SUPREME COURT OF KENTUCKY

Fletcher v. Commonwealth

163 S.W.3d 852 (Ky. 2005) · No. 2005-SC-0046-TG, 2005-SC-0049-TG, 2005-SC-0050-TG · Decided May 19, 2005

SUMMARY

The Supreme Court of Kentucky considered whether the Governor could direct expenditures from the state treasury to fund executive-branch operations when the General Assembly had not enacted an executive department budget. The court addressed mootness, the political-question doctrine, separation of powers, and the constitutional limits on unilateral executive appropriations.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	Justice Cooper; Cooper; Graves; Johnstone; Keller; Lambert; Scott; Wintersheimer
JURISDICTION	Kentucky
DECIDED	May 19, 2005
DOCKET	2005-SC-0046-TG, 2005-SC-0049-TG, 2005-SC-0050-TG
DISPOSITION	other
PROCEDURAL POSTURE	Consolidated appeal from a Franklin Circuit Court judgment declaring the Governor's Public Services Continuation Plan unconstitutional, while temporarily permitting its continuation and allowing limited expenditures under Miller v. Quertermous. The Supreme Court of Kentucky granted transfer and expedited review.
STANDARD OF REVIEW	Constitutional interpretation and review of the circuit court's declaratory judgment de novo.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Ernie Fletcher, in his official capacity as Governor of Kentucky, Robbie Rudolph, in his official capacity as Secretary of the Finance and Administration Cabinet, Steve Nunn, Jim Wayne, Commonwealth of Kentucky, Department of the Treasury, acting through Jonathan Miller, Treasurer v. Commonwealth of Kentucky, Office of the Attorney General ex rel. Gregory D. Stumbo, Common Cause of Kentucky and Richard V. Beliles, Harry Moberly, Jr., Joe Barrows, Jim

Callahan, David L. Williams, Jody Richards, Kentucky Retirement Systems, Board of Trustees, Commonwealth of Kentucky, Department of the Treasury ex rel. Jonathan Miller, Commonwealth of Kentucky, Office of the Governor ex rel. Ernie Fletcher, Commonwealth of Kentucky, Finance and Administration Cabinet ex rel. Robbie Rudolph

TOPICS

appropriations | separation of powers | constitutional law | federal spending

PRACTICE AREAS

constitutional law | state government | appropriations | separation of powers | public finance

QUESTIONS PRESENTED

1. Whether the appeal was moot after the General Assembly enacted a budget and ratified expenditures made under the Public Services Continuation Plan.
2. Whether the constitutional validity of the Governor's spending plan presented a nonjusticiable political question.
3. Whether the Governor may order money drawn from the state treasury to fund executive-branch operations when the General Assembly has not made an appropriation.
4. Whether statutory, constitutional, or federal mandates may authorize or require expenditures notwithstanding the absence of a specific budget appropriation.
5. Whether Kentucky law recognizes a continuation budget based on the prior biennial budget.
6. Whether the Governor possesses inherent or emergency authority to spend unappropriated funds.
7. Whether the Governor may suspend statutes through an executive spending plan.

HOLDINGS

1. The appeal was not moot because the challenged issue was capable of repetition yet evading review.
2. The dispute over whether the Governor's spending plan exceeded constitutional authority was justiciable and was not a nonjusticiable political question.
3. Absent a specific appropriation, statutory mandate, constitutional mandate, or valid federal mandate, section 230 of the Kentucky Constitution prohibits withdrawal of money from the state treasury.
4. Statutes specifically mandating payments or contributions may operate as self-executing appropriations; constitutional mandates must be funded at no more than existing levels; and valid federal mandates required by the Supremacy Clause must be funded notwithstanding section 230.
5. Kentucky law provides no authority for a continuation budget based on the immediately preceding biennial budget.
6. The Governor has no inherent, emergency, or unilateral constitutional authority to appropriate money from the state treasury that the General Assembly has not appropriated.

7. Miller v. Quertermous is overruled to the extent it permits or can be interpreted to permit unilateral executive spending of unappropriated funds during an emergency.
8. The Governor's suspension of statutes through the Public Services Continuation Plan was unconstitutional and invalid from its inception.

KEY QUOTATIONS

> *"Accordingly, we hold that, in the absence of a specific appropriation, or a statutory, constitutional, or federal mandate as discussed below, the unambiguous language of Section 230 prohibits the withdrawal of funds from the state treasury."* (864)

> *"We simply hold that to the extent the Supremacy Clause of the United States Constitution, U.S. Const. art. VI, cl. 2, requires compliance with any valid federal mandate, it must be funded by the Treasurer notwithstanding Section 230 of the Constitution of Kentucky."* (868)

> *"We reject the proposition that a Governor can unilaterally declare an emergency and spend unappropriated funds to resolve it."* (871)

> *"A fortiori, the suspension of any statutes by the Governor's Public Services Continuation Plan was unconstitutional and invalid ab initio."* (872)

> *"When the General Assembly declines to exercise its appropriations power, that power does not flow over the "high wall" erected by Section 28 to another department of government."* (873)

FACTUAL BACKGROUND

The Kentucky General Assembly adjourned on April 14, 2004, without enacting an executive-department budget for the 2004-06 biennium after legislative disagreement over tax measures and other budget provisions. Governor Fletcher subsequently issued an executive spending plan purporting to appropriate approximately $20.7 billion for executive-branch operations and authorized treasury warrants to implement it. The Attorney General and other intervenors challenged the Governor's authority to spend unappropriated funds and to suspend existing statutes.

PROCEDURAL HISTORY

After the General Assembly failed to enact an executive-branch budget for the 2004-06 biennium, Governor Fletcher issued Executive Order 2004-650, adopting a Public Services Continuation Plan and authorizing warrants against the state treasury. The Franklin Circuit Court declared the plan unconstitutional but authorized limited continuation until June 30, 2005. During the appeal, the General Assembly enacted a budget and ratified the Governor's prior expenditures nunc pro tunc. The Supreme Court reached the merits under the capable-of-repetition-yet-evading-review exception.

DISPOSITION

other

CASES CITED

- Miller v. Quertermous, 304 Ky. 733, 202 S.W.2d 389 (1947)
- Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)
- Commonwealth ex rel. Armstrong v. Collins, 709 S.W.2d 437 (Ky. 1986)
- Legislative Research Commission ex rel. Prather v. Brown, 664 S.W.2d 907 (Ky. 1984)
- Ferguson v. Oates, 314 S.W.2d 518 (Ky. 1958)
- Baker v. Carr, 369 U.S. 186 (1962)
- Printz v. United States, 521 U.S. 898 (1997)
- New York v. United States, 505 U.S. 144 (1992)
- White v. Davis, 108 Cal. App. 4th 197, 133 Cal. Rptr. 2d 691 (2002), reversed in part on other grounds, 30 Cal. 4th 528, 133 Cal. Rptr. 2d 648, 68 P.3d 74 (2003)
- Board of Trustees v. Attorney General, 132 S.W.3d 770 (Ky. 2003)
- Dalton v. State Property & Building Commission, 304 S.W.2d 342 (Ky. 1957)
- Rhea v. Newman, 153 Ky. 604, 156 S.W. 154 (1913)
- Dishman v. Coleman, 244 Ky. 239, 50 S.W.2d 504 (1932)
- Brown v. Barkley, 628 S.W.2d 616 (Ky. 1982)