Clerk of the Superior Court
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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2019-014945 10/30/2020

HONORABLE JOSEPH P. MIKITISH

CLERK OF THE COURT
A. Walker
Deputy

PUENTE, et al.

HEATHER HAMEL

v.

ARIZONA STATE LEGISLATURE

THOMAS J. BASILE

JUDGE MIKITISH

MINUTE ENTRY

Ruling on Motion to Dismiss

The court has received and reviewed the Defendant Arizona State Legislature's (the Defendant) Motion to Dismiss filed March 19, 2020; the Plaintiffs Puente, Mijente Support Committee, Jamil Nasar, Jamar Williams, and Jacinta Gonzalez's (collectively the Plaintiffs) Response thereto filed May 4, 2020; and the Defendant's Reply filed May 18, 2020. The Court heard argument on the motion on September 1, 2020 and took the matter under advisement. For the reasons stated below, the motion is granted.

**Background**

On December 4, 2019, the Plaintiffs filed a complaint seeking declaratory judgment against the Defendant for violating Arizona's Open Meeting Law. The Plaintiffs asserted that a quorum of five legislative committees would be attending the American Legislative Exchange Council (ALEC) Summit on December 4, 5, and 6, 2019, in Scottsdale, Arizona (the Summit). Those five committees include 1) the Senate's Natural Resources and Energy Committee; 2) the Senate Water & Agriculture Committee; 3) the House of Representatives Appropriations Committee; 4) the House Federal Relations Committee; and 5) the House Health and Human Services Committee. The Plaintiffs assert that the summit will attract state legislators and private participants from across the country to formulate "model bills" that will be introduced in Arizona and nationwide. The Summit is not open to the public.

In the Complaint, the Plaintiffs assert that each of the legislative committees will have the ability to commit to introduce the model bills in one or both houses of the legislature and advance these bills through the legislative process. They argue that the participation of a quorum of each of the legislative committees at the summit will violate Arizona's Open Meeting Law, A.R.S. § 38-431, et seq. That law requires that "all meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings," and that "all legal action of public body shall occur during a public meeting." A.R.S. §38-431.01. The Plaintiffs allege that the Legislature and legislative committees are public bodies as defined in the open meeting law. *See* A.R.S. §38-431.

**Legal standard**

A claim may be dismissed for failure to state a claim upon which relief can be granted. Rule 12(b)(6), Ariz. R. Civ. P. Under the Rule, a claim must be dismissed when the plaintiff is not entitled to relief under any interpretation of the facts. *Coleman v. City of Mesa*, 230 Ariz. 352, 356 ¶ 8 (2012). A court is to look only to the pleading itself and the well pled factual allegations therein. *Cullen v. Auto-Owners Insurance Company*, 218 Ariz. 417, 419 ¶ 7 (2008). Mere conclusory statements are insufficient to state a valid claim. *Id.* Courts must assume the truth of the factual allegations and all reasonable inferences therefrom in the light most favorable to the pleading party. *Logan v. Forever Living Products International Inc.*, 203 Ariz. 191 (2002).

**Discussion**

The Defendant argues that the court must dismiss the complaint for several reasons.

**1. Proper Parties**

As a preliminary matter, the Defendant argues that the Court should dismiss the action because the Plaintiffs failed to name and serve the proper defendant. Rule 12 (b) (5), Ariz. R. Civ. P. (insufficient service of process). It argues that the Arizona Constitution establishes the Legislature as two separate and independent houses, the Senate and the House of Representatives. Ariz. Const. art. IV, pt. 2, § 1. It argues that each house maintains its own membership, committee and subcommittee structures, and rules of proceedings. *Id.* §§ 8, 9. The Defendant argues that the Plaintiffs did not allege that it engaged in any wrongdoing, but rather that certain individual legislators acting as specific committees of a particular legislative house violated the open meeting law. It argues that the Constitution prohibits individual members from being served with civil process during the legislative session and that the Plaintiffs are suing the Legislature to get around that prohibition.

