

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

HOWARD JARVIS TAXPAYERS ASSOCIATION
et al.,

Petitioners,

v.

DEBRA BOWEN, as Secretary of State, etc.,

Respondent;

LEGISLATURE OF THE STATE OF CALIFORNIA
et al.,

Real Parties in Interest.

C071506

ORIGINAL PROCEEDING in mandate. Petition denied.

Bell, McAndrews & Hiltachk, Charles H. Bell, Jr., and Brian T. Hildreth for
Petitioners.

Nielsen, Merksamer, Parrinello, Gross & Leoni, Steven A. Merksamer, Richard D.
Martland, and Kurt R. Oneto for California Chamber of Commerce as Amicus Curiae on
behalf of Petitioners.

Kamala D. Harris, Attorney General, Douglas J. Woods, Senior Assistant Attorney General, Peter A. Krause, Supervising Deputy Attorney General, and Ross C. Moody, Deputy Attorney General, for Respondent.

Remcho, Johansen & Purcell, Thomas A. Willis, and Karen Getman for Real Party in Interest Thomas A. Willis.

Diane F. Boyer-Vine, Legislative Counsel, Jeffrey A. DeLand, Chief Deputy Legislative Counsel, and Robert A. Pratt, Principal Deputy Legislative Counsel; Strumwasser & Woocher, Fredric D. Woocher, Michael J. Strumwasser, and Giulia C.S. Good Stefani, for Real Party in Interest Legislature of the State of California.

Olson, Hagel & Fishburn, Lance H. Olson, Deborah B. Caplan, and Richard C. Miadich for Peace Officers Research Association of California as Amicus Curiae on behalf of Real Parties in Interest.

The narrow, but potentially recurring and important, question we address in these writ proceedings is whether the California Constitution, as amended by the voters in 2010, allows the Legislature to identify blank bills with an assigned number but no substance (so-called “spot bills”¹) in the budget bill, pass the budget, and thereafter add content to the placeholder and approve it by a majority vote as urgency legislation. (Cal. Const., art. IV, § 12, subds. (d) & (e).) We conclude that spot bills which remain empty of content at the time the budget is passed are not bills that can be identified within the meaning of article IV, section 12, subdivision (e)(2) of the California Constitution and enacted as urgency legislation by a mere majority vote.

¹ According to the California State Legislature Glossary, a spot bill is “[a] bill that amends a code section in a nonsubstantive way. A spot bill may be introduced to ensure that a germane vehicle will be available at a later date. Assembly Rules provide that a spot bill cannot be referred to a committee by the Rules Committee without substantive amendments.” (Legis. Counsel, *A Guide for Accessing California Legislative Information on the Internet, Appendix B: Glossary of Legislative Terms*, <<http://www.leginfo.ca.gov/guide.html#S>> [as of Jan. 10, 2013].)

FACTUAL AND LEGAL CONTEXT²

Prior to the 2010 amendments to the California Constitution, a two-thirds supermajority of the Legislature was required to pass an annual budget. (Cal. Const., art. IV, former § 12.) Through an initiative measure on the November 2, 2010, ballot, however, the voters passed the “On-Time Budget Act of 2010,” thereby amending article IV, section 12 of the California Constitution (hereafter art. IV, § 12). At issue in these proceedings is the language set forth in article IV, section 12, subdivisions (d) and (e)(2).

Subdivision (d) of article IV, section 12 states: “No bill except the budget bill may contain more than one item of appropriation, and that for one certain, expressed purpose. Appropriations from the General Fund of the State, except appropriations for the public schools *and appropriations in the budget bill and in other bills providing for appropriations related to the budget bill*, are void unless passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring.” (Language added by 2010 amend. in italics.)

Subdivision (e)(2) of article IV, section 12 further explains: “For purposes of this section, ‘other bills providing for appropriations related to the budget bill’ shall consist only of bills identified as related to the budget in the budget bill passed by the Legislature.”

In February 2012 there were 80 spot bills on the legislative docket: Assembly Bill Nos. 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, and 1503; and Senate Bill Nos. 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1014,

² The requests for judicial notice filed by petitioners and real party in interest Legislature of the State of California are granted.

1015, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1025, 1026, 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, 1039, 1040, 1041, 1042, and 1043. Each of these bills was assigned a number but was otherwise empty of content. Indeed, their purpose is to reserve a spot on the legislative calendar. Each blank bill contains the same place-saving 18 words: “It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.” One of these blank bills is at the center of the current controversy -- Assembly Bill No. 1499.

