

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

MICHAEL K. BARRETT, et al.,                    )  
Plaintiffs,                                        )  
vs.    )  
JEREMIAH W. (Jay) NIXON,                    )  
Defendant.                                        )  
Case No. 16AC-CC00290

ORDER AND JUDGMENT

The Court takes up the pending cause for ruling, having considered the arguments of counsel. Being duly advised in the premises, the Court issues its rulings with respect to Counts I, II and IV of Plaintiffs' First Amended Petition as set forth below.

Defendant Governor initially argues that these remaining claims are not ripe, a position that this Court agrees with, if Article IV, Section 27<sup>1</sup> is properly applied to Plaintiffs<sup>2</sup>. This position, however, does not resolve (at least as the Court understands them) the specific claims made in Counts I, II and IV. The *Schweich* defense does not apply to every challenge to the Defendant Governor's exercise of budget authority, rather only that exercise made under the authority of Article IV, Section 27. Authority aside, the Defendant Governor has clearly deprived Plaintiffs of the benefit of 100 percent of their appropriation. These remaining claims assert that Article IV, Section 27 cannot be applied to Plaintiffs.

Count I asserts that Plaintiffs are not an agency of the State and therefor Article IV, Section 27 cannot be applied to them. In support, they rely upon the list of components of the Executive Department. This argument fails on its face.

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<sup>1</sup> References to articles and sections thereof refer to the Missouri Constitution of 1945, as amended.

<sup>2</sup> The Court will use the term Plaintiffs to refer to both the Office of the State Public Defender and the Missouri Public Defender Commission.

First, Article IV, Section 12 by its own terms does not purport to be the exclusive definition of agencies of the State. It specifically provides that, “all present or future boards, bureaus, commissions and other agencies of the state exercising administrative or executive authority” are part of the executive department. Second, because Plaintiffs are the entity delegated to fulfill the State’s obligation for indigent defense established by *Gideon v. Wainwright*, they are clearly an agency of the State. See *State ex rel. Sayad v. Zych*, 642 S.W.2d 907, 910 (Mo. banc 1982), See also *State ex rel. Public Defender Comm. v. County Court of Greene Cty, MO* (667 S.W.2d 409, 411 (Mo. App. 1984)(expressly referring to the Public Defender Commission as a “state agency”). Plaintiffs are a “state agency” for Article IV, Section 27 purposes.

Count II asserts that the Defendant Governor’s restrictions “did not reduce the expenditures of ‘the state’ as a whole but rather reduced the expenditures of only certain agencies and departments within the state.” This argument fails on its face as well.

Article IV, Section 27 provides that:

1. The governor may control the rate at which any appropriation is expended during the period of the appropriation by allotment and may reduce the expenditures of the state or any of its agencies below their appropriations whenever the actual revenues are less than the revenue estimates upon which the appropriations were based. The governor shall not reduce any appropriation for the payment of principal and interest on the public debt. (Emphasis added)

There is no requirement that any withholdings reduce the expenditures of the state as a whole as that requirement is in the disjunctive. The Defendant Governor is authorized to withhold or reduce the appropriation to the Plaintiffs (a certain agency within the state) in accordance with the law.

Count IV asserts that the withholdings violate the separation of powers provision set forth in Article II of the Missouri Constitution. Plaintiffs assert that the Office of the State Public Defender is an independent department of the judicial branch<sup>3</sup> as set forth in § 610.019.1 RSMo and that the exercise of executive powers (the challenged budget action) over them is the violation.

Resolution of this claim starts with examination of the separation of powers provision of Article II, which reads as follows:

The powers of government shall be divided into three distinct departments--the legislative, executive and judicial--each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted.

The analysis depends upon the “powers” exercised and not upon the “org chart” designation. If this exercise of executive power interfered with or prevented the exercise of judicial power, this would be violation of Article II.

Judicial power is “[t]he authority vested in the courts and judges to hear and decide cases and to make binding judgments on them; the power to construe and apply the law when controversies arise over what has been done or not done under it.” *Black’s Law Dictionary*, (7<sup>th</sup> Ed 1999)(p. 851). The defense of indigent defendants is not the exercise of judicial power.

Plaintiffs certainly do not legislate. As noted above, they fulfill the State’s obligations by carrying out the duties set forth in Chapter 600 RSMo. They exercise executive powers, not

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<sup>3</sup> The Court notes that while the Constitution refers to the judicial department, the General Assembly refers to the judicial branch. For purposes of this order and judgment, the Court will assume that judicial department and judicial branch are the same entity.

withstanding their placement on the organization chart.

Because Plaintiffs do not exercise judicial power, they cannot claim that a restriction in their funding by the Defendant Governor (the executive) constitutes a violation of the separation of powers clause.

This Court incorporates by reference its order of September 28, 2016, dismissing Count III for ripeness.

Judgment on the pleadings is appropriate when from the face of the pleadings, the moving party is entitled to judgment as a matter of law. Such is the circumstances of the instant case.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be and is hereby entered in favor of Defendant Jeremiah W. (Jay) Nixon on all counts.

SO ORDERED this 3rd day of November, 2016.

A handwritten signature in black ink is written over a solid horizontal line. The signature is stylized and appears to be the name of the judge.