

Summary of SC95369, *Timothy S. Pestka, et al. v. State of Missouri, et al.*

Appeal from the Cole County circuit court, Judge Jon E. Beetem

Argued and submitted January 13, 2016; following supplemental briefing, argued and submitted again April 26, 2016; opinion issued July 26, 2016

Attorneys: The challengers were represented by Michael A. Evans and James P. Faul of Hartnett Gladney Hetterman LLC in St. Louis, (314) 531-1054; and the state was represented by Maggie M. Ahrens of the attorney general's office in Jefferson City, (573) 751-3321.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: This case presents an issue of first impression – whether the state senate had constitutional authority to override the governor's veto of a bill during its veto session when the house of representatives voted to override the veto during the regular legislative session. In a 4-3 decision written by Judge George W. Draper III, the Supreme Court of Missouri reverses the circuit court's judgment in favor of the state. When the governor vetoes a bill more than five days before the end of the regular legislative session, the plain language and history of the pertinent constitutional provision require the legislature to reconsider and vote to override the veto before the session adjourns for the bill to pass. The senate's override of this particular veto during the subsequent veto session, therefore, was untimely. Because the bill was not passed as the constitution requires, none of its provisions became law.

Judge Mary R. Russell dissents. She would hold the senate's proceedings overriding the governor's veto of the bill complied with the requirements of the plain language, history and contextual meaning of the pertinent constitutional provision. Absent express requirements of the constitution, the senate has constitutional authority to determine the rules of its own proceedings.

Facts: The legislature passed House Bill No. 150, which made changes to Missouri's unemployment benefits compensation statutes, in April 2015. The governor vetoed the bill on May 5, 2015, more than five days before the legislature adjourned. Before adjournment, the house of representatives reconsidered HB 150 and voted to override the governor's veto. The senate adjourned May 15, 2015, without taking any action to reconsider the bill or override the veto. The governor's veto of an unrelated bill resulted in the legislature convening in September 2015 for a veto session pursuant to article III, section 32 of the state constitution. During the veto session, the senate reconsidered HB 150 and voted to override the governor's veto. Challengers sued, seeking to prohibit HB 150 from being executed or enforced. The circuit court granted judgment on the pleadings to the state. The court found that article III, section 32 did not limit what bills could be considered during the veto session nor require a vetoed bill to be reconsidered before the end of the regular legislative session and that the senate's veto-session vote on HB 150 was timely and did not violate article III, section 32. The challengers appeal.

REVERSED.

Court en banc holds: The senate's override of the governor's veto of HB 150 was untimely, causing the bill not to be passed, "the objections of the governor thereto notwithstanding" as the constitution requires. The plain language of article III, section 32 demonstrates that a veto

session is not triggered until and unless the governor vetoes a bill on or after the fifth day before the end of the regular legislative session, and reconsideration of such vetoed bills contemplates a two-house process in which the house to which the bill is returned must vote to override the veto and then send the bill to the other house for “like proceedings.” The parties dispute what the legislature may reconsider during the veto session. A close reading of the three amendments to article III, section 32 since the state’s constitution was adopted in 1945 reveals the people’s intent to confine a September veto session to only late-vetoed bills. In 1945, the legislature could reconsider any bill vetoed by the governor, regardless of when the veto occurred, at its convenience. In every subsequent amendment to article III, section 32, the people of Missouri gradually have restricted the legislature’s power regarding which bills it can reconsider and when it can reconsider them, making a clear distinction between “every bill” the governor returned and late-vetoed bills. This Court must presume these amendments have meaning and were intended to define the scope of the September veto session. When construing the first two sentences of article III, section 32 together, this Court finds the veto session’s purpose is to consider the late-vetoed bills – plural – that brought the session into existence, not additional bills. The legislature has adequate time to reconsider a bill vetoed more than five days before the end of the legislative session or reintroduce the same or similar bill for consideration and adoption. There is no dispute that HB 150 was not a late-vetoed bill. The house sent it to the senate for reconsideration two days before the regular session ended. The senate failed to act on the bill before the end of the regular session, and it lacked authority to reconsider the bill during the September veto session. Neither the parties nor the dissenting opinion point to any single prior instance when the legislature endeavored to override the governor’s veto in such a way as occurred here.

Dissenting opinion by Judge Russell: The author would hold the senate’s proceedings overriding the governor’s veto of HB 150 complied with the requirements of the plain text of article III, section 32; therefore, she would affirm the circuit court’s judgment. Absent express requirements of the constitution, the senate has constitutional authority to determine the rules of its own proceedings. The plain language of article III, section 32 permits the legislature to reconsider any vetoed bills during its veto session. Under that provision, once a single late-vetoed bill automatically triggers the veto session, the legislature reconvenes for not more than 10 days for the sole purpose of considering “bills returned by the governor.” The provision does not contain language explicitly limiting the legislature to consider only the late-vetoed bill that triggered the session or any other late-vetoed bills. A natural reading of the “bills returned by the governor” includes all vetoed bills, not just those that were vetoed late in the session. Further, the amendments to article III, section 32 demonstrate the voters knew how to limit which vetoed bills the legislature could consider and when, but voters instead retained more expansive language that allows the legislature to reconsider “bills” vetoed by the governor when “any bill” is returned late and triggers the veto session. The language of surrounding constitutional provisions emphasizes that article III, section 32 does not limit the legislature’s power to reconsider vetoed bills but rather protects and enlarges that power. The legislature’s override of the governor’s veto was valid even though the house voted to override the veto during the regular session and the senate voted to do so in the veto session. Article III, section 32 provides that the legislature shall “reconvene” to reconsider vetoed bills if a bill is vetoed late, and journals of the house and senate reflect that the September 2015 veto session was a continuation of the first regular session of the 98th General Assembly that convened in January 2015.