winner v. Cuomo, 176 A.D.2d 60
- Matter of Sullivan v. Seibert, 70 A.D.2d 975
- Society of Plastics Indus. v. County of Suffolk, 77 N.Y.2d 761, 771-772
- Coleman v. Miller, 307 U.S. 433, 438, 446
- Dodak v. State Admin. Bd., 441 Mich. 547, 495 N.W.2d 539
- Raines v. Byrd, 521 U.S. 811, 816, 819, 821-823, 829
- Matter of Posner v. Rockefeller, 26 N.Y.2d 970, 971-972
- Kennedy v. Sampson, 511 F.2d 430, 435-436
- Dennis v. Luis, 741 F.2d 628, 630-631
- Fordice v. Bryan, 651 So. 2d 998, 1003
- Hendrick v. Walters, 865 P.2d 1232, 1236-1238
- Campbell v. Clinton, 52 F. Supp. 2d 34, 45 n.11, aff'd, 203 F.3d 19, cert. denied, 531 U.S. 815
- Clinton v. City of New York, 524 U.S. 417, 430, 434
- New York State Bankers Ass'n v. Wetzler, 81 N.Y.2d 98, 102
- People v. Tremaine, 281 N.Y. 1
- People v. Tremaine, 252 N.Y. 27
- Saxton v. Carey, 44 N.Y.2d 545, 551
- Matter of King v. Cuomo, 81 N.Y.2d 247, 251
- Chenoweth v. Clinton, 181 F.3d 112, 115