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Legislative Powers

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SUPREME COURT
NEW YORK COUNTY

Lavalle v. Hayden[1]
(decided September 30, 1999)

Plaintiffs who were duly elected New York State legislators, maintained they were deprived of their State and Federal Constitutional rights to be heard and to participate in government through their duly elected representatives.[2] The plaintiffs complained that, inter alia, their rights to participate in the formulation and effectuation of State educational policy through elected representatives to the Senate and plaintiff's rights to a republican form of government were violated.[3] Plaintiffs sought judgment that portions of sections 202.1[4] and 202.2[5] of the Education Law is violative of the plaintiffs' right to a bicameral legislature.[6] The defendants, Carl Hayden and other members of the Board of Regents of the University of the State of New York, moved pursuant to CPLR 3211(a)(7)[7] to dismiss the complaint,[8]

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[1] 696 N.Y.S.2d 782.

[2] *Id.* at 784.

[3] *Id.*

[4] N.Y. EDUCATION LAW art. V § 202.1 (McKinney Supp. 1999). This statute provides in pertinent part:

> [E]ach regent should be elected by the legislature by concurrent resolution in the preceding March, on or before the first Tuesday of such month. If, however, the legislative fails to agree on such concurrent resolution by the first Tuesday of such month, then the houses shall meet in joint session at noon on the second Tuesday of such month to proceed to elect such regent by joint ballot.

Id.

[5] N.Y. EDUCATION LAW art. V § 202.2 (McKinney 1999). This statute provides in pertinent part: "All vacancies in such office, either for full or unexpired terms, shall be so filled that there shall always be in the membership of the board of regents at least one resident of each of the judicial districts." *Id.*

[6] N.Y. CONST. art. III § 1. This section provides in pertinent part: "The legislative power of this State shall be vested in the Senate and Assembly." *Id.*

[7] N.Y. C.P.L.R. art. 32 § 11 (a)(7). This section provides in pertinent part: "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that the pleading fails to state a cause of action." *Id.*

while the plaintiffs moved pursuant to CPLR 3211(c)[9] to treat the motions to dismiss as motions for summary judgment.[10]

The plaintiffs here maintained that the manner in which members of the Board of Regents are elected violates their right to a bicameral legislative system.[11] They claimed it violates the plaintiffs' "rights to proportional representation by permitting [a] malapportioned joint body of the Legislature to control State educational policy,"[12] violates the rule of one-person one-vote,[13]and violates the Guaranty Clause of the United States Constitution.[14] They sought to dismiss the election of the defendants as Regents to the Board of Regents, as well as overturning the election of "any other Regents hereinafter elected by 'joint ballot' pursuant to § 202(1) and (2) of the Education law."[15]

The defendants moved pursuant to CPLR 3211(a)(3) and (a)(7) to dismiss the complaint as to them.[16] Whichever party claims that the statute is unconstitutional has the burden to identify the improper construction.[17] The court stated the Assembly and the

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[8] *Lavalle,* 696 N.Y.S.2d 782, 784.

[9] N.Y. C.P.L.R. art. 32 § 11(c). This section provides in pertinent part:"Upon the hearing of a motion made under subdivision (a) or (b), either party may submit any evidence that could properly be considered on a motion for summary judgment."*Id.*

[10] *Lavalle,* 696 N.Y.S.2d at 782.

[11] N.Y. CONST. art. III § 1. *See supra* note 7 and accompanying text..

[12] N.Y. CONST. art. XI § 3. This section provides in pertinent part: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

[13] U.S. CONST. amend. XIV § 2. This section provides in pertinent part: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." *Id.*

[14] U.S. CONST. art. IV § 4. This section provides in pertinent part: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive against Domestic Violence." *Id.*

[15] *Lavalle,* 696 N.Y.S.2d at 784.

