

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC.

SUPERIOR COURT

(FILED: September 15, 2015)

CRANSTON POLICE RETIREES ACTION :  
COMMITTEE, :  
Plaintiff, :

v. :

C.A. No. KC-13-1059

THE CITY OF CRANSTON, by and through :  
its Finance Director ROBERT STROM and :  
its City Treasurer DAVID CAPUANO, :  
ALLAN FUNG, in his capacity as Mayor :  
of the City of Cranston, Members of the :  
Cranston City Council JOHN LANNI, JR., :  
DONALD BOTTS, JR., MARIO ACETO, :  
MICHAEL J. FARINA, MICHAEL W. :  
FAVICCHIO, PAUL H. ARCHETTO, :  
RICHARD D. SANTAMARIA, JR., :  
SARAH KALES LEE, and STEVEN A. :  
STYCOAS, in their capacity as members of :  
the Cranston City Council, :  
Defendants. :

DECISION

TAFT-CARTER, J. Before the Court for decision is Defendant City of Cranston’s (the City) Motion for a Protective Order and Plaintiffs Cranston Police Retirees Action Committee’s (the Committee) objection. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

**Facts and Travel**

The instant Motion arises out of a suit brought by the Committee against the City alleging that the City has breached contracts which were previously negotiated with the City’s Police Union, Local 301 of the International Brotherhood of Police Officers. In particular, the Committee alleges certain Cranston City Ordinances violated the U.S. Constitution.

During discovery, the Committee filed a Notice of Deposition seeking to depose City Council President John E. Lanni, Jr. (Mr. Lanni). The Committee sought to gather information from Mr. Lanni relating to certain ordinances, including police and firefighter Collective Bargaining Agreements, financial conditions and spending of the City, and actuarial reports, as well as statements found on a website promoting the reelection of Mr. Lanni relating to his past accomplishments and future goals.<sup>1</sup>

The City objected to this deposition and, after the parties could not resolve the dispute, the City's Motion for a Protective Order soon followed pursuant to Super. R. Civ. P. 26(c). The City argues that the Notice of Deposition would impermissibly intrude upon the constitutional legislative immunity granted to Mr. Lanni in his role as Cranston City Council President. The City additionally asserts the testimony of any Cranston City Council member is not relevant to the matter at hand. The Committee retorts that the topics on which they seek to question Mr. Lanni do not fall within the protections afforded by legislative immunity. The Committee contends that these topics are non-legislative or political in nature and thus are not barred areas of inquiry.

The Court heard oral argument on September 10, 2015 and now issues its Decision.

## II

### Standard of Review

Rule 26(b)(1) of the Superior Court Rules of Civil Procedure permits discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . ." Super. R. Civ. P. 26(b)(1). A party seeking a deposition must give "reasonable notice in writing to every other party to the action." Super. R. Civ. P. 30(b)(1). Upon timely motion and a

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<sup>1</sup> The website can be found at John Lanni for Cranston, <http://www.johnlanniforcranston.com/index.html> (last visited Sept. 10, 2015).

good faith effort to “resolve the dispute without court action,” the party opposing the deposition may move for a protective order to limit the scope of discovery. Super. R. Civ. P. 26(c). A court may then “make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . .” Id.; see also Dowd v. Rayner, 655 A.2d 679, 683 (R.I. 1995) (noting that the Superior Court has “broad discretion” in its handling of motions for protective orders) (quoting Bashforth v. Zampini, 576 A.2d 1197, 1201 (R.I. 1990)).

