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Legislative Powers

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.

SUPREME COURT

ALBANY COUNTY

Campaign for Fiscal Equity, Inc. v. Marino[1]
(decided September 13, 1994)

Petitioners, alleging that the Senate violated the constitutional mandates of section 7 of article IV of the New York State Constitution,[2] as well as the legal mandates of section 2 of Senate Rule IV[3] by withholding the presentation of the Maintenance of Effort Bill #3248 to the Governor for his approval or veto, brought this article 78 proceeding[4] seeking declaratory relief.[5] The Maintenance of Effort Bill #3248 was passed by both houses of the New York State Legislature in 1994, by the Senate on

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1. 162 Misc. 2d 398, 617 N.Y.S.2d 263 (Sup. Ct. Albany County 1994).

2. 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 approves, 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 . . . if any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall be presented to him, the same shall be a law in like manner as if he had signed it . . . .

Id.

3. Senate Rule IV, § 2 provides in relevant part:

> It shall be the duty of the Secretary to have the journals, bills, calendars, messages and other documents printed and distributed in the manner provided by law. He shall present to the Governor, and enter upon the journals, such bills as shall have originated in the Senate and shall have been passed by bother [sic] houses. He shall, subject to the rules of the Senate, transmit to the Assembly all bills of concurrent resolutions which have passed the Senate.

Campaign, 162 Misc. 2d at 399, 617 N.Y.S.2d at 263.

4. CPLR article 78 provides for judicial review of respondent's determination if a question raised in the proceeding is "whether a determination was made in violation of lawful procedure . . . or was arbitrary and capricious or an abuse of discretion." N.Y. CIV. PRAC. L. & R. § 7803(3) (McKinney 1994).

5. *Campaign*, 162 Misc. 2d at 398, 617 N.Y.S.2d at 263.

March 8, 1994, and by the Assembly on June 6, 1994.[6] However, as of the date of this decision, the bill still has not been submitted to the Governor.[7] The Supreme Court of Albany County held that petitioners failed to allege grounds for relief because there was no constitutional provision, statute or rule which specifically mandated when bills had to be presented to the Governor for approval.[8]

The court stated that when presenting their arguments to the court, both petitioner and respondent relied heavily on *King v. Cuomo*.[9] However, the court does not specifically describe the nature of the arguments made for either side. The *King* court held that the bicameral "recall" procedures[10] used to reacquire bills from the Governor which had not yet been approved or vetoed were not authorized by section 7 of article IV of the New York Constitution and were therefore unconstitutional.[11] Furthermore, the court reasoned that there was no provision in the Constitution which grants the Legislature the authority to recall a bill once it has been presented to the Governor because "'[w]hen both houses

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6. *Id.* at 399, 617 N.Y.S.2d at 263.

7. *Id.*

8. *Id.* at 401, 617 N.Y.S.2d at 264. Petitioners did not challenge the actions of the New York State Senate under any provisions of the Federal Constitution.

9. 81 N.Y.2d 247, 613 N.E.2d 950, 597 N.Y.S.2d 918 (1993).

10. It had been a long-standing practice of the Legislature to formally adopt a resolution requesting that the Governor return the bill to the Legislature prior to it being signed or vetoed. *Id.* at 250, 254, 613 N.E.2d at 951, 953, 597 N.Y.S.2d at 919, 921. "In New York, between the years of 1932 and 1980, a bill was recalled by the New York Legislature 2,132 times, including 288 times in 1966 alone." *See New York State Constitutional Decisions: 1993 Compilations*, 10 TOURO L. REV. 1077, 1080-81 (1994).

11. *King*, 81 N.Y.2d at 250, 613 N.E.2d at 951, 597 N.Y.S.2d at 919. The *King* decision rested primarily on the plain language found in the Constitution which expressly delineates the respective powers of the Executive and the Legislative branches as to how a bill becomes a law: "Since the authority of the Legislature is 'wholly derived from and dependent upon the Constitution,' the discrete rules of the two houses do not constitute organic law and may not substitute for or substantially alter the plain and precise terms of that primary source of governing authority." *Id.* at 251, 613 N.E.2d at 952, 597 N.Y.S.2d at 920 (citations omitted).

have finally passed a bill, and sent it to the governor, *they have exhausted their powers* upon it.'"[12]

In relying on *King*, the starting point of petitioner's argument[13] for the imposition of a time-frame for presentment of bills to the Governor is in the language of the Constitution itself which states that "[e]very bill which shall have passed the senate and assembly *shall . . . be presented to the governor.*"[14] When the New York Court of Appeals was called upon to decide the constitutionality of legislative "recall" procedures in *King*, it held that the "[L]egislature must be guided and governed . . . by the Constitution, not by a self-generated additive"[15] and that the Legislature cannot "place itself outside the express mandate of the Constitution."[16] The Legislature, as the petitioner's argument went, should have been "required to comply strictly with the constitutional mandate"[17] and, because the plain language of the Constitution states that every bill shall be presented to the Governor, the Legislature was constitutionally prohibited from

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12. *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)).

