

DOCKET NO.: HHD-CV-18-5054798-S : SUPERIOR COURT
JOE MARKLEY : J.D. OF HARTFORD
 : AT HARTFORD
V. :
 :
DANNEL MALLOY : OCTOBER 25, 2018

Memorandum of Decision Dismissing Case

A Connecticut state senator sues the state's governor to stop him from using state funds on a toll road study. The governor asks the court to dismiss the case because money spent studying toll roads does not harm the senator in any way personal enough for the courts to consider.

Both sides recognize that you can't sue someone who hasn't harmed you. The senator claims the governor has harmed him personally by usurping the authority of the legislature he belongs to. He also claims the governor has nullified his vote on the bills authorizing transportation projects by ignoring that vote. Is this harm personal enough to sue over?

Let's assume for a moment that the court can consider a claim that a governor nullified a senator's vote by refusing to carry out a law passed with his support. Our highest court hasn't considered the issue yet. But the United States Supreme Court

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appears to have approved of such claims in a limited context in 1939 in *Coleman v. Miller*.¹

The trouble is that even if this court could hold that a nullified vote is harm personal enough to sue over, the senator hasn't alleged his vote was nullified. His lawyers admit he voted *against* the bills authorizing transportation projects. Had he voted for the bills and had the bills banned spending to research tolls, he might have an argument that his vote was nullified by the governor spending on them anyway. But not only did the senator vote against the bills, the bills that passed didn't expressly ban spending on toll research. The senator wishes a bill had passed to ban spending on tolls and claims that no bill expressly authorizes the spending. But none of this means anything the governor did nullified the senator's "no" vote. It merely means the senator voted "no" and enough other people voted "yes" to pass a bill in a form he disapproves. Given the defeat of his view in the General Assembly, the governor's action didn't change the impact of the senator's "no" vote in any way.

This means the senator has to rely on a less personal and more general concern that the governor has usurped power from the legislature and that as a member of the legislature this means the senator's power has been usurped too. Again, our Supreme Court hasn't considered the issue.

¹ 307 U.S. 433.

But the United States Supreme Court has considered it. In 2001 in *Raines v. Byrd* it firmly rejected allowing legislators to sue for generalized claims about the constitutionality of overreaching by another branch of government. Using familiar language about litigants needing “standing” to sue, the Court held: “We have consistently stressed that a plaintiff’s complaint must establish that he has a ‘personal stake’ in the alleged dispute, and that the alleged injury suffered is particularized as to him.”² More specifically, the Court said six members of Congress who voted against a line-item-veto law couldn’t challenge the power it granted the president because their harm wasn’t personal enough.³

In *Raines*, the Supreme Court took a modest view of judicial power. It said claims that are too “abstract” don’t belong in court. The Court said that in *Coleman* the 20 legislators suing voted with a majority to spend money that the relevant state officials then simply refused to spend, making their votes to spend the money a nullity.⁴ This was personal enough. But the *Raines* Court went on to find the harm suffered by the six legislators in *Raines* was too remote for them to make a personal claim in court:

They have not alleged that they voted for a specific bill, that there were sufficient votes to pass the bill, and that the bill was nonetheless deemed defeated. In the vote on the Act, their votes were given full effect. They simply

² 521 U.S. 811, 819.

³ *Id.* at 813-14.

⁴ *Id.* at 822-23.

lost that vote. Nor can they allege that the Act will nullify their votes in the future in the same way that the votes of the *Coleman* legislators had been nullified. In the future, a majority of Senators and Congressmen can pass or reject appropriations bills; the Act has no effect on this process. In addition, a majority of Senators and Congressmen can vote to repeal the Act, or to exempt a given appropriations bill (or a given provision in an appropriations bill) from the Act; again, the Act has no effect on this process.⁵

To the *Raines* Court, any step removed from actual vote nullification goes over the line between a claim personal enough to justify a lawsuit and one that is too far removed from personal rights for the courts to hear. The Court decided that judicial power does not extend to hearing individual legislators' claims about "the abstract dilution of institutional legislative power"⁶ According to the Court, rejecting this reflects that the courts have "maintained public esteem" by refusing to take on an "amorphous general supervision of the operations of government"⁷

All this is fatal to the senator's claims in this case. Without any vote of his being nullified by the governor, his claim is merely an individual claim about abstract dilution of legislative power, and, according to the highest court in the land, this court is powerless to hear it.

As our Supreme Court held in 2001 in *Ganim v. Smith & Wesson Corp.*, a party who has suffered no harm courts are willing to recognize has no right to bring his claim

⁵ *Id.* at 824.

⁶ *Id.* at 826.

⁷ *Id.* at 829.

to court— he has no “standing” to invoke the court’s jurisdiction— and the court must dismiss his claim for lack of subject matter jurisdiction without hearing any other part of the case.⁸

There may be ways a claim like the senator’s can be addressed. Besides the obvious legislative remedies, the *Raines* court suggested that a suit authorized by the legislative body itself might present a different case and might yield a different result.⁹ The Court indeed found this kind of institutional standing in 2015 in *Arizona State Legislature v. Arizona Independent Redistricting Commission*.¹⁰ But nothing before or since has left doubt that an individual lawsuit where the individual didn’t face a nullification of his vote is impermissible.

The court has no subject matter jurisdiction. This case is dismissed.

BY THE COURT

Moukawsher, J.

⁸ 258 Conn. 313, 347-48 (2001).

⁹ 521 U.S. at 829-30.

¹⁰ 135 S. Ct. 2652, 2659