### III

#### Discussion

Legislators in Rhode Island are granted protection under both the Rhode Island and United States Constitutions from questioning relating to their legislative duties. R.I. Const. art. VI, § 5 (“For any speech in debate in either house, no member shall be questioned in any other place.”); U.S. Const. art. I, § 6 (“The Senators and Representatives . . . for any Speech or Debate in either House, they shall not be questioned in any other Place.”). Based on English common law privileges, legislative immunity “protects . . . [the legislature] . . . from threats to its deliberative autonomy.” L. Tribe, American Constitutional Law § 5-20 (3d ed. 1999); see also Nat’l Ass’n of Soc. Workers v. Harwood, 69 F.3d 622, 629 (1<sup>st</sup> Cir. 1995). It functions as an “important protection of the independence and integrity of the legislature.” United States v. Johnson, 383 U.S. 169, 178 (1966) (internal citations omitted). By ensuring that the legislature is free to carry out its duties, the “people are the intended and ultimate beneficiaries.” Irons v. R.I. Ethics Comm’n, 973 A.2d 1124, 1131 (R.I. 2009) (citing Gravel v. United States, 408 U.S. 606, 618 (1972)).

The Rhode Island Supreme Court has made it clear that the Rhode Island Constitution provision is functionally coterminous with the federal one. See Holmes v. Farmer, 475 A.2d 976, 981 (R.I. 1984) (“We do not accept plaintiff’s contention that there is a relevant difference between the federal provision (‘speech or debate’) and the state provision (‘speech in debate’).”). It has also made plain that the protections afforded by legislative immunity apply to municipal legislators. See Maynard v. Beck, 741 A.2d 866, 872 (R.I. 1999) (holding that the legislative immunity applied to municipal officials acting in legislative capacities).<sup>2</sup>

Legislative immunity provides protection to legislators from questioning “‘by any other branch of government for their acts in carrying out their legislative duties relating to the legislative process.’” Irons, 973 A.2d at 1131 (quoting Holmes, 475 A.2d at 983). Such immunity includes all activities that are a part of the legislative process. See, e.g., Holmes, 475 A.2d at 983. “To determine whether [the] challenged conduct is legislative . . . a court must consider the nature of the acts in question, rather than the motive or intent of the official performing them.” Maynard, 741 A.2d at 870 (citing Bogan v. Scott Harris, 523 U.S. 44, 54 (1998)). Therefore, even if a legislator were attempting to advance his or her own “personal and political interests through their ordinance-related actions,” such activities are still legislative in character and thus fall within the purview of legislative immunity. Id. at 870.

Here, the requested deposition of Mr. Lanni does not accord with the immunity granted him. As Cranston City Council President, Mr. Lanni is a legislator within the meaning of the

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<sup>2</sup> The Rhode Island Supreme Court has, at times, interchanged the terms “legislative privilege” with “legislative immunity.” See Holmes, 475 A.2d at 980 (using the term “legislative privilege”); see also Maynard, 741 A.2d at 868 (using the term “legislative immunity.”); see also Marra v. O’Leary, 652 A.2d 974 (R.I. 1995) (using the term “legislative immunity”). This Court will adhere to the more modern and commonly used formulation, “legislative immunity.”

clause and thus is afforded the protections of legislative immunity. See Maynard, 741 A.2d at 872. The information sought by the Committee impermissibly contravenes that immunity.

Much of what the Committee requests—information relating to police and firefighter Collective Bargaining Agreements, financial conditions and spending of the City, and actuarial reports—can be easily obtained. The Committee does not argue, nor could they, that this information is entirely unrelated to Mr. Lanni’s duties as a legislator. Instead, the Committee contends that there are non-legislative areas of the subject ordinance which the Committee can ask about that do not violate legislative immunity. This Court fails to observe the coherency of this argument. See Miles-Un-Ltd., Inc. v. Town of New Shoreham, R.I., 917 F. Supp. 91, 102 (D.N.H. 1996) (“[P]laintiffs are attempting to pierce a Town Council action which is, in and of itself, legislative in nature.”). Mr. Lanni’s knowledge of Collective Bargaining Agreements, the financial conditions and spending of the City, and actuarial reports will necessarily come from his performance in his position as a legislator. As a city councilor and later as City Council President, Mr. Lanni was privy to this information in the course of “proposing, passing, or voting” upon particular pieces of legislation, specifically in the passage of the subject ordinance. Holmes, 475 A.2d at 984. This information is part and parcel of the legislative process. Id. at 983. Mr. Lanni’s testimony on these matters is inherently linked to “core legislative acts.” See Irons, 973 A.2d at 1131. Mr. Lanni is therefore afforded protection on these matters by legislative immunity.

