Senate v. Nakamura, 7 ROP Intrm. 8 (1998)

THE SENATE,
Plaintiff-Appellant,

v.

KUNIWO NAKAMURA, TOMMY REMENGESAU, Jr., ELBUCHEL SADANG, and ANTONIO U. MIKEL,
Defendants-Appellees.

CIVIL APPEAL NO. 28-97
Civil Action No. 510-96

Supreme Court, Appellate Division
Republic of Palau

Argued: January 15, 1998
Decided: February 13, 1998

Counsel for Appellant: Dorji Roberts, Esq., Randy Riddle, Esq.

Counsel for Appellees: Scott J. Campbell, Esq.

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice, JEFFREY L. BEATTIE, Associate Justice; LARRY W. MILLER, Associate Justice.

NGIRAKLSONG, Chief Justice:

In this civil appeal, we must decide whether the Senate has standing to sue the President and other members of the executive branch for allegedly spending funds that the Olbiil Era Kelulau had not appropriated. The Trial Division held that the Senate lacked standing to bring such a suit. We reverse and remand.

I. BACKGROUND

The allegations of fact contained in the Senate's complaint, which we accept as true ⊥9 for purposes of this appeal, are not complex. The Senate alleges that the President, the Vice-President, the Director of the National Treasury and the Director of the Bureau of Program Management and Budget violated the Constitution by spending $644,154 more than what the OEK had appropriated for fiscal year 1995. The Senate seeks a declaration that the unauthorized expenditures were unconstitutional, an injunction prohibiting defendants from spending unappropriated funds again and an order that defendants must reimburse the Republic for the amounts spent.

Defendants filed a motion to dismiss the Senate's claims on the grounds that the Senate lacked standing and had failed to state a claim upon which relief could be granted. The Trial

Division granted defendants' motion, holding that the Senate lacked standing because 1) the Senate was attempting to enforce the law, in violation of the separation of powers doctrine, and 2) the Senate had not alleged a legally cognizable injury to itself as an institution. The Senate appealed, bringing the case before us.

II. DISCUSSION

A. Standing Doctrine

The Palau Constitution imposes limitations on the rights of litigants to bring claims in courts of law. These limitations, commonly known as the "standing" doctrine, require a court to verify that a party has suffered an injury that the court is capable of redressing before allowing the party to proceed with a lawsuit.

The Palau Constitution confines the judicial power of the Palau Supreme Court to "all matters in law and equity." Art. X, 5. In *Gibbons v. ROP*, 1 ROP Intrm. 634, 637 (1989), we held that this provision limited our jurisdiction to "matters which traditionally require judicial resolution." Thus, at a minimum, the allegations of the complaint must show that the defendant has caused the plaintiff to suffer an injury in fact and that the injury was to a legally protected right. *Id.*

In determining whether the Senate suffered an injury significant enough to confer standing to bring this lawsuit, we are mindful of the important separation of powers issues at stake, not only separation between the judiciary and the two other branches, but separation between the executive and legislative branches. [1] In deciding whether one co-equal branch has standing to sue another co-equal branch, the Court must be especially wary of becoming involved in disputes that are better left to the political process. *See Foreign Investment Board v. OEK*, Civ. Act No. 226-95 (Tr. Div. Mar 21, 1996) at 1-2 (Court must keep in mind that "the power and willingness of the courts to resolve separation -of-powers disputes between the other branches itself raises serous separation-of-powers concerns . . . .").

B. Precedent

Although we have never addressed the standing question before us today, the Trial Division has entertained cases between the Senate and the President on at least two occasions in the past. *See The Senate v.* ⊥*10* *Remeliik (Remelik II)*, 1 ROP Intrm. 90 (Tr. Div. 1983); *Remeliik v. The Senate (Remeliik I)*, 1 ROP Intrm 1 (Tr. Div. 1981). The court did not discuss standing in either of these cases but it is apparent that the court believed it had the constitutional authority to resolve the disputes. *Remeliik II*, 1 ROP Intrm. at 94 ("It would be absurd to prevent [the Senate] from bringing its cause of action into court . . . ."); *Remeliik I*, 1 ROP Intrm. at 5 (Palau

[1] The standing doctrine is designed to keep the judiciary from overstepping its constitutional authority, even when convenience and efficiency might lead the Court to want to decide a dispute immediately. *Raines v. Byrd*, 117 S.Ct. 2312, 2318 (1997) (standing doctrine "built on a single basic idea - the idea of separation of powers") (*citing Allen v. Wright*, 468 U.S. 737, 752 (1984)).

Constitution makes Supreme Court "ultimate interpreter" of Constitution).

There is also ample precedent for judicial resolution of disputes between different branches of state government. *See Termeteet v. Ngiwal State* , 5 ROP Intrm. 236 (1996) (governor may sue state legislature concerning the legality of spending]aw under state constitution); *Sixth Kelulul a Kiuluul v. Ngiramekatii* , 5 ROP Intrm. 321 (Tr. Div. 1995) (state legislature may sue governor over alleged unauthorized expenditure of government funds); *Aquon v. Ngarchelong State Assembly*, 4 ROP Intrm. 374 (Tr. Div. 1994) (governor may sue state assembly concerning law that abridged his term as governor). One of these cases, *Sixth Kelulul*, involved virtually the same issue before the Court today, whether the governor of Ngiwal State violated the state constitution by allegedly expending funds in an amount that exceeded the state budget.[2]

While this precedent indicates our willingness to resolve disputes between the other branches of government, it does not necessarily dictate the outcome of this appeal. We turn now to an examination of the exact injury the Senate claims to have suffered as a result of the executive branch's alleged overspending.

