Touro Law Review

Volume 12
Number 3 *New York State constitutional Decisions: 1995 Compilation*

Article 39

1996

Presentment

PRESENTMENT

N.Y. CONST. art. IV, § 7:

Every bill which shall have passed the Senate and the 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 . . . proceed to reconsider it . . . [i]f any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it . . . .

COURT OF APPEALS

Campaign for Fiscal Equity, Inc. v. Marino[1]
(decided December 28, 1995)

Appellants, Campaign for Fiscal Equity, et. al., brought this appeal contending that the New York State Senate violated the constitutional mandates of Article IV, section 7 of the New York State Constitution,[2] as well as the New York Court of Appeal's decision in *King v. Cuomo*,[3] in failing to present the Maintenance of Effort Bill #3248 to the Governor for his review and possible signing into law.[4] The Appellate Division, Third Department affirmed the judgment of the Supreme Court, Albany County holding that the bill which was passed by both houses of the legislature, but was not presented to the Governor, did not

---

1. 1995 WL 761930 (N.Y. Dec. 28, 1995).

2. N.Y. CONST. art. IV, § 7. This section states in pertinent part:
Every bill which shall have passed the Senate and the 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 . . . proceed to reconsider it . . . [i]f any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it . . . .
Id.

3. 81 N.Y.2d 247, 613 N.E.2d 950, 597 N.Y.S.2d 918 (1993).

4. 1995 WL 761930, *1.

violate the New York Constitution.[5] The Third Department further rejected the petitioners' contention that the Senate's failure to present the bill to the Governor was contrary to the decision in *King v. Cuomo*,[6] finding that it did not raise the separation of powers concerns of the "bicameral recall practice" and because the bill had remained within the control of the legislature.[7]

On appeal, the New York Court of Appeals framed the issue as "whether the State Constitution mandates that a bill passed by both houses of the Legislature be presented to the Governor."[8] The court of appeals reversed the judgment of the appellate division, holding that the Senate's failure to present the bill to the Governor violated the Presentment Clause of the New York State Constitution.[9] The court also held that withholding passed bills while conducting discussions is similar to the unconstitutional "recall" practice at issue in *King* and, thus, ran afoul of the *King* decision.[10]

The Maintenance of Effort Bill was passed by both the Senate and the Assembly during the 1994 Legislative term.[11] It was not, however, presented to the Governor before the legislative session had ended.[12] The Supreme Court, Albany County dismissed the

---

5. Campaign for Fiscal Equity, Inc. v. Marino, 209 A.D.2d 80, 84, 625 N.Y.S.2d 331, 333 (3d Dep't), *rev'd*, 1995 WL 761930 (N.Y. Dec. 28, 1995).

6. 81 N.Y.2d at 250, 613 N.E.2d at 951, 597 N.Y.S.2d at 919. In *King*, the New York Court of Appeals determined that

> [t]he bicameral 'recall' practice used by the Legislature to reacquire [an] Assembly [bill] . . . from the Governor's desk is not authorized by article IV, § 7 of the New York State Constitution. The Constitution prescribes the respective powers of the Executive and Legislative Branches as to how a passed bill becomes a law or is rejected.

Id.

7. *Campaign*, 209 A.D.2d at 82-83, 625 N.Y.S.2d at 333.

8. *Campaign*, 1995 WL 761930, at *1.

9. *Id.*

10. *Id.* at *2.

11. *Id.* at *1. The bill was passed by the New York State Senate on March 8, 1994 and the Assembly on June 6, 1994. *Id.*

12. *Id.* At the trial court level, the respondents claimed that the suit was moot because a bill passed by both houses must have been presented to the

petitioners' original article 78 proceeding, finding that they did not have standing to bring the action, and held that they failed to state a cause of action absent a constitutional provision which set forth a time period under which bills passed by the legislature must be presented to the Governor.[13] The Third Department affirmed, finding that the choice of whether to present a bill for gubernatorial review "should be left to the purview of the legislature."[14]

On appeal, the appellants argued that the practice of withholding a bill passed by both houses of the legislature violated Article IV, section 7 of the New York State Constitution in that it "effectively block[ed] Executive action in approving or vetoing" the legislation.[15] Thus, the appellants contended the legislature should have been constitutionally required to present the bill to the Governor and, therefore, overstepped its powers by not doing so.[16] The appellants further argued that "such [a] procedure violat[ed] the principles of separation of powers and open, accountable government," and, therefore, the Presentment

---

Governor during the term in which it was passed. *Campaign*, 209 A.D.2d at 82, 625 N.Y.S.2d at 332. In addressing the respondents' mootness claim, the Third Department recognized that a "bill lapses when a session of the Legislature has ended," but found that the constitutional implications of the "law-making process" excepted the claim from the mootness doctrine. *Id.* The court addressed the constitutional issue because it found "the factors necessary to invoke the exception to the mootness doctrine: (1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on, . . . " were present. *Id.* at 82, 625 N.Y.S.2d at 332-33. The court, therefore, addressed the petitioners' claim on the merits. *Id.* Similarly, the New York Court of Appeals addressed the petitioners' claims notwithstanding the lack of judiciability, but held that "a retroactive ruling in the instant case is not warranted." *Campaign*, 1995 WL 761930, at *3.

