

DOCKET NO.: CV 10-6014847-S : SUPERIOR COURT
STATE OF CONNECTICUT EX REL, : J. D. OF HARTFORD
RICHARD BLUMENTHAL, ATTORNEY GENERAL :
V. : AT HARTFORD
EDDIE ALBERTO PEREZ : MARCH 7, 2011

**MEMORANDUM OF DECISION ON DEFENDANT'S
MOTION TO DISMISS**

FACTS:

The defendant, the former Mayor of Hartford, (hereinafter also "Perez") has moved to dismiss the plaintiff's claim which is seeking under C.G.S. § 1-110 et seq., the revocation or reduction of the pension benefits of Perez based upon Perez's conviction of crimes related to his office.

On September 10, 2010 Perez was convicted of the following crimes: one count each of Larceny in the First Degree by Extortion, Criminal Attempt to Commit Larceny in the First Degree by Extortion, Bribe Receiving, Conspiracy to Commit Fabrication of Evidence and being an Accessory to Fabrication of Physical Evidence. Each of the crimes for which Perez was convicted constituted a "crime related to state or municipal office" within the meaning of C.G.S. § 1-110(3).

The crimes for which Perez was convicted involve conduct that occurred between 2005 and 2007. The pension revocation law for either a guilty plea or a conviction was adopted in June 11, 2008 with an effective date of October 1, 2008.

Connecticut General Statutes § 1-110a states in pertinent part as follows:

"(a) Notwithstanding any provision of the general statutes, on or after October 1, 2008, if any public official or state or municipal employee is convicted of or pleads guilty or nolo contendere to any crime related to state or municipal office in state criminal or federal criminal court, the

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Attorney General shall apply to the Superior Court for an order to revoke or reduce the pension of any kind to which such public official or state or municipal employee is otherwise entitled under the general statutes for service as a public official or state or municipal employee.”

The defendant's motion to dismiss claims that (1) this is a violation of the ex-post facto clause of the United States Constitution; (2) the statute was constructed to only apply prospectively; (3) a retroactive application conflicts with the intent of the legislature as well as common law principles. The plaintiff filed a brief in response to the motion to dismiss, and oral argument was held before this Court on February 28, 2011.

STANDARD OF REVIEW:

In accordance with C.P.B. § 10-31(a) “the motion to dismiss shall be used to assert (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, and (5) insufficiency of service of process.” “A motion to dismiss properly attacks jurisdiction of the court essentially asserting that plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court. *Page v. State Marshall Com'n* 108 Conn. App. 668 (2008).

ISSUES AND FINDINGS:

1. Is a Motion to Dismiss the Proper Procedure for Perez's Challenge to the Constitutionality of General Statutes § 1-110a?

The short answer is **Yes**.

“[W]hen the constitutionality of a statute implicates the jurisdiction of the court . . . a motion to dismiss may properly serve as a vehicle for presenting such an issue.”

Chotkowski v. State, 213 Conn. 13, 19 n.8, 566 A.2d 419 (1989). *Chotkowski*, supra, 213 Conn. 14, was a breach of contract suit filed against the state by a state employee. In *Chotkowski*, "when the plaintiff first presented his notice of claim to the commissioner . . . no award was made because the claim was barred by the one year limitation The legislature rejected the commissioner's recommendation, however, and enacted a special act allowing the plaintiff to prosecute his claim against the state despite the untimely notice. After this enactment the plaintiff reasserted his claim before the commissioner, who, in reliance on the special act, granted the plaintiff permission to sue the state The trial court refrained from deciding the issue of the constitutionality of the special act because its conclusion that the plaintiff could not prevail on the merits made it unnecessary to do so. 'Constitutional issues are not considered unless absolutely necessary to the decision of a case . . . or unless sufficient public interest warrants such a review.' [Citation omitted.] *State v. DellaCamera*, 166 Conn. 557, 560-61, 353 A.2d 750 (1974). In [*Chotkowski*], however, the constitutional issue of the validity of the special act that induced the claims commissioner to authorize the plaintiff to sue the state [involved] jurisdiction and should properly have been decided before considering the merits of the action." *Id.*, 15-17.

Similarly, in the present case, the constitutional issue of the validity of General Statutes § 1-110a that induced the attorney general to file this action directly involves jurisdiction. Section 1-110a created the cause of action under which the state has filed suit. Like the constitutional issue in *Chotkowski*, supra, 213 Conn. 17, the constitutionality of § 1-110a should be decided before considering the merits of this

action. Accordingly, because the issue is one of constitutionality of the statute, a motion to dismiss is proper.

2. Does this Court Lack Subject Matter Jurisdiction because the Statute, § 1-110a et seq., as Applied is an Unconstitutional Ex-Post Facto Law?

The short answer is **No**.

There is no question that the United States Constitution Article 1 Section 9 c/3 prohibits the Congress of the United States from adopting or passing an ex-post facto law. Section 10 c/1 prohibits the states from passing or adopting an ex-post facto law.

This Court finds that the ex-post facto laws in the United States Constitution do not apply to civil cases.