The Plaintiffs argue that the Legislature is a proper defendant in this matter. The Plaintiffs argue that the Legislature has been sued as the defendant or sued as the plaintiff in several cases. *See McLaughlin v. Bennett*, 225 Arizona 351 (2010) (including "Legislature of the State of Arizona" as a defendant); United States v. State of Arizona, No.CV 10-1413-PHX-SRB (D. Ariz. April 5, 2011) (order granting Motion of Arizona of State Legislature to appear as intervenor-defendant); Arizona State Legislature v. Arizona Independent Redistricting Commission, 997 F. Supp. 2d 1047 (D. Ariz. 2014) (holding that the Legislature has standing to bring a legal action where it shows a concrete injury). The Plaintiffs further argue that the fact that the Legislature consists of two chambers does not mean that it is not a single entity. See Ariz. Const. art. IV, pt. 1, § 1 (legislative authority vested "in the legislature, consisting of a Senate and a House of Representatives"). Finally, the Plaintiffs argue that the Open Meeting Law itself recognizes the Legislature as a specific entity because the law expressly includes the Legislature in the definition of a "public body." A.R.S. §38-431

The Court finds that the Arizona Constitution itself expressly refers to the Legislature as a discrete entity, albeit made up of two other discrete bodies, the Senate and House. Ariz. Const. art. IV, pt. 1, § 1. As a discrete entity, the Legislature has been a party in multiple legal actions. Further, the Open Meeting Law itself recognizes the Legislature as a public body subject to the law. For these reasons, the court concludes that the Defendant is a proper party to this action.

**2. Political question doctrine**

The Defendant next argues that the enforcement of the Open Meeting Law against it is a political question that is not enforceable through the courts. It argues that the case involves a decision that the Constitution commits to one of the political branches of government and raises issues not susceptible to judicial resolution. Therefore, courts should refrain from addressing the issue.

Specifically, the Defendant points to the Arizona Constitution which provides that each house of the legislature shall "determine its own rules of procedure." Ariz. Const. art. IV, pt. 2, § 8. It notes that the Constitution also provides that the majority of the members of each house shall constitute a quorum but a smaller number may meet for various purposes "in a manner and under such penalties as each house may prescribe." Ariz. Const. art. IV, pt. 1, § 9. The Defendant concludes that the entirety of legislative proceedings – including defining what constitutes a committee "meeting" and the definition of the term "committee" itself – are the exclusive province of each legislative chamber.

The Defendant argues that the Open Meeting Law itself acknowledges the constitutional grant of authority to the Legislature by noting that "either house of the legislature may adopt a rule or procedure pursuant to article IV, part 2 section 8, Constitution of Arizona, to provide an exemption to the notice and agenda requirements of this article." A.R.S. §38-431.08 (D). The Defendant goes on to note that both the House and the Senate of the 54th Legislature adopted meeting notice and agenda requirements and that each chamber and all committees and subcommittees shall be governed exclusively by these rules. *See* Arizona House of Representatives Rule 32 (H); Arizona Senate Rules, 54th Legislature, Rule 7. The Defendant argues that these rules entirely supplant the open meeting law.

The Defendant cites to cases in at least eight other states holding that the Legislature's compliance with the state's open meeting or similar sunshine law are not justiciable. It further notes that, in adopting the open meeting law in 1982, the 35th Legislature did not, and could not, limit the constitutional authority of future legislatures to control their own proceedings.

The Plaintiffs argue that the political question doctrine is a narrow exception to the judiciary's constitutional role of deciding cases and controversies. *Zivotofsky v. Clinton*, 566 U.S. 189, 196 (2015). They argue that the U.S. Supreme Court has never applied the political question doctrine in a case involving alleged statutory violations. *See El-Shifa Pharmaceutical Industry Co. v. United States*, 607 F.3d 836, 856 (D.C. Cir. 2010) (Kavanaugh J. concurring). They note that the most important factors in evaluating whether a claim is a political question are whether there is: 1) a "textually demonstrable constitutional commitment of the issue to a coordinate political department;" or 2) a "lack of judicially discoverable and manageable standards for resolving it." *Zivotofsky*, 566 U.S. at 195.

The Plaintiffs argue that the Arizona Constitution does not supplant all restrictions on meetings such as those contained in the Open Meeting Law. They argue that the constitutional provisions only contemplate actions of a duly constituted, collective house body and not specific legislative committees. They further argue that the constitutional powers relate only to those procedures specifically listed in the Constitution. Because the constitutional provisions are not an all-encompassing grant of legislative authority, Plaintiffs argue that courts must determine the

limits of the legislative powers contained in the constitutional text. *See Powell v. McCormick*, 395 U.S. 486 (1969). Finally, the Plaintiffs argue that the Court must read the application of the open meeting law itself to determine whether it impedes the constitutional grant of authority to the legislature. They argue that the Open Meeting Law does not.