13. Campaign for Fiscal Equity, Inc. v. Marino, 162 Misc. 2d 398, 401, 617 N.Y.S.2d 263, 264 (Sup. Ct. Albany County 1994), *aff'd*, 209 A.D.2d 80, 625 N.Y.S.2d 331 (3d Dep't), *rev'd*, 1995 WL 761930 (N.Y. Dec. 28, 1995).

14. *Campaign*, 209 A.D.2d at 83, 625 N.Y.S.2d at 333.

15. *Campaign*, 1995 WL 761930, *1.

16. *Id.*

Clause "should be read to contain an implied 'rule of reason' as to the time for presentment of a bill to the Governor."[17] The respondents contended that they were not constitutionally compelled to present a bill to the Governor absent a mandate requiring them to do so and, thus, argued that the New York Court of Appeals should affirm the order of the appellate division.[18]

As in the previous actions, the petitioners' arguments in this case were based primarily upon the rationale adopted by the New York Court of Appeals in *King*.[19] In *King*, the court of appeals held that the bicameral "recall" procedures used by the legislature to reacquire bills which had not been signed or rejected by the Governor were unconstitutional and contrary to the language of Article IV, section 7 of the New York State Constitution.[20] The appellate division in *Campaign* distinguished *King* on the grounds that in *Campaign* the legislature had not exhausted its powers upon the bill because they did not submit it to the Governor for executive approval.[21] The court found that the issues surrounding the bicameral recall practice in *King* did not exist in *Campaign*[22] and, consequently, the legislature "acted within its legislative prerogative in retaining the bill."[23] The court of appeals reversed the Third Department's decision in *Campaign* and held, consistent with *King*, that "the practice of withholding from the Governor these bills on which both houses

17. *Id.*

18. *Campaign,* 1995 WL 761930, at *2.

19. *Id.*

20. *King*, 81 N.Y.2d at 252, 613 N.E.2d at 953, 597 N.Y.S.2d at 921.

21. *Campaign*, 209 A.D.2d at 83, 625 N.Y.S.2d at 333.

22. *Id.*

23. *Id.* (citing People v. Devlin, 33 N.Y. 269, 277 (1865)). In *King*, the Third Department acknowledged the "rule making" power of the legislature as outlined in *Devlin* under Article III, Section 9 of the State Constitution, but found their power to recall the bill ceased after submission to the Governor. *King*, 81 N.Y.2d at 251, 613 N.E.2d at 952, 597 N.Y.S.2d at 920. Citing the rationale in *Devlin*, the New York Court of Appeals stated that once a bill was passed by both houses and sent to the Governor for approval, the legislature "ha[s] exhausted their powers upon it." *Id.* at 252, 613 N.E.2d at 953, 597 N.Y.S.2d at 921 (citations omitted).

of the Legislature have formally acted is violative of Article IV, [section] 7."[24] The court of appeals stated that "[t]he former recall practice allowed legislators, executive agencies and interested groups additional opportunity to influence and affect bills without public inquiry or examination."[25] Likewise, the court found the legislative practices here were "just another method of thwarting open, regular governmental process," and similarly violative of the State Constitution.[26]

In determining the constitutionality of the legislature's decision not to present the bill, the court of appeals disagreed with the Third Department's decision which focused upon the absence of a constitutional mandate requiring presentment and their refusal to dictate legislative policy by inferring a constitutional presentment requirement.[27] The court of appeals held that the language of Article IV, Section 7 of the State Constitution implicitly requires that all bills passed by both houses be presented to the Governor "for enactment into law or vetoing within a reasonable time after its passage."[28] The court reasoned that "[t]o hold otherwise would be to sanction a practice where one house or one or two persons, as leaders of the legislature, could nullify the express vote and will of the People's representatives."[29] Furthermore, they found that requiring presentment under these circumstances would not interfere with the "usual and appropriate" law-making functions of either the Legislative or Executive Branches.[30]

Finally, the court of appeals rejected the respondents' contention that, since the legislature had not yet presented the bill, it was still under their control.[31] The court found that the wording "before it becomes law" contained in the Presentment Clause does not give the legislature unbridled discretion as to

---

24. *Campaign,* 1995 WL 761930, at *2.
25. *Id.*
26. *Id.*
27. *Id.*
28. *Campaign,* 1995 WL 761930, at *2.
29. *Id.*
30. *Id.*
31. *Id.*

when presentment should take place.[32] In support of their holding, the court relied on similar federal cases containing an analogous mandate.[33] Thus, it was found that the legislature's withholding practice was an unconstitutional use of their authority and concluded that once a bill has been passed by both houses, Article IV, Section 7 requires the bill be presented to the Governor for executive action.[34]

---

32. *Id.*

33. *Id. See* United States v. Munoz-Flores, 495 U.S. 385, 402 (1990) (interpreting the Presentment Clause of the United States Constitution to require that "every" bill passed by both houses of Congress, even "improperly originated bills," be presented to the President for possible signing into law); *see also* Field v. Clark, 143 U.S. 649, 672 (1892) (specifying the manner in which a bill is deemed to have been approved by both houses as the "signing [of the bill] by the speaker of the house of representatives, and by the president of the senate," and stating that once such procedure is completed "its authentication as a bill that has passed congress should be deemed complete and unimpeachable" and, thus, the bill must be presented to the President for action).

34. *Campaign,* 1995 WL 761930, *3.