The initial case on this issue was decided by the United States Supreme Court in *Calder v. Bull* 3 U.S. 386 (1798). This case is still good law and has been cited subsequently by the United States and Connecticut's Supreme Courts. U. S. Justice Chase stated: "Here the meaning, annexed to the terms ex-post facto laws, unquestionably refers to crimes, and nothing else" . . . "Justice Paterson: they refer to crimes, pains and penalties." *Id.* 396. Justice Iredell in a concurring opinion in regard to an act which had been passed by the Legislature of the State of Connecticut, stated: "Still, however, in the present instance, the act or resolution of the Legislature of Connecticut, cannot be regarded as an ex-post facto law; for, the true construction of the prohibition extends to criminal, not to civil, cases. It is only in criminal cases, indeed in which the danger to be guarded against, is greatly to be apprehended The

policy, the reason and humanity, of the prohibition, do not, I repeat, extend to civil cases, to cases that merely affect the private property of citizens." Id. 399-400.

In *Collins v. Young Blood* 497 U.S. 37 (1990) the United States Supreme Court quoted Justice Chase favorably and stated in pertinent part: "it has long been recognized by this Court that the constitutional prohibition on ex-post facto laws applied only to penal statutes which disadvantage the offender affected by them." Finally, in *Beasley v. Commissioner of Correction* 50 Conn. App. 421, 427-431 (1998) which was affirmed by the Connecticut Supreme Court at 249 Conn. 499 (1999), the Appellate Court stated "our Supreme Court has held that an 'ex-post facto relates to crimes only; it is, emphatically, the making of an innocent action criminal" Id. 427. The Appellate Court went on to say "The United States Supreme Court held that the act was not a violation of the ex-post facto clause because that clause, 'which forbids the application of any new punitive measure to a crime already consummated, has been interpreted to pertain exclusively to penal statutes.'" Id. 430-431.

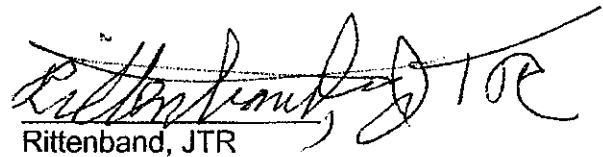
Defendant claims that revocation of the pension or reduction thereof is an enhanced penalty. This may be true, but it is still a civil penalty, and this is still a civil case. The Court, therefore, rejects plaintiffs contention.

This Court has a problem with the above rulings by the Courts, both Connecticut and the U.S. Supreme Court. The purpose of the prohibition of ex-post facto laws is that it is not right or fair to charge someone with something if he or she does not know what the penalty will be. Perez was put in a position with little choice because he maintained his innocence. If he had pleaded guilty or nolo contendere or gone to trial and been convicted, which he was, under the present statute he has a potential loss of

his pension. Perez was not aware of the pension revocation statute when he committed the crimes for which he was found guilty.

It is clear from the legislative history that the legislature did not want the law to be unconstitutional by being ex-post facto so it apparently persuaded the drafters of the law to provide a test or trigger of this statute to be the conviction instead of the commission of the acts that would lead to the revocation of the pension.¹ Although this Court believes that the ex-post facto provision of the United States Constitution should be applied to civil as well as criminal cases, this Court is nevertheless, bound by the rulings of the United States and Connecticut Supreme Court and Appellate Court.

Accordingly, the motion to dismiss is denied.


Rittenband, JTR

¹ This Court has a problem with the reasoning that would change the trigger to be one of conviction instead of one of commission of the crime.



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HHD-CV10-6014847-S CONNECTICUT STATE OF v. PEREZ, EDDIE
 Prefix/Suffix: [none] Case Type: M90 File Date: 09/27/2010 Return Date: 11/09/2010

Case Detail

Data Updated as of: 03/05/2011

Case Information

Case Type: M90 - MISC - ALL OTHER
 Court Location: HARTFORD
 List Type:
 Trial List Claim:
 Last Action Date: 02/16/2011 (Last Action Date is a data entry date, not actual date)

Disposition Information

Disposition Date:
 Disposition:
 Judge or Magistrate:

Parties & Appearances

Party Number	Plaintiff/Defendant		No Fee Party
01	P	CONNECTICUT STATE OF Attorney: ROBERT B TEITELMAN(085053) FRAUD UNIT 55 ELM ST PO BOX 120 HARTFORD, CT 061410120	Appear Date: 09/27/2010
50	D	EDDIE A PEREZ Attorney: HALLORAN R. BARTLEY LAW OFFICES(112123) 74 BATERSON PARK ROAD FARMINGTON, CT 06032	Appear Date: 11/08/2010

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arquable
	11/08/2010	D	<u>APPEARANCE</u> Appearance	
	02/16/2011		<u>CLAIM/RECLAIM</u> Claim/Reclaim	
100.30	09/27/2010	P	<u>SUMMONS</u>	No
100.31	09/27/2010	P	<u>COMPLAINT</u>	No
100.32	09/27/2010	P	<u>RETURN OF SERVICE</u>	No
101.00	11/08/2010	D	<u>MOTION FOR EXTENSION OF TIME</u> To Answer Complaint RESULT: Granted 11/24/2010 HON JERRY WAGNER, JTR	No
101.86	11/24/2010	Court	<u>ORDER</u> RESULT: Granted 11/24/2010 HON JERRY WAGNER, JTR	No
102.00	11/09/2010	D	<u>MOTION FOR EXTENSION OF TIME</u> To Respond to Complaint RESULT: Granted 11/24/2010 HON JERRY WAGNER, JTR	No
102.86	11/24/2010	Court	<u>ORDER</u> RESULT: Granted 11/24/2010 HON JERRY WAGNER, JTR	No

DOCKET NUMBER: CV 10-6014847

CASE NAME: State of Connecticut v Eddie Perez

MEMORANDUM OF DECISION DATED: 3/7/11

FILE SEALED: YES _____ NO

MEMO SEALED: YES _____ NO

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