The Committee on Budget introduced Assembly Bill No. 1499 on January 10, 2012. (Assem. Bill No. 1499 (2011-2012 Reg. Sess.) as introduced Jan. 10, 2012.) It reiterates the language that appears in each of the other spot bills: “The people of the State of California do enact as follows: [¶] SECTION 1. It is the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.” The Legislative Counsel’s Digest states, in part: “Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.” (Legis. Counsel’s Dig., Assem. Bill No. 1499, *supra*, as introduced Jan. 10, 2012.) It was read on January 10, March 19, and March 22, 2012, passed by the Assembly, and ordered to the Senate. (Complete Bill Hist., Assem. Bill No. 1499, *supra*, at <http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1451-1500/ab_1499_bill_20120627_history.html> [as of Jan. 10, 2013].)

The budget bill, Assembly Bill No. 1464, was enacted on June 15, 2012, by a majority vote of the Legislature. (Stats. 2012, ch. 21, § 39.00; see complete Bill Hist., Assem. Bill No. 1499, *supra*, at <http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1451-1500/ab_1499_bill_20120627_history.html> [as of Jan. 10, 2013].) The budget bill states: “The Legislature hereby finds and declares that the following bills are other bills providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution: . . . AB 1499” (Stats. 2012, ch. 21, § 39.00.)

Ten days later the Legislature, again by majority vote, added substance to the otherwise empty Assembly Bill No. 1499. (Assem. Bill No. 1499, *supra*, as amended June 25, 2012.) The Legislative Counsel's Digest was amended to read, in part: "Appropriation: yes. Fiscal committee: yes." (Legis. Counsel's Dig., Assem. Bill No. 1499, *supra*, as amended June 25, 2012.) As of June 25, 2012, Assembly Bill No. 1499 read: "*The people of the State of California do enact as follows:*

"SECTION 1. (a) The Legislature finds and declares that bond measures and constitutional amendments should have priority on the ballot because of the profound and lasting impact these measures can have on our state. Bond measures create debts against the state treasury that obligate the resources of future Californians. Constitutional amendments make changes to our state's fundamental principles and protections. In recognition of their significance, bond measures and constitutional amendments should be placed at the top of the ballot to ensure that the voters can carefully weigh the consequences of these important measures.

"(b) The Legislature further finds and declares that the Secretary of State has received funding in the Budget Act of 2012, and an appropriation contained herein, to provide direction to counties regarding the preparation of ballots, and to prepare the ballot pamphlet, in a manner that is consistent with the changes to the Elections Code provided by this act.

"SEC. 2. Section 13115 of the Elections Code is amended to read:

"13115. The order in which all state measures that are to be submitted to the voters shall appear upon the ballot is as follows:

"(a) Bond measures, including those proposed by initiative, in the order in which they qualify.

"(b) Constitutional amendments, including those proposed by initiative, in the order in which they qualify.

~~“(c) Other legislative~~ *Legislative measures, other than those described in subdivision (a) or (b), in the order in which they are approved by the Legislature.*

“(d) Initiative measures, *other than those described in subdivision (a) or (b), in the order in which they qualify.*

“(e) Referendum measures, in the order in which they qualify.

“SEC. 3. The sum of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the Secretary of State to implement the requirements of this act.

“SEC. 4. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.” (Assem. Bill No. 1499, *supra*, as amended June 25, 2012.)

The following day, June 26, it was passed from committee. And the next day, June 27, Assembly rules were suspended, the Senate amendments were concurred in, and the bill was enrolled and presented to the Governor, signed by the Governor, and chaptered by the Secretary of State. (Complete Bill Hist., Assem. Bill No. 1499, *supra*, at <http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1451-1500/ab_1499_bill_20120627_history.html> [as of Jan. 10, 2013]; Stats. 2012, ch. 30.)

As a result of the legislation, the Secretary of State was prepared to place Governor Brown’s initiative to increase taxes first on the ballot for the November 2012 general election and identified as Proposition 30.

