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Legislature sues gov. over line-item veto

By Howard Fischer

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PHOENIX — The Legislature filed suit Wednesday against Gov. Janet Napolitano, saying she exceeded her constitutional authority two months ago in making a line-item veto in a bill dealing with a pay raise for state employees.

In legal papers filed at the state Supreme Court, an attorney for lawmakers acknowledged the governor can legally remove one or more spending items from legislation that appropriates money. And the measure sent to Napolitano did, in fact, allocate funds to enact an immediate pay hike for state and university workers.

But Gary Lassen, the lawmakers' lead counsel, said the provision Napolitano excised was simply a change in state personnel policy. It said new workers hired above pay grade 24 beginning next year would not be subject to the state's merit system and would not have the protections against being demoted, disciplined or fired.

Napolitano said workers exempt from the personnel system accrue leave time faster than those who are covered. And that, she said, means the change would cost money for the state, making it, from her way of thinking, an appropriation and subject to her line-item veto.

Lassen told the justices that letting the act stand "would be a great expansion of her veto power, would have the effect of rewriting our constitution, and would dramatically alter the balance of powers."

House Speaker Jim Weiers, R-Phoenix, put it another way: "If you've got a governor that's able to thwart the intent (of a bill) by superseding the intent of the constitution, then there is no Legislature anymore.

"Everything we stop or try to do can be overridden," Weiers continued, because virtually everything could affect state spending. And that, he said, would put all government power in the governor's hands.

Napolitano said Wednesday she is not arguing that her power of line-item veto extends to every policy change that has a cost implication. But she said this particular change about new workers clearly falls on the side of an appropriation.

"We can virtually almost put a price tag on that particular item even though it didn't have a dollar amount in the bill," the Democratic governor said.

The governor had her own take on how the outcome of this fight would affect the constitution issue of balance of power. She said if the court were to rule against her, the Legislature could thwart any governor's veto authority "by not actually putting a number in but putting in such constricting language that it must necessarily result in increased appropriations."

Weiers called that "probably some of the most creative wordsmithing I've ever heard."

Lassen noted the Supreme Court, in an earlier fight between the Legislature and the governor, specifically said an appropriation has three parts: a certain sum of money, a specified object, and the authority of the agency to spend it.

He said the five lines Napolitano deleted from the legislation fail that test because there is no specific sum and

certainly no authority to spend money.

The governor now has to respond to the lawsuit through her lawyers before the court decides if it wants to hear the dispute.

While the lawsuit was brought on behalf of the entire Legislature, it does not necessarily represent the views of all 90 lawmakers: The votes in the House and Senate to sue were along party lines, with majority Republicans in favor and Democrats all against it.

Despite that, Rep. Peter Rios, D-Dudleyville, said he believes the Republicans may have a case. Rios has some history on this: As Senate president more than a decade ago he filed suit against then-Gov. Fife Symington, a Republican, over some of his line-item vetoes, winning part of the claim.

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