

Lancman v De Blasio
2019 NY Slip Op 30812(U)
March 27, 2019
Supreme Court, New York County
Docket Number: 158709/18
Judge: Lynn R. Kotler
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 8**

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RORY I. LANCMAN; DAVID R. JONES; and
COMMUNITY SERVICE SOCIETY OF NEW
YORK,

**DECISION, ORDER AND
JUDGMENT**

INDEX NO.: 158709/18
MOT SEQ.: 001

Petitioner(s),

For a Judgment Under Article 78 of the CPLR,

-against-

BILL DE BLASIO, as Mayor of the City of New York;
and JAMES P. O'NEILL, as Police Commissioner
of the City of New York,

Present:
Hon. Lynn R. Kotler, J.S.C.

Respondent(s).

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Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this
(these) motion(s):

Papers	Numbered
N/Petition, N/Petition (amended), Petition, Memo of Law	1-19
Answer, Memo of Law in opp	20-23
N/Petition (amended), Petition (amended), Memo of Law	25-41
N/Motion (002), Aff in support	45-53
Aff in opp	55-57
Reply Aff	58

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In this Article 78 proceeding, petitioners seek an order compelling the New York
Police Department ("NYPD") to post certain subway arrest information on its website,
pursuant to Administrative Code § 14-172. In lieu of answering the petition, respondents
cross-move to dismiss. Petitioners oppose the cross-motion. For the reasons that follow,
the cross-motion is granted and this proceeding is dismissed.

Petitioners are Rory I. Lancman, David R. Jones and Community Service Society
of New York ("CSSNY"). Lancman is currently a member of the New York City Council

representing the 24th District in Queens and he brings this proceeding in his official capacity. Jones is the President and CEO of the Community Service Society of New York and also serves on the Metropolitan Transportation Authority (“MTA”) Board as a representative of New York City. Finally, CSSNY is a non-profit corporation which according to the petition “serves as an unwavering advocate for more than three million low-income New Yorkers, addressing the root causes of economic disparity through research, advocacy, litigation, and other innovative programs.”

Respondents are Bill de Blasio, the Mayor of the City of New York and James P O’Neill, the Police Commissioner of the City of New York, who is the chief executive of the NYPD.

The law in question, Admin Code § 14-172, entitled “Online Reporting of Arrests and Summonses for Subway Fare Evasion,” reads as follows:

- a. No later than 30 days after the quarter ending December 31, 2017 and 30 days after every quarter thereafter, the [Police] department shall publish on the department’s website a report for the prior quarter, which shall include:
 1. The total number of arrests under subdivision 3 of section 165.15 of the penal law that occurred in a New York city transit authority station in total and disaggregated by the (a) transit bureau district; (b) New York city transit authority station; (c) race, sex and age group of the arrestee, including but not limited to disaggregation of arrestees under the age of 18; and (d) whether the arrestee was issued a desk appearance ticket or was the subject of a live arrest.
 2. The total number of summonses returnable to the transit adjudication bureau issued for subway fare evasion as defined in section 1050.4 of title 21 of the New York codes, rules and regulations in total and disaggregated by (a) transit bureau district; (b) the New York city transit authority station; and (c) race, sex and age group of the violator, including but not limited to disaggregation of violators under the age of 18.

b. The department shall publish on its website the department's policy with respect to determining whether an individual is issued a summons returnable to the transit adjudication bureau or a criminal summons.

In their petition, petitioners assert that the NYPD has "refused" to comply with Admin Code § 14-172 without explanation and therefore "has disregarded the limits our city government places on its power, seemingly believing that if it does not agree with the legislature's policy decisions, it is not bound by the very city laws it has sworn to enforce." Petitioners maintain that they seek to enforce Admin Code §14-172 "because they have an ongoing immediate need for the information that is required to be disclosed ... specifically so [Lancman] can study whether the NYPD's fare evasion law enforcement practices are disproportionately targeting low-income, minority communities." Lancman further maintains that the subject information will help him "craft further legislation."

As for CSSNY and Jones, petitioners maintain that the NYPD's failure to provide the subway arrest information affects their ability to develop and advocate for legislation and/or change with respect to MTA policies.

In cross-moving to dismiss the petition, respondents argue herein that petitioners lack standing to bring this proceeding on the grounds they do not face an immediate and direct harm from the alleged inaction of NYPD. They further maintain that Lancman also lacks capacity to sue. The court will first consider the issue of standing.

