



NEW YORK STATE SENATOR

Liz Krueger

Appeals Court Hears Arguments in Lawsuit Against “Three Men in a Room”

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New York City -- Friday, a 1st Department Appellate Division panel of judges heard complaints from the lawsuit against the “three men in a room” over dysfunctional legislative practices in the New York State Legislature. The panel listened to plaintiffs’ appeals of counts that were previously dismissed, as well as the State’s appeals of lower court decisions allowing some counts to move forward.

In February 2005, New York State Senator Liz Krueger (D-Manhattan) and Assemblyman Tom Kirwan (R-Newburgh) filed suit against Governor George Pataki, Senate Majority Leader Joseph Bruno, Assembly Speaker Sheldon Silver, the Senate, and the Assembly, challenging the constitutionality of various rules and practices that contribute to the Legislature’s dysfunction. The plaintiffs are represented pro bono by Cleary Gottlieb Steen & Hamilton LLP and its partner and former Counsel to Governor Mario M. Cuomo, Evan A. Davis.

The suit challenges practices in both houses of the State Legislature which enhance the power of the majority, while discriminating against minority party members and their constituents. In a November 2005 ruling, New York State Supreme Court Judge Jane S. Solomon dismissed sixteen of the plaintiffs claims, but allowed three complaints to proceed, writing “this lawsuit addresses important issues central to the health of New York State’s government. Studies and newspaper editorials describe New York’s Legislature as ‘dysfunctional,’ and as the worst state legislature in the country.”

In the Appellate Court hearing, Plaintiff’s Counsel Evan Davis argued for reinstatement of the dismissed counts. The arguments focused on challenging the claim that defendants were granted immunity from these counts on the grounds of the protections provided by the Speech and Debate Clause of the State Constitution, which protects legislators from claims against them for actions taken in the course of their legislative duties. Counsel Davis argued that previous court cases had established that his immunity only extended to legislative, as opposed to administrative, actions, and that plaintiffs’ claims were challenging administrative actions by the Governor and legislative leaders.

Counsel also argued that because the issues raised in plaintiffs’ claims involved fundamental rights, including equal protection and freedom of speech and association, they must be subject to a standard of “strict scrutiny” which requires that the State demonstrate a compelling interest for any discriminatory practices.

“Our case is about ensuring equal protection under the law for all State Legislators, and by extension, all state residents,” Krueger said. “This is a historic case which I anticipate will lead to major reform in the State Legislature, and will be a major victory for all New Yorkers.”

Judge Solomon ruled that the plaintiffs equal protection claims regarding unequal funding of member support and unequal member items, as well as the claim that the Governor does not follow constitutional requirements in issuing messages of necessity, should proceed to trial. The Appellate Division also heard arguments from New York State appealing Judge Solomon’s ruling allowing these counts to proceed.

Krueger added, “Democracy does not work when our State’s decisions are determined with only three powerful men in one room. When members of minority parties are unable to fully and completely do their jobs, it is their constituents who

suffer. New Yorkers deserve more openness and transparency in their government than what these three men have given us.”

Senator Krueger and Assemblyman Kirwan expect a decision from this level of the judiciary by the end of summer, and anticipate the case will eventually be argued in the Court of Appeals, New York State’s highest court.