[16] *Id.*

[17] *Id.*

Senate were necessary parties to this action and invited counsel to submit papers on this issue.[18] The counsel to the Majority notified the court that the Assembly declined the court's invitation to participate in the proceeding.[19]

While the court's job involves reviewing actions of the legislative branch of government,[20] its role is limited by the fact that every legislative enactment has an exceedingly strong presumption of constitutionality.[21] Such constitutional presumptions can be upset only by proof that is persuasive beyond a reasonable doubt.[22] It is a requirement that courts avoid interpreting a statute in a way that would render it unconstitutional, as long as such construction can be avoided.[23]

The Court finds the statutory limitations on those persons who could be Regents[24] and on the powers to be exercised by Regents[25]

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[18] *Id.*

[19] *Lavalle,* 696 N.Y.S.2d at 784.

[20] *Id.* at 785. *See* Methodist Hospital of Brooklyn v. State Insurance Fund, 486 N.Y.S.2d 905 (holding that an act of the Legislature is constitutional and that this presumption can be upset only by proof persuasive beyond a reasonable doubt).

[21] *Lavalle,* 696 N.Y.S.2d at 785. *See also Methodist Hospital,* 486 N.Y.S.2d at 908. *See* Sgaglione v. Lewitt, 375 N.Y.2d 79, 85 (Cook, J., dissenting) (holding that every legislative enactment is clothed with a strong presumption of constitutionality).

[22] *Lavalle,* 696 N.Y.S.2d 792, 785. *See also Methodist Hospital,*486 N.Y.2d at 910. *See* People v. Tichenor, 658 N.Y.S.2d 233,234 (noting a party seeking to nullify statute as unconstitutional must overcome the presumption of constitutionality that favors legislative enactments, and invalidity of the law must be demonstrated beyond a reasonable doubt).

[23] *Lavalle,* 696 N.Y.S.2d at 785.

[24] N.Y. EDUCATION LAW art. V § 202.4 (McKinney 1999). This statute provides in pertinent part: "No person shall be at the same time a regent of the university and a trustee, president, principal, or any other officer of an institution belonging to the university." *Id.*

[25] N.Y. EDUCATION LAW art. V § 207 (McKinney 1999). This statute provides in pertinent part:

> Subject and in conformity to the constitution and laws of the state, the regents shall exercise legislative functions concerning the educational system of the state, determine its educational policies, and, except, as to the judicial functions of the commissioner of education, establish rules for carrying into effect the laws and policies of the state, relating to

sufficiently set forth as overall policy and purpose to withstand constitutional scrutiny.[26] Here, *Lavalle* argued that the New York State Constitution, Article XI §§ 1[27] and 2[28] "gives to the legislature plenary powers over the Regents."[29] While this power of the legislature over the educational system is plenary, the Court of Appeals had already determined that the legislature constitutes "the legislature," whether sitting bicamerally or unicamerally.[30]

The parties devoted a considerable amount of time and energy to the term "continued" as contained in Article XI § 2.[31] There was an issue of whether what was continued included the manner of election or appointment of Regents.[32] The Court stated:

> It has been held that the provision of the Constitution of the State of New York continuing the corporation of the Regents of the State of New York confirms the rights and powers of the corporation therefore existing and to confer upon the legislature unlimited discretion to deal with the matter of education subject only to the general

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> education, and the functions, powers, duties and trusts conferred or charged upon the university and education department.
> *Id.*

[26] *Lavalle*, 696 N.Y.S. at 787.

[27] N.Y. CONST. art. XI § 1. This section provides in pertinent part: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

[28] N.Y. CONST. art. XI § 2. This section provides in pertinent part:

> The corporation created in the year one-thousand seven-hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby contained under the name of the University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified, or diminished by the legislature, shall be exercised by not less than nine regents.
> *Id.*

[29] *Lavalle*, 696 N.Y.S.2d at 787.