The political question doctrine flows from the basic principle of separation of powers and acknowledges that some decisions are entrusted to branches of government other than the judiciary. For these reasons, Arizona courts refrain from addressing political questions. *Kromko v. Arizona Board of Regents*, 216 Ariz. 190, 192-193 (2007). Our Constitution provides that the departments of our state government "shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others." Ariz. Const. Art. III. "A controversy is nonjusticiable—*i.e.*, involves a political question—where there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it....' " *Kromko*, 216 Ariz. at 192.

In this case, the relevant portions of the Arizona Constitution provide as follows:

8. Organization; officers; rules of procedure

Each house, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and *determine its own rules of procedure*.

9. Quorum; compelling attendance; adjournment

The majority of the members of each house shall constitute a quorum to do business, but a smaller number may meet, adjourn from day to day, and compel the attendance of absent members, *in such manner and under such penalties as each house may prescribe*. Neither house shall adjourn for more than three days, nor to any place other than that in which it may be sitting, without the consent of the other.

Ariz. Const. art. IV, pt. 2, §§ 8, 9 (*emphasis added*).

In determining whether a court may decide if the Defendant violated the statutory requirements for public meetings, this Court must first determine whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department." In this case, the Constitution provides for each house to determine its own rules of procedure. Ariz. Const. art. IV, pt. 2, § 8. That grant of authority specifically applies to the manner in which members of each house may meet. Ariz. Const. art. IV, pt. 2, § 9. The manner in which members of the legislature meet logically includes the types of requirements set forth in the open meeting law,

including whether the meetings are noticed and open to the public, the manner of how legal action occurs, whether minutes are taken, and the posting of legal actions taken. *See* A.R.S. § 38-431.01. Because the text of the Constitution commits these issues to the Legislature, the first factor of determining whether the issue is a political question is met.

In looking at the second factor for determining a political question, the courts must consider whether there is "a lack of judicially discoverable and manageable standards for resolving" the issue. In this case, the constitutional delegation is broad: each house is to determine its own rules of procedure. Given the Legislature's plenary authority in this arena, there appears to be no judicially manageable standard for determining what should be included in those legislative rules of procedure, including whether there should be a requirement for public meetings in the settings challenged by the Plaintiffs. In fact, a reasonable person could imagine a broad range of rules of procedure a Legislature might adopt to meet the specific needs of each house and its committees and its members. Therefore, the second factor in determining a political question likewise appears to be met in this case.

Contrary to the Plaintiffs' arguments, the constitutional text does not limit itself to rules and procedures for a "duly constituted and collective house body." In fact, the constitutional text appears to contemplate committees when it authorizes "a smaller number" than a quorum to meet and compel attendance "*in such manner and under such penalties as each house may prescribe*." Art. IV, pt. 2, § 9. The Court finds no basis to conclude that the text applies only to each house as a whole rather than individual committees.

Several other state courts likewise have concluded that their legislature's compliance with open meeting laws is a nonjusticiable political question. *See* Defendant's Motion at 7-8. As the New Hampshire Supreme Court recognized, "we emphasize that the question before us is not whether the Right-to-Know Law applies to the legislature. By the statute's express terms, it does. The question before us is whether the legislature's alleged violation of the Right-to-Know Law is justiciable. We have concluded that this question is not justiciable." *Hughes v. Speaker of the New Hampshire House of Representatives,* 876 A.2d 736, 746 (N.H. 2005).

Because the issue in this case is a political question, the Court must decline to address it.

**Other issues**

The Defendant also argues that the legislators' attendance at summit constituted a meeting of a political caucus which is exempted from the requirements of the open meeting law. *See* A.R.S. § 38-431.08 (A) (1). It further argues that the Complaint fails to allege an actionable violation of the Open Meeting Law or any cognizable relief. Finally, the Defendant asserts that the Plaintiffs' interpretation of the Open Meeting Law would entangle the courts in matters that exceed their

constitutional authority. Because the Court determines that the issue is a political question, it declines to address these additional issues raised in the motion to dismiss.

**Conclusion**

For the reasons stated herein,

IT IS ORDERED, **granting** the Defendant's Motion to Dismiss.