The Superior Court denied the Howard Jarvis Taxpayers Association and Jon Coupal’s petition for a writ of mandate seeking an order to restore the ordering of ballot initiatives on the ballot prior to the enactment of Assembly Bill No. 1499. (*Our Children, Our Future v. Debra Bowen* (Super. Ct. Sacramento County, 2012, No. 34-2012-80001194).) On July 9, 2012, petitioners filed the petition for a writ of mandate or other extraordinary relief in the instant case and requested a stay ordering the Secretary of State to desist and refrain from taking any further action relative to the numbering of the

ballot measures, which was set to occur the following day. On July 10, 2012, we issued the alternative writ but denied the stay request. On July 30, 2012, and August 6, 2012, the Legislature, the Secretary of State, and Thomas A. Willis, the proponent of The Schools and Local Public Safety Protection Act of 2012 (Proposition 30), filed returns to the petition.³

DISCUSSION

I

The Legislature urges us to dismiss the writ proceedings as moot because the petition does not present a justiciable controversy. Since it is now too late to grant petitioners the relief they seek, that is, the reordering of the ballot propositions on the November 6, 2012, ballots, the Legislature concludes there is no likelihood the instant dispute will ever recur and we should dismiss the petition without reaching the merits of the constitutional challenge. The Legislature fails to properly characterize the narrow, but dispositive, question before us. Properly understood, the constitutional issue we resolve is one that is “ ‘likely to recur . . . yet evade review’ ” and is “ ‘of continuing public interest.’ ” (*Howard Jarvis Taxpayers Assn. v. Bowen* (2011) 192 Cal.App.4th 110, 120 (*Howard Jarvis I.*)) We therefore exercise our discretion to address the constitutionality of Assembly Bill No. 1499.

The issue is neither as broad as petitioners contend nor as narrow as the Legislature asserts. Petitioners would have us decide whether the \$1,000 appropriation was a sham and whether the Legislature has violated article IV, section 12 by finding the amendment to the Elections Code reordering ballots is “related to the budget.” (Art. IV,

³ Respondent Debra Bowen and real party in interest Thomas A. Willis take no position on the constitutionality of Assembly Bill No. 1499. Their returns discuss the propriety of the stay. Thus, we refer to the Legislature as the sole real party in interest throughout this opinion.

§ 12, subd. (e)(2).) But cognizant of the “appropriate role of the judiciary in a tripartite system of government” (*Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1213 (*Schabarum*)), we need not decide either of these two issues in this case.

We telegraphed the dispositive constitutional inquiry at the top of our opinion. Put another way, the question is whether the Legislature violated the meaning of article IV, section 12, subdivision (e)(2) by passing a budget with empty bills and identifying them by number, but only after the budget was passed filling them with substantive content. In its simplest formulation, the issue is whether a spot bill is a bill within the meaning of subdivision (e)(2).

This issue is justiciable precisely because it is likely to recur and it is within the most basic duty of a court to decide. “[I]t is well established that it is a judicial function to interpret the law, including the Constitution, and, when appropriately presented in a case or controversy, to declare when an act of the Legislature or the executive is beyond the constitutional authority vested in those branches.” (*Schabarum, supra*, 60 Cal.App.4th at p. 1213.) Although Proposition 30’s fate was determined on November 6, 2012, the legislative practice of reserving spots for legislative content after a budget bill is passed has a long history and is very likely to continue well after Proposition 30’s fate was sealed. It is up to the judiciary to carefully review the meaning of the words chosen by the voters to amend their Constitution, and it is a matter of utmost public interest whether the representatives of the people are subscribing to the letter and the spirit of Proposition 25, the constitutional amendment to the budgeting process at issue in these proceedings. (Prop. 25, as approved by voters, Gen. Elec. (Nov. 2, 2010).)

II

The Legislature insists that we must presume the constitutionality of decisions made by the two other branches of government. In the Legislature’s view, we are not at liberty to interfere with a legislative decision “unless it is palpably arbitrary, that is, unless no rational set of facts supports that decision.” (*Schabarum, supra*,

60 Cal.App.4th at p. 1227.) Indeed, there is no question that the scope of judicial review is limited and derives from the venerable dispersion of power among the three coordinate branches of our government. (*Ibid.*)

As we explained in *Schabarum*, “The people, in their Constitution, may place restrictions upon the exercise of the legislative power by the Legislature but the courts may not do so without violating the fundamental separation of powers doctrine. Judicial application of clear and unequivocal constitutional restrictions on the Legislature’s authority merely enforces the people’s exercise of the right to place restrictions upon the Legislature. On the other hand, legislative restraint imposed through judicial interpretation of less than unequivocal language would inevitably lead to inappropriate judicial interference with the prerogatives of a coordinate branch of government. Accordingly, the only judicial standard commensurate with the separation of powers doctrine is one of strict construction to ensure that restrictions on the Legislature are in fact imposed by the people rather than by the courts in the guise of interpretation.” (*Schabarum, supra*, 60 Cal.App.4th at p. 1218.)

