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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, APPELLATE DIVISION

THIRD DEPARTMENT

Seymour v. Cuomo[888]
(decided June 4, 1992)

Petitioners, Supervisors of the Town of Northumberland, and others, claimed that the bicameral recall of a bill, after being

888. 180 A.D.2d 215, 584 N.Y.S.2d 207 (3d Dep't), *appeal denied*, 80 N.Y.2d 958, 605 N.E.2d 870, 591 N.Y.S.2d 134 (1992).

passed by the Assembly and Senate, and delivered to the Governor, violated procedures of legislative enactment[889] as set forth in article III, section 9 of the New York State Constitution.[890] The third department held that although the New York State Constitution does not provide a specific provision authorizing the recall process,[891] it does provide that each house establish rules to govern its own proceedings.[892] Thus, the court found the bicameral recall process to be a viable, long-standing procedure[893] that did not violate the New York State Constitution's legislative enactment procedures.[894]

During the 1990 legislative session, the Assembly and Senate passed Assembly Bill No. 9592-A.[895] The day after the bill was delivered to the Governor, the Assembly, with concurrence of the Senate, passed a resolution requesting that the Governor return the bill to the Assembly. Upon receipt of the resolution, the Governor immediately complied.[896] Petitioners claimed the bicameral recall was invalid because the Legislature no longer had any authority over the bill unless and until it was vetoed.[897] Thus, when the Governor did not veto the bill ten days after presentment, it became law.[898] Petitioners also argued that the Assembly failed to follow its own rules since the impropriety of lobbying forces at work after the Legislature had voted made the recall procedure undemocratic.[899]

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889. *Id.* at 216, 584 N.Y.S.2d at 208.

890. N.Y. CONST. art. IV, § 7.

891. *Seymour*, 180 A.D.2d at 217, 584 N.Y.S.2d at 209.

892. *Id.*; *see* N.Y. CONST. art. III, § 9 ("Each house shall determine the rules of its own proceedings . . . .").

893. *Seymour*, 180 A.D.2d at 217, 584 N.Y.S. at 209. *See* People v. Devlin, 33 N.Y. 268 (1865).

894. *Seymour*, 180 A.D.2d at 216, 584 N.Y.S.2d at 208.

895. *Id.*

896. *Id.*

897. *Id.* at 216-17, 584 N.Y.S.2d at 208-09.

898. *Id.* at 217, 584 N.Y.S.2d at 208. Article III, § 7 of the New York State Constitution provides in pertinent part: "If 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 become law in like manner as if he had signed it . . . ." N.Y. CONST. art. III, § 7.

899. *Seymour*, 180 A.D.2d at 172, 584 N.Y.S.2d at 209.

The court stated at the outset that historically the judiciary has exercised restraint, based on the policy of separation of powers, from reviewing or intruding upon the "internal affairs" of the legislative branch.[900] While maintaining that it would not shrink from the task if required to do so, it preferred to adhere to its long-standing policy of non-interference in legislative affairs.[901]

Turning to the recall issue, the court began by stating that the bicameral recall process is a long-standing practice dating back to 1865.[902] It also noted that the plaintiff acknowledged the existence of this practice, although they scorned its use.[903] However, the court could find nothing in the constitution "which either authorize[d] or proscribe[d] the recall process."[904] The court rejected petitioners' reliance on *People v. Devlin*[905] as grounds for prohibiting the recall process by noting that "the court of appeals recognized in that case that 'the united action of both houses would be necessary to recall the bill.'"[906] Further, the court distinguished *Devlin* because the recall issue raised in that case addressed whether a bill passed by both houses of the legislature and delivered to the Governor could be recalled by resolution of only one house.[907]

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900. *Id.* at 216, 584 N.Y.S.2d at 208. *See, e.g.*, Heimbach v. New York, 59 N.Y.2d 891, 893, 452 N.E.2d 1264, 1265, 465 N.Y.S.2d 936, 937 ("based upon our respect for the basic policy of separation of powers and the proper exercise of the judicial restraint, we will not intrude into the wholly internal affairs of the Legislature") *appeal dismissed*, 464 U.S. 956 (1983); Board of Educ. v. City of New York, 41 N.Y.2d 535, 538, 363 N.E.2d 948, 951, 394 N.Y.S.2d 148, 151 (1977) ("[T]he courts should be hesitant to intervene in the internal affairs of the Legislature.").

901. *Seymour*, 180 A.D.2d at 216, 584 N.Y.S.2d at 208. *See, e.g.*, Hatch v. Reardon, 184 N.Y. 431, 442, 77 N.E. 970, 973 (1906), *aff'd*, 204 U.S. 152 (1907) ("[I]t is not the province of the courts to direct the legislature how to do it work . . . .").

902. *Seymour*, 180 A.D.2d at 217, 584 N.Y.S.2d at 209.

903. *Id.*

904. *Id.*

905. 33 N.Y. 269 (1865).

906. *Seymour*, 180 A.D.2d at 217, 584 N.Y.S.2d at 209 (quoting *Devlin*, 33 N.Y. at 286 (Campbell, J., concurring)).

907. *Id.*; *Devlin*, 33 N.Y. at 276.

The court also found that the Assembly followed its own rules as evidenced by the Assembly Journal entries which recorded the recall process.[908] Therefore, the court maintained that "[t]hese entries are binding on the courts and may not be impeached by collateral evidence."[909] The court concluded that the Legislature acted within its authority, which was governed by its own rules of proceeding established pursuant to the state constitution.[910]

The Federal Constitution contains a similarly worded parallel provision on legislative rules and procedure governing the passage and enactment of bills.[911] It too is void of any reference to a recall process. Under congressional rules and procedures, recall of a bill may only be effectuated by a concurrent resolution.[912] Thus, subsequent to bicameral passage and presentment, Congress may recall a bill prior to any presidential action, by submitting a concurrent resolution to the President requesting its return.[913] To date, however, federal courts have not adjudicated the constitutionality of a congressional recall.

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908. *Seymour*, 180 A.D.2d at 217, 584 N.Y.S.2d at 209. The court found that the entries "set forth the complete recall procedure followed by the Legislature and the Governor." *Id.*

909. *Id.* (citations omitted).

910. *Id. See* N.Y. CONST. art. III, § 9.

911. U.S. CONST. art. I, § 7.

912. *See* FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE 446-447 (1992).

913. *See id.*