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Legislative Powers: King v. Cuomo

LEGISLATIVE POWERS

N.Y. CONST. art. III, § 9:

A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings . . . .

N.Y. CONST. art. IV, § 7:

Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it.

U.S. CONST. art. I, § 7

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it.

COURT OF APPEALS

King v. Cuomo[1548]
(decided May 6, 1993)

Appellants sought to reverse a judgment of the Appellate Division, Third Department, which held that the bicameral "recall" practice used by the legislature to reacquire bills already given to the Governor was constitutional.[1549] The court of

1548. 81 N.Y.2d 247, 613 N.E.2d 950, 597 N.Y.S.2d 918 (1993).

1549. Seymour v. Cuomo, 180 A.D.2d 215, 584 N.Y.S.2d 207 (3d Dep't 1992), *rev'd*, 81 N.Y.2d 247, 613 N.E.2d 950, 597 N.Y.S.2d 918 (1993).

appeals held that the bicameral "recall" practice violated the New York State Constitution article IV Section 7,[1550] which prescribes how a passed bill becomes a law.[1551] The court held the procedure to be unconstitutional, prospectively as of the date of this court of appeals decision, May 6, 1993.[1552]

In June 1990, Assembly Bill Number 9592-A[1553] was passed by both the Assembly and the Senate and was formally sent to the Governor in the middle of July, 1990.[1554] The day after the bill was sent to the Governor, the Assembly, with the Senate concurring, adopted a resolution requesting that the bill be sent back to the Legislature.[1555] The Governor promptly returned the bill as requested on that same day.[1556] Appellants argued that the Legislature's method of retrieving the bill was unconstitutional, and accordingly, that this passed bill became law because the Governor failed to veto it within ten days of its receipt.[1557]

The court initially addressed the state's contention that judicial review of the bicameral recall process violated the principle of

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1550. N.Y. CONST. art IV, § 7. This section provides:

> Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated . . . and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it will be likewise reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor . . . . If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall been presented to him, the same shall be a law in like manner as if he had signed it . . . .

Id.

1551. *King*, 81 N.Y.2d at 250, 613 N.E.2d at 951, 597 N.Y.S.2d at 919.

1552. *Id.* at 257, 613 N.E.2d at 955, 597 N.Y.S.2d at 923.

1553. This bill was entitled "AN ACT to amend the agriculture and markets law, in relation to the siting of solid waste management-resource recovery facilities within agricultural districts." *Id.* at 250, 613 N.E.2d at 951, 597 N.Y.S.2d at 919.

1554. *Id.* at 250, 613 N.E.2d at 951, 597 N.Y.S.2d at 919.

1555. *Id.*

1556. *Id.*

1557. *Id.*

separation of powers between governmental branches.[1558] The state maintained that the Assembly and Senate had its own internal rules, and judicial review of such proceedings constituted an intrusion into the internal affairs of the Legislature.[1559] Although the New York State Constitution states that "'[e]ach house shall determine the rules of its own proceedings,'"[1560] the court held that this bicameral recall process did not involve only internal affairs of the Legislature, but rather extended beyond the Legislature's own proceedings, affecting executive proceedings, and accordingly, was not justified by the Legislature's internal rulemaking powers.[1561] "'When both houses have . . . finally passed a bill and sent it to the governor, *they have exhausted their powers* upon it.'"[1562] The court held that the Legislature could not add an "expedient and unchartered bypass" without guidance from the Constitution.[1563] The court went on to state that "[w]hen language of a constitutional provision is plain and unambiguous, full effect should be given to 'the intention of the framers . . . as indicated by the language employed' and approved by the People."[1564] The court rejected the argument that the recall process should be maintained simply because it was "long-standing," and held that the practice was clearly outside the plain language of the Constitution.[1565] Additionally, the court concluded that the recall practice effected an imbalance

1558. *Id.* at 251, 613 N.E.2d at 951-52, 597 N.Y.S.2d at 919-20.

1559. *Id.* at 251, 613 N.E.2d at 952, 597 N.Y.S.2d at 920.

1560. *Id.* (quoting N.Y. CONST. art. III, § 9).

1561. *Id.*

1562. *Id.* at 252, 613 N.E.2d at 953, 597 N.Y.S.2d at 921 (quoting People v. Devlin, 33 N.Y. 269, 277 (1865)).

1563. *Id.* at 252, 613 N.E.2d at 952, 597 N.Y.S.2d at 920.