At first blush, the Committee’s last request—for statements found on a website promoting the reelection of Mr. Lanni relating to his past accomplishments and future goals—is less clearly within legislative immunity. The Supreme Court has held that legislative immunity is not absolute and that certain activities of the legislators are outside the scope of legislative

immunity. United States v. Brewster, 408 U.S. 501, 512 (1972). And the Rhode Island Supreme Court has been clear that “actions by legislators outside the legislative process” are not protected. Holmes, 475 A.2d at 983. Specifically, these actions include political activities. Irons, 973 A.2d at 1131.

However, this Court is satisfied that the Committee’s request falls inside the protected area. Although the requested information comes from what appears to be a reelection website, the information from that website is, in substance, material relating to Mr. Lanni’s legislative duties. See Sarni v. Meloccaro, 113 R.I. 630, 636, 324 A.2d 648, 651 (1974) (“We look to substance, not labels.”). Though the Committee correctly notes that the information is under the subtitles “Political Accomplishments” and “Future Goals,” the specific requested information—among them, the tax freeze in 2005–2006, the City’s bond rating, and the “rainy day fund”—substantively consist of activities that are a part of the legislative process. See Bogan, 523 U.S. at 55–56 (holding that “a discretionary, policymaking decision implicating the budgetary priorities of the city . . .” was legislative). As a city councilor, and now City Council President, Mr. Lanni’s discretionary duties include the power to propose or pass ordinances that, inter alia, effect the “making [of] an appropriation [and] authorizing the borrowing of money . . .” Cranston, R.I., Charter § 3.10 (2014); see also G.L. 1956 § 45-2-3 (granting towns and cities the power to appropriate money); see also S. Stevenson, Antieau on Local Government Law § 67.06[1] (2d ed. 2015) (“The governing body of a local government has wide discretion in preparing the budget . . .”). Certainly, the tax freeze, the City’s bond rating, and the “rainy day fund” fall within that authority. Were these activities listed on an official government website and not on what appears to be a reelection website, it would be clear that the actions were legislative in nature. The simple fact that they are listed on a political website does not make

them political statements. As such, they are a part of the legislative process and therefore protected by legislative immunity.

Moreover, this Court is satisfied that the Committee's requested information can be found from sources other than Mr. Lanni that do not implicate legislative immunity. See, e.g., Office of the Auditor General, <http://www.oag.ri.gov> (last visited Sept. 14, 2015); see also Irons, 973 A.2d at 1131 (illustrating that legislative immunity does not apply to non-legislators). Much of the City's general financial information is publicly available. Other witnesses without legislative immunity are available to provide sufficient facts on the various Collective Bargaining Agreements, the general financial condition of the City, and actuarial reports. The Committee has not shown any specific inability to procure this information through other means or a particular hardship in attempting to do so. This Court is reluctant to intrude upon a venerated constitutional immunity when less invasive means exist to effectuate the same end.

The Committee has failed to produce any line of questioning of Mr. Lanni that does not encroach upon his legislative immunity.<sup>3</sup> In so holding, the Court is mindful that legislative immunity is best protected by "a liberal construction and strict enforcement . . ." Holmes, 475 A.2d at 982.

#### IV

#### Conclusion

For the foregoing reasons, the Court grants the Defendant's Motion for a Protective Order with regard to Mr. Lanni's testimony.

Counsel shall submit appropriate order for entry.

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<sup>3</sup> Having decided the protective motion on legislative immunity grounds, this Court need not rule on the City's alternative argument that the information was not relevant.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Cranston Police Retirees Action Committee v. The City of Cranston, et al.

**CASE NO:** KC-13-1059

**COURT:** Kent County Superior Court

**DATE DECISION FILED:** September 15, 2015

**JUSTICE/MAGISTRATE:** Taft-Carter, J.

**ATTORNEYS:**

**For Plaintiff:** Marisa A. Desautel, Esq.  
Patrick J. Sullivan, Esq.

**For Defendant:** William M. Dolan, III, Esq.  
William K. Wray, Jr., Esq.