Standing is a threshold question and must be considered at the outset when challenged (*Society of Plastics Indus. v. County of Suffolk*, 77 NY2d 761, 771 [1991]). To demonstrate standing, petitioners must satisfy a two-part test: [1] they must show that they have suffered an "injury in fact, meaning that [petitioners] will actually be

harm[ed] by the challenged administrative action”; and [2] that the injury petitioners allege “fall[s] within the zone of interest or concerns sought to be promoted or protected by the statutory provision under which the agency has acted” (*New York State Assn. of Nurse Anesthetists v Novello*, 2 NY3d 207 [2004] [internal quotations omitted]; see also *Transactive Corp. v. New York State Dept. of Social Services*, 92 NY2d 579 [1998]; *Silver v. Pataki*, 96 NY2d 532 [2001]). The injury must be more than “conjectural” (*New York State Assn. of Nurse Anesthetists v Novello*, *supra*).

While petitioners’ goals are praiseworthy, the court is constrained to find that they have not alleged injury in fact based upon well-established precedent. Indeed, as respondents correctly point out, it is entirely speculative for petitioners to state that the subway arrest information will have an affect on their ability to legislate or develop and/or advocate for policy. Petitioners maintain that if Lancman is provided with the subject data, he will be able to “make an informed assessment of the NYPD’s fare evasion enforcement in low-income communities”. However, this argument literally fits the definition of speculation and conjecture because it is based upon a series of assumptions, *inter alia*, that such data is necessary to legislate. Further, the fact that NYPD’s compliance with Admin Code §14-172 does not actually harm these specific petitioners undercuts their claim to standing.

Lancman’s specific claims are analogous to those raised in *Matter of Townswend v. Spitzer*, 69 Ad3d 1026 [3d Dept 2010], where the Third Department held that “post-enactment inaction does not affect [the petitioner’s] statutory rights or duties as a legislator.” The facts here are in stark contrast to cases where a statute poses an actual or threatened injury (see i.e. *New York, Inc. v. The City of New York*, 2014 WL 2776622

[NY Sup, NY Co. 2014]; *Owner-Operator Indep. Drivers Ass'n, Inc. v. Fed. Motor Carrier Safety Admin.*, 656 F3d 580, 586 [7th Cir. 2011]).

This case is also distinguishable from *Silver v. Pataki*, *supra*, where the Court of Appeals found that a State Assembly member had standing to sue because his vote with the majority in favor of legislation had been nullified. The Court explained that a legislator's have standing to sue in two general circumstances: vote nullification and usurpation of power (*Silver* at 539). The court agrees with respondents that the facts here do not fall under either category. Indeed, the law which Lancman sponsored and voted for has been passed. The issue of whether that law is being enforced does not *ipso facto* nullify Lancman's vote. Nor does the NYPD's alleged refusal to enforce Admin Code §14-172 constitute an usurpation of Lancman's power, since he remains free to legislate as he sees fit within the confines of his authority to do so.

Petitioners' reliance on *Sullivan v. Siebert* (70 AD2d 975 [3d Dept 1979]) is misplaced. In that case, the Third Department held that a State Assembly member had standing to compel respondents' compliance with Executive Law § 164, which required respondents to publish annual reports on or before May 15th for the preceding calendar year. *Sullivan* is distinguishable from the facts here because Executive Law § 164 specifically conferred standing upon the State Assembly member, since it expressly required the respondents to publish their reports to the Governor and the Legislature. Here, Admin Code §14-172 does not require the NYPD to provide such information to Lancman and therefore *Sullivan* is not on point (see also *New York Public Interest Research Group Straphangers Campaign, Inc., v. Metropolitan Transportation Authority*, 309 AD2d 127, 140 [1st Dep't 2003]).

As for Jones and CSSNY, the court also finds that they lack standing. There purported injuries are as speculative as Lancman's, and neither can demonstrate that they have "suffered an injury in fact, distinct from that of the general public" (*Matter of Citizens Emergency Comm. to Preserve Preserv. v Tierney*, 70 AD3d 576 [1st Dept 2010]). While there can be no dispute that both have an interest in gaining access to the data that is the subject of Admin Code §14-172, "interest and injury are not synonymous" and "[a] general – or even special – interest in the subject matter is insufficient to confer standing, absent an injury distinct from the public in the particular circumstances of the case" (*id.* at 576).

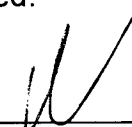
Since petitioners lack standing to seek the relief sought herein, the petition must be dismissed. In light of this result, the court declines to consider the parties remaining arguments.

Accordingly, it is hereby

ADJUDGED that the petition is denied and the proceeding is dismissed.

This constitutes the decision, order and judgment of the court.

Dated: New York, New York
3/27/19

So Ordered:


 Hon. Lynn R. Kotler, J.S.C.