

12-7-2020 8:00a.m.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2020-095696

12/04/2020

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT
V. Felix
Deputy

CHARLENE R FERNANDEZ, et al.

JAMES E BARTON II

v.

COMMISSION ON APPELLATE COURT
APPOINTMENTS, et al.

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JUDGE CRAWFORD

UNDER ADVISEMENT RULING

The Court has read all of the parties' filings in this matter, considered the oral arguments, and reviewed public records addressing matters in the First Amended Complaint.

In ruling on a motion to dismiss, the Court will "assume the truth of the well-pled factual allegations and indulge all reasonable inferences therefrom." *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419 (2008). The Court does not, however, accept the truth of allegations that are conclusions of law, inferences or deductions that are not necessarily implied by any well-pleaded facts, unreasonable inferences or unsupported factual or legal conclusions.

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Plaintiffs contend that the list of nominees sent by the Commission on Appellate Court Appointments (“CACA”) for appointment to the Arizona Independent Redistricting Commission (“AIRC”) was constitutionally invalid because it included a paid, registered lobbyist and a sham Independent.

It is undisputed that the CACA issued its list of 25 nominees on 10/8/2020. It is also undisputed that the list included 10 registered Republicans, 10 registered Democrats, and 5 nominees who were not registered with either party. Plaintiffs do not dispute that Mr. Wilson, the alleged sham Independent, has been registered as unaffiliated with a political party for three years or more preceding his nomination by the CACA.

The following material facts are undisputed. On 10/22/2020, Rusty Bowers, Arizona Speaker of the House, made his appointment to the AIRC from the list of nominees issued by the CACA. On 10/29/2020, Plaintiff Charlene Fernandez, Minority Leader of the Arizona House of Representatives, made her appointment to the AIRC from the list of nominees issued by the CACA. On 11/5/2020, Plaintiff David Bradley, Minority Leader of the Arizona Senate, made his appointment to the AIRC from the list of nominees issued by the CACA. At this time, all four members have been appointed to the AIRC from the list of nominees issued by the CACA. Under the Constitution, the four appointed members are empowered to appoint the fifth member of the AIRC.

The Court finds persuasive Defendant’s and Intervenors’ arguments that Plaintiffs’ claims are moot, that Plaintiffs’ lack standing, and that the alleged injury is not redressable because the Court does not have the power to remove the four duly appointed members.

The Constitution sets forth clear parameters for the CACA to issue a list of nominees, the procedure and timeline of the appointment of four members to the AIRC, and the procedure and timeline for the appointment of the fifth member to the AIRC. If the Court were to order the CACA to issue a new list of qualified nominees, the order would effectively remove the four duly appointed members in a manner that is not legally available. Plaintiffs’ argument that the four members appointed to the AIRC were chosen from an unconstitutional pool seems incongruous with their own appointments and their announcement of their appointments.

Additionally, Plaintiffs fail to state a claim that Mr. Wilson and Mr. Loquvam are not qualified.

As to Mr. Wilson,

The language in the Constitution is clear and unambiguous. Five of the nominees must be persons “who are not registered with either of the two largest political parties in Arizona.” It is

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undisputed that Mr. Wilson has been registered as an Independent for three or more years prior to being included in the pool of qualified applicants. Nevertheless, Plaintiffs contend that his political activities show that he is really a Republican and his registration as an Independent is a sham. Plaintiffs disregard the plain meaning of the words “not registered with either of the two largest political parties in Arizona.” There is no requirement that Mr. Wilson avoid, limit, or restrict his political activities. Further, permitting such a challenge to a person’s voter registration would have a chilling effect on applicants to the AIRC and could result in an unfathomable increase in self-interested legislators challenging the qualifications of any nominee sent by the Commission that a particular legislator did not want appointed.

As to Mr. Loquvam,

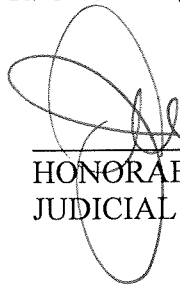
The Court finds persuasive Defendant’s argument for the interpretation of a paid registered lobbyist under the Constitution. Interpreting the word lobbying as it was interpreted before the adoption of Proposition 106 is consistent with the analysis contained in *Adams v. Commission on Appellate Court Appointments*, 227 Ariz. 128, 132-35, 254 P.3d 367, 372-74 (2011). Accordingly, Mr. Loquvam’s registration as a lobbyist with the Arizona Corporation Commission does not make him a paid registered lobbyist who is ineligible to serve as a member of the AIRC.

Conclusion

Based on the foregoing and for the reasons set forth in Defendant’s Motion to Dismiss First Amended Complaint, Response of Intervenors in Support of Defendant’s Motion to Dismiss the First Amended Complaint, Defendant’s Reply in Support of Motion to Dismiss the First Amended Complaint, and the arguments of counsel,

IT IS ORDERED granting Defendant’s Motion to Dismiss and dismissing Plaintiffs’ First Amended Complaint with prejudice.

No matters remain pending in this case. Accordingly, the Order is a final judgment under Ariz. R. Civ. P. 54(c).



HONORABLE JANICE CRAWFORD
JUDICIAL OFFICER OF THE SUPERIOR COURT