13. Initially, in order to overcome respondent's contention that petitioner's lacked standing to assert this action, petitioner may have pointed to the determination made by the *King* court stating:

> We conclude that the courts do not trespass "into the wholly internal affairs of the Legislature" when they review and enforce a clear and unambiguous constitutional regimen of this nature . . . . Our precedents are firm that the "courts will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the other two branches of the government."

King, 81 N.Y.2d at 251, 613 N.E.2d at 952, 597 N.Y.S.2d at 920 (citations omitted). Without discussion on this point, the *Campaign* court summarily found that petitioners did have standing in this action. *Campaign*, 162 Misc. 2d at 399, 617 N.Y.S.2d at 263.

14. *See* NEW YORK CONST. art. IV, § 7; *see also King*, 81 N.Y.2d at 252, 613 N.E.2d at 952, 597 N.Y.S.2d at 920; *Campaign*, 162 Misc. 2d at 399, 617 N.Y.S.2d at 263.

15. *King*, 81 N.Y.2d at 252, 613 N.E.2d at 952, 597 N.Y.S.2d at 920.

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

17. *Campaign*, 162 Misc. 2d at 401, 617 N.Y.S.2d at 264.

passing a bill without then submitting it to the Governor for approval or veto.[18]

Notwithstanding petitioner's reliance on *King*, respondent also found support in *King*. The *King* court relied on *People v. Devlin*[19] and quoted that decision as saying "[w]hen both houses have . . . finally passed a bill and sent it to the [G]overnor, *they have exhausted their powers* upon it."[20] It follows from this statement that the Legislature no longer has any control over the legislation after it has been presented to the Governor. If the bill has not yet been presented to the Governor, the Legislature still has power and control over the bill. If the Legislature still has control over the bill, it logically follows that it has the power to determine when it will be presented to the Governor. Moreover, the *King* court concluded that there was "no justification . . . for departing from the *literal language of the constitutional provision*"[21] and that any supplementation of the Constitution was not "the will of the People."[22] Therefore, since there is no language in the Constitution specifically providing for a presentment timeframe, the court will not supplement the Constitution by judicially creating a timeframe because to do so would be to override the "will of the People."[23]

The *Campaign* court basically adopted respondent's interpretation of *King* even though it did not rely on the holding. The court distinguished the *King* decision from the present action

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18. N.Y. CONST. art. IV, § 7.

19. 33 N.Y. 269 (1865). The issue presented in *Devlin* was virtually identical to the issue resolved in *King*. The constitutionality of a *unicameral* recall procedure was challenged. *Id.* at 276. The Court held that this was unconstitutional unless the recall was consented to by *both* houses: "By no rule or custom shown, nor by the exercise of common reason, could one house, by their action, undo, annul or change what both had solemnly done, under their solemn legislative sanction, according to all constitutional forms, and according to their published rules and forms of law." *Id.* at 277-78.

20. *Id.* at 252, 613 N.E.2d at 953, 597 N.Y.S.2d at 921 (citing *Devlin*, 33 N.Y. at 277) (emphasis added).

21. *Id.* at 253, 613 N.E.2d at 953, 597 N.Y.S.2d at 921 (citations omitted).

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

23. *Id.*

on its facts: "This court has reviewed *King* and finds the factual situation to be quite different . . . [u]nlike the *King* case this bill has not yet been presented to the Governor and the court is being asked to add a requirement to the Constitution in establishing a time frame for presentment."[24] Rather, the court relied entirely on the plain language of section 2 of Senate Rule IV and article IV of the Constitution. Actually, the court relied on the *absence of plain language*. As the New York Court of Appeals did in *King*, the *Campaign* court refused to "supplement" the constitutional mandate by prescribing a judicially created time-frame: "[T]here has been no showing of a specific constitutional provision, statute or rule which mandates a time frame for the Senate."[25] Furthermore, under section 9 of article 3 of the New York Constitution "[e]ach house shall determine the rules of its own proceedings"[26] and the court will not interfere with the Senate and impose a time limit where the Senate itself has chosen not to.[27] The decision of whether or not to impose a time limit for the presentation of bills to the Governor is best left to the Senate to decide under its article 3, section 9 powers.[28] "This court will not prescribe the specific manner in which the Senate must present a bill to the Governor . . . ."[29]

It is quite ironic that the decision in *Campaign*, which rejects petitioner's argument in total, is entirely consistent with language from *King* and seems to simultaneously support both petitioner's and respondent's position. As the *King* court stated, "[r]equiring 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."[30]

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24. *Campaign*, 162 Misc. 2d at 399-400, 617 N.Y.S.2d at 264.
25. *Id.* at 400, 617 N.Y.S.2d at 264.
26. *Id.*
27. *Id.*
28. *Id.* at 401, 617 N.Y.S.2d at 264.
29. *Id.* at 400, 617 N.Y.S.2d at 264.
30. *King*, 81 N.Y.2d at 255, 613 N.E.2d at 954, 597 N.Y.S.2d at 922.