1564. *Id.* at 253, 613 N.E.2d at 953, 597 N.Y.S.2d at 921 (quoting Settle v. Van Evrea, 49 N.Y. 280, 281 (1872)). Based on the language of the section, the court found that a passed bill may become law or be rejected by three different methods. First, the Governor may approve the bill and sign it into law. Second, the Governor may veto the bill and thus reject it. Third, the Governor may approve the bill by not returning it to the Legislature within ten days. *Id.* at 252, 613 N.E.2d at 952-53, 597 N.Y.S.2d at 920-21.

1565. *Id.* at 254, 613 N.E.2d at 953, 597 N.Y.S.2d at 921.

in governmental power.[1566] The court stated that "[s]ince only 'insiders' are likely to know or be able to discover the private arrangements between the Legislature and Executive when the recall method is employed, open government would suffer a significant setback if the courts were to countenance this long-standing practice."[1567]

Certain states do allow a recall practice to go on unabated. In fact, as of 1981, there were some thirty-three states that actively employed a recall practice of this nature.[1568] For instance, the states of Florida,[1569] Maryland[1570] and Michigan[1571] have ruled that a recall practice is valid so long as it is done by a concurrent action of both houses of the legislature, as opposed to the independent action of one house. In contrast, Virginia has ruled that the legislature has no such authority whatsoever.[1572] In New York, between the years of 1932 and 1980, a bill was recalled by

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1566. *Id.* at 255, 613 N.E.2d at 954, 597 N.Y.S.2d at 922. The court stated:

> [T]he recall practice 'affords interest groups another opportunity to amend or kill certain bills,' shielded from the public scrutiny which accompanies the initial consideration and passage of a bill. This 'does not promote public confidence in the legislature as an institution' because 'it is difficult for citizens to determine the location in the legislative process of a bill that may be of great importance to them.'

Id. (quoting JOSEPH H. ZIMMERMAN, THE GOVERNMENT AND POLITICS OF NEW YORK STATE 145, 152 (1981)).

1567. *Id.*

1568. Gerald Benjamin, *The Diffusion of the Governor's Veto Power*, 55 STATE GOV'T 99, 104 (1982).

1569. *See, e.g.*, State *ex rel.* Florida Portland Cement Co. v. Hale, 176 So. 577 (Fla. 1937) (holding that neither house of the legislature can independently recall a bill which has been presented to the governor).

1570. *See, e.g.*, Baltimore Fidelity Warehouse Co. v. Canton Lumber Co., 84 A. 188 (Md. 1912) (holding that the legislature may recall a bill presented to the governor upon concurrent action of both houses).

1571. *See, e.g.*, Anderson v. Atwood, 262 N.W. 922 (Mich. 1935) (holding that concurrent action to recall a bill is acceptable).

1572. Wolfe v. McCaull, 76 Va. 876 (1882) (finding that the recall of a bill is not a valid procedure).

the New York Legislature 2,132 times,[1573] including 288 times in 1966 alone.[1574]

The *King* court concluded with a very strong statement on this long-standing recall practice.[1575] The court stated:

> In sum, the [recall] practice undermines the integrity of the law-making process as well as the underlying rationale for the demarcation of authority and power in this process. Requiring that the Legislature adhere to this constitutional mandate is not some hypertechnical insistence of form over substance, but rather ensures that the central law-making function remains reliable, consistent and exposed to civic scrutiny and involvement.[1576]

Thus, the court declared this bicameral recall process unconstitutional.[1577]

The New York State Constitution[1578] very closely follows the counterpart provision of the United States Constitution[1579] on how a bill becomes a law. The United States Constitution similarly does not provide for a legislative recall. Congress, however, may recall a bill with a concurrent resolution appropriately endorsed by both houses.[1580] During the time after both houses of Congress pass a bill and before the President signs it, Congress may recall the bill by passing a concurrent resolution requesting that the President return the bill.[1581] To date, the constitutionality of a congressional recall has not been litigated in the federal courts.

1573. *See* JOSEPH H. ZIMMERMAN, THE GOVERNMENT AND POLITICS OF NEW YORK STATE 145, 151 (1981).

1574. *Id.*

1575. *King*, 81 N.Y.2d at 255, 613 N.E.2d at 954, 597 N.Y.S.2d at 922.

1576. *Id.*

1577. *Id.*

1578. N.Y. CONST. art IV, § 7.

1579. U.S. CONST. art III, § 7, cl. 2.

1580. *See generally* FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 446-47 (1992).

1581. *See id.*