

Urban Justice Ctr. v Silver

2007 NY Slip Op 33388(U)

October 17, 2007

Supreme Court, New York County

Docket Number: 0105064/2006

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK - NEW YORK COUNTY

PRESENT: Solomon
Justice

PART 55

Urban Justice

INDEX NO. 105064/00

MOTION DATE 9-20-07

MOTION SEQ. NO. 002

MOTION CAL. NO. _____

- v -

Sheldon Silver

The following papers, numbered 1 to _____ were read on this motion to/for dismiss

Notice of Motion/ Order to Show Cause - Affidavits - Exhibits ...

Answering Affidavits - Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the annexed memorandum decision and order.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

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Dated: 10/17/07

[Signature]
JANE B. SOLOMON J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 55

-----X
URBAN JUSTICE CENTER, THOMAS J. KIRWAN,
Member of the New York State Assembly,
and LIZ KRUEGER, Member of the New
York State Senate,

Plaintiffs,

INDEX NO. 105064/2006

-against-

SHELDON SILVER, Speaker of the New
York State Assembly, JOSEPH L. BRUNO,
President Pro Tempore and Majority
Leader of the New York State Senate,
NEW YORK STATE ASSEMBLY, and NEW YORK
STATE SENATE,

DECISION and ORDER

Defendants.

JANE S. SOLOMON, J.

Defendants move under CPLR § 3211(a)(1) (2), and (7) to dismiss the complaint. Although this motion was fully briefed more than a year ago, the parties jointly requested the court to postpone a decision until after the Appellate Division, First Department, decided the parties' cross appeals of this court's decision in a related case, Urban Justice Center v. Pataki, Index No. 102180/05 (the "Related Action"). Now that the First Department has ruled in the Related Action (Urban Justice Center v. Pataki, 38 A.D.3d 20 [1st Dep't 2006]), the parties have agreed to reinstate this action to the court's calendar, and have submitted supplemental briefs.

In the Related Action, the plaintiffs alleged that a number of rules and practices in the State Assembly and Senate prevented members of the minority party in each Chamber from

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being able to act as effective legislators. In this action, plaintiffs allege that, in violation of the Free Speech Clause in the Federal and the State Constitutions, staff members appointed by the majority party, in each Chamber, censor the content of minority Members' constituent communications eligible for the franking privilege, and use overbroad and vague criteria to do so. For example, such communications may not use the words "Democrat" or "Republican," or the names of the Governor or the legislative leaders, including defendants Bruno and Silver. Nor may such communications discuss how the Legislature operates, or any legislative proposals to modify current legislative rules and practices, or criticize any legislative issue about which the majority is particularly concerned.

As an initial matter, plaintiff Urban Justice Center (the "Center") lacks standing. The gravamen of the complaint is that the franking privilege provided by Legislative Law § 16 is being restricted on the basis of content. The Center, however, is not entitled to the franking privilege in any circumstances.

Plaintiffs Kreuger and Kirwan, however, do have standing to raise their claims. Although neither alleges any proposed communication by either of them has been refused the franking privilege, to the extent that the content-based restrictions described above are known among the legislators, Kreuger's and Kirwan's subsidized mailings to their constituents are, in effect, being censored. Moreover, a party has standing to raise a freedom of speech claim even when a restriction on

[* 4]

speech "may cause others not before the court to refrain from constitutionally protected speech or expression." Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973); see also People v. Dupont, 107 A.D.2d 247 (1st Dep't 1985); Highway Tavern Corp. v. McLaughlin, 105 A.D.2d 122 (2d Dep't 1984).

Legislative Law § 16 (a) provides that:

[t]he secretary of the senate ... and the clerk of the assembly ... shall prepay the postage on all official mail deposited in the post office of the respective houses for transmission through the mails by members of the senate and assembly, respectively.

What communications qualify as "official mail," within the meaning of Legislative Law § 16, must be defined by the Legislature. See generally, Urban Justice Center v. Pataki, 38 A.D.3d 20, supra. Moreover, neither Senator Kreuger nor Representative Kirwan, nor any other member of the Legislature, is being prevented from using the mail. The limitations of which plaintiffs complain are solely limitations on the use of a subsidy (see Gottlieb v. Duryea, 38 A.D.2d 634 [3d Dep't 1971], aff'd 30 N.Y.2d 807 [1972]), and the government can make content-based distinctions when it subsidizes speech. Davenport v. Washington Educ. Assn., ___ U.S. ___, 127 S.Ct. 2372 (2007); Regan v. Taxation With Representation of Wash., 461 U.S. 540 (1983).

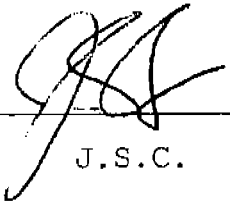
Accordingly, it hereby is

ORDERED that the motion is granted and the complaint is dismissed with costs and disbursements as taxed by the Clerk of the Court upon the submission of an appropriate bill of costs; and it further is

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated: October 17, 2007

ENTER:



J.S.C.

JANE S. SOLOMON

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