[30] *Id.*

[31] *Id*

[32] *Id.*

> fundamental restrictions contained in the Constitution.[33]

The Court concluded that Article XI § 2 was not meant to continue the previous methods for electing Regents, and that therefore the plaintiffs' argument was irrelevant.[34]

Further, plaintiff argued that the joint ballot alternative for electing Regents contained in § 202.1 of the Education Law violated Article I §2 of the Constitution of the State of New York, reasoning that the Senate and Assembly meeting in joint session does not constitute legislation.[35] The plaintiff argued that Article III § 1[36] provides that the legislature of New York comprises two houses, Senate and Assembly.[37]

The courts have constantly held that this portion of the Constitution of the State of New York relates only to the law-making power and function of the Legislature.[38] The court maintained that the Senate and Assembly continue to constitute the legislature, and, as provided by § 202 of the Education Law, elect Regents.[39] Neither the Senate or Assembly operating independently

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[33] *Lavalle*, 696 N.Y.S.2d at 787. *See* Shanker v. The Regents of the University of the State of New York, 281 N.Y.S.2d 355 (holding that Judicial Districts were unequal in population, and the provision for equal representation of the districts on the board was a violation of the 'one man-one vote' rule mandated by the equal protection clauses).

[34] *Lavalle*, 696 N.Y.S. 2d at 788.

[35] *Lavalle*, 696 N.Y.S.2d at 784.

[36] N.Y. CONST. art. III §1. *See supra* note 7 and accompanying text.

[37] *Lavalle*, 696 N.Y.S.2d at 785.

[38] *Id. See* Dorst v. Pataki, 665 N.Y.S.2d 65, 66. *See also* Hawke v. Smith, 253 U.S. 221, 227 (interpreting the Constitution of Ohio which held that the legislative power meant the power to legislate in the enactment of the laws of a State, which power is derived from the people of the State).

[39] *Lavalle,* 696 N.Y.S.2d at 785 (citing In Matter of Anderson v. Krupsak, 40 N.Y.2d 397, 386 N.Y.S.2d 859, 863. (1975)). In *Anderson,* the Court of Appeals was asked to determine whether a joint session was duly convened and what constitutes a quorum under the joint ballot alternative of § 202 of the Education Law. *Id* at 862. The Court of Appeals noted "[c]ertainly, once the joint session was convened, the legislature, sitting as a unicameral body, could have agreed upon a set of rules governing it." *Id* at 863. Finally, the Court of Appeals stated "[o]nce the joint session had been convened, the Senate and Assembly were no longer separate bodies of the legislature, but were instead merged into a unicameral body, where a quorum was simply a majority of the

can exercise legislative power nor pass a bill into law.[40] However, the court considers the legislature sitting as a unicameral body to be the legislature, as well as considering a joint session of the Senate and Assembly as being composed of members of the legislature itself.[41] The court concluded the plaintiffs did not offer proof sufficient to rebut the presumption of constitutionality that favors § 202 of the Education Law [42] for the election of Regents.

The Court of Appeals held that the selection of Regents by joint ballot in joint session is not an unconstitutional delegation of legislative power to a unicameral legislature.[43] Moreover, such selection method did not violate the "one man, one vote" principle of the federal Constitution's Due Process Clause[44] or the federal Constitution's guarantee of the republican form of government.[45]

Ivonne Polasky

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total membership of the unicameral body, without regard to whether those members come from the Senate or the Assembly." *Id.*

[40] *Lavalle,* 696 N.Y.S.2d at 785.

[41] *Id.*

[42] *Lavalle,* 696 N.Y.S.2d at 788.

[43] *Id.*

[44] U.S. CONST. amend. XIV § 1. This amendment provides in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law." *Id.*

[45] U.S. CONST. art. I. § 2. This section provides in pertinent part: "The House of Representatives shall be composed of Members chosen every second year by the people of the several states, and the Electors in each state shall have the Qualifications requisite for Electors of the most numerous branch of the State Legislature." *Id.*