

IS IT A GIMME? JUSTICES JUDGING COURT'S OWN SUIT

Author: Robert G. Seidenstein. Monday, August 22, 2005, 14 NJL 1656.

The New Jersey Supreme Court, in effect, will be reviewing how the doctrine of separation of powers applies to itself.

The high court has decided to hear a case centering on the constitutionality of a 2001 law that would enable probation officers ? court employees ? to carry firearms.

The judiciary first fought the measure as it worked its way through the legislature and then, of all places, in the courts.

The judiciary has long maintained that in enacting the law, the legislative and executive branches stepped on the court's turf.

Separation-of-power controversies are relatively rare in Trenton as both the courts and lawmakers tend to head off such battles by reaching a com-promise.

Not in this case ? one where the probation officers lobbied hard for years in both houses of the legislature for the authority to carry guns.

Although the law has been on the books four years, the judiciary essentially ignored it.

In a comprehensive opinion by Judge Robert A. Fall earlier this year, the Appellate Division said the law unconstitutionally treads on the Supreme Court's authority.

Now the court itself will be weighing in on *In re Matter of P.L. 2001, Chapter 362*.

At the very least, the justices will be on record on how they view the issue. It may be that the court wants to put an exclamation point on Fall's ruling.

In 1994, the court issued an administrative ruling that probation officers are not police officers. The judiciary has held that firearms would make probation officers more like police officers.

But the high court emphasized probation is "an integral part of the judiciary." It said probation serves the courts, not the prosecution.

Probation officers are concerned about their safety. The judiciary's answer has been to call the police if they find themselves in dicey situations ? or just leave.

The statute would have established a unit of at least 200 probation officers empowered to carry firearms and enforce the state's criminal laws.

Intrusion

Fall wrote, "Simply put, the act remains an unconstitutional intrusion into the Supreme Court's administration of New Jersey's judiciary."

He said, "The arming of probation officers, their law enforcement status and their training clearly fall within the realm of managerial prerogatives."

Fall also said the judiciary is not biased, but could adjudicate the case fairly.

That appellate ruling affirmed Judge Paulette M. Sapp-Peterson, who held the probation officers are in the court's domain.

And she said at the time, "This litigation is akin to a custody battle that cannot be resolved with an award of joint custody. One branch must assume exclusive administration of probation."

The case could end up producing a definitive statement from the court on separation of powers ? until the next time the legislature passes a bill the justices think goes too far.

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