The Legislature’s view of our role presupposes that we are reviewing a legislative decision rather than interpreting the meaning of the constitutional amendment enacted through the initiative process. Because our task is to construe the meaning of the Constitution, the rules guiding our task are well established. The overarching goal is to interpret the words so as to effectuate the electorate’s intent, a project no different from attempting to effectuate the Legislature’s intent in enacting a statute. We begin with the plain meaning of the words we seek to understand in the context of the entire law in which they appear. (*People v. Elliot* (2005) 37 Cal.4th 453, 478.) Only if the plain meaning is obscured should we look to extrinsic aids such as the purpose of the amendment, the evil to be remedied, the policy to be achieved, and the analyses and arguments contained in the official ballot pamphlet to resolve the ambiguity. (*Howard Jarvis I, supra*, 192 Cal.App.4th at p. 122.)

We turn then, as we must, to the words of the initiative that fundamentally changed the budgetary process. As we quoted above, article IV, section 12, subdivision (d) allows the Legislature to pass a budget by a simple majority rather than a two-thirds supermajority. In the background analysis in the Voter Information Guide, the Legislative Analyst explained: “Certain budget actions, such as a decision to change the services that a state department is mandated to provide, require changing state law. These changes often are included in ‘trailer bills’ that accompany passage of the budget each year.” (Voter Information Guide, Gen. Elec. (Nov. 2, 2010) analysis of Prop. 25 by the Legis. Analyst, p. 52.) According to the Legislative Analyst, the lower vote requirement prescribed by Proposition 25 would also apply to trailer bills. (Voter Information Guide, at p. 53.)

We must scrutinize the meaning of two phrases limiting the Legislature’s power to enact trailer bills by a majority vote. The Constitution states the general rule that appropriations must be approved by a supermajority vote. (Art. IV, § 12, subd. (d).) The Constitution also provides that a statute enacted at a regular session is not effective until January 1 next following a 90-day period from the date of its enactment unless it is an urgency statute approved by a supermajority vote, a statute calling an election, or a statute providing for tax levies or appropriations for the usual current expenses of the state (the budget bill). (Cal. Const., art. IV, § 8, subd. (c).) Assembly Bill No. 1499, the trailer bill here at issue, which was passed by majority vote, could not have become effective immediately and thus operative during the November 2012 general election had it not contained an appropriation and were it not for article IV, section 12, subdivision (d), which permits “appropriations in the budget bill and in other bills providing for appropriations related to the budget bill” to be passed by majority vote. The electorate recognized the need for trailer bills but restricted the Legislature’s ability to pass the trailer bills by a mere majority to those appropriations “related to the budget bill.” (*Ibid.*)

The electorate further limited the Legislature's opportunity to avoid the two-thirds vote requirement by expressly defining the trailer bills that would qualify for the exception. Subdivision (e)(2) of article IV, section 12 constricts the number of trailer bills by imposition of a time limitation. "For purposes of this section, 'other bills providing for appropriations related to the budget bill' shall consist only of bills identified as related to the budget in the budget bill passed by the Legislature." (Art. IV, § 12, subd. (e)(2).) Thus, the bills must not only be related to the budget bill, but they must be identified at the time the budget bill is passed by the Legislature.

The Legislature argues that it complied with these constitutional requirements by appropriating \$1,000 to the Secretary of State to pay for expenses, by finding that Assembly Bill No. 1499 is related to the budget, and by identifying Assembly Bill No. 1499 at the time the budget bill was passed and designating it by number in the budget bill. The problem, of course, is that Assembly Bill No. 1499 was nothing but a number, a placeholder, an empty vessel at the time the budget bill was passed. What was later to become the substantive content of Assembly Bill No. 1499 was not contained in the bill at the time it was passed. Did the electorate intend to allow the Legislature to amend spot bills after the budget bill is passed by a mere majority vote as urgency legislation? The answer resides in the plain language of article IV, section 12, subdivision (e)(2).