C. Senate's Injury

The Senate asserts that it suffered an injury to its "lawmaking powers" by virtue of the fact that it will never be able to exercise its constitutional authority to determine how the Palauan government should spend the unappropriated $644,000 allegedly spent by appellees. Because appellees have already disbursed that $644,000, the Senate will never be able to pass an appropriations law determining the programs to which that money should be directed. Appellees counter that the Senate has not suffered any injury because the Senate had the opportunity to pass an appropriations law and that appropriations law went into effect. Because the Senate's power to make law was not diminished, the Senate did not suffer an injury. In appellees' view, the Senate is attempting to enforce its appropriations law even though the Constitution reserves enforcement authority to the executive branch.

Like the Palau Supreme Court, the United States Supreme Court has never addressed this issue directly. However, the U.S. Supreme Court held recently that individual federal legislators who had sued executive branch officials concerning the constitutionality of the Line Item Veto Act had not suffered an injury in fact sufficient to confer standing. [3] *See Raines v. Byrd* , 117 S. ⊥11 Ct. 2312 (1997). The Court reached this conclusion because the members of Congress who brought suit did not have a sufficient "personal stake" in the dispute and the institutional injury they alleged, the diminution of legislative power, was too abstract and widely dispersed. *Id.* at

[2] Although these cases do not involve the same separation of powers issues before us today because the state governments are not co-equal with us, they do show how this court has treated disputes between two co-equal branches of government.

[3] We find U.S. case law pertinent in that in order to have standing under the United States Constitution, as under the Palau Constitution, a party must show injury in fact to a legally protected right. *See Bennett v. Spear*, 117 S.Ct. 1154, 1163 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

2322. The majority decision spoke exclusively to the question of individual legislators; it made only cryptic reference to how the Court might view a similar case if it were brought by one of the Houses of Congress. *Id.* (Court "attach[ed] some importance" to fact that members of Congress suing on their own rather than as representative of their respective Houses of Congress). In a concurring opinion, Justice Souter mentioned that "it is possible that the impairment of certain official powers may support standing for Congress, or one House thereof, to seek the aid of the Federal Judiciary." *Id.* at 2323 n.2 (Souter, J., concurring).

We find the question raised in *Raines* to be quite different from the question posed here. The injury suffered by individual legislators when a bill that they opposed becomes law is not the same as the injury suffered by a branch of Congress when its lawmaking powers are usurped by executive action. The Constitution grants the power to appropriate funds to the OEK; as part of that institution, the Senate is injured when its appropriation powers are taken away. *Cf.* R. Lawrence Dessem, *Congressional Standing to Sue: Whose Vote is This, Anyway* ?, 62 Notre Dame L. Rev. 1, 2(1986) ("[I]n appropriate circumstances the courts should recognize the standing to sue of the Congress.")

Despite appellees' arguments to the contrary, we believe that the Senate has sufficiently alleged an injury to its lawmaking powers. Although the Senate had an opportunity to pass an appropriations law, the Senate has lost the ability to determine how the $644,000 spent by appellees should be appropriated. Its powers with respect to the $644.000 have been completely nullified by executive action. *See Raines*, 117 S.Ct. at 2319 (*citing Coleman v. Miller* , 59 S.Ct. 972 (1939) for proposition that legislators have standing when their votes have been "completely nullified").

Appellees assert that by determining that the Senate has standing in this case, we will be opening the floodgates to a slew of interbranch lawsuits. We disagree. Conferring standing on the Senate in this case, where the facts alleged show an executive usurpation of legislative powers, will not mean that the legislative branch will have free rein to challenge all executive actions with which it disagrees. It suffices to say that while different fact patterns may require that lines be drawn, we are confident of our ability to draw such lines and of our conclusion that the facts alleged herein are sufficient to confer standing on the Senate.

D. Separation of Powers

As an alternative basis for dismissal, the Trial Division found that in bringing this action the Senate was attempting improperly to enforce the law. Again, we disagree. Any enforcement aspect to this action is incidental to its primary focus - to prevent the executive branch from usurping the OEK's constitutional power to determine how much is spent by the government. *See OPM v. Richmond* , 110 S.Ct. 2465, 2473 (1990) (purpose of appropriation clause to make sure that difficult spending judgments reached by ⊥12 elected Congress rather than executive branch). Indeed, the injury suffered by the Senate would have been exactly the same had it never passed an appropriations law.

Allowing this lawsuit to go forward will preserve rather than destroy the separation of

powers embodied in the Constitution. This is not merely a political dispute. Rather, it is a justiciable controversy regarding the executive branch's constitutional authority to spend unappropriated funds. Accordingly, we hold that the Senate has standing to maintain this action. It is ORDERED that the decision of the Trial Division is REVERSED and this case is REMANDED for further proceedings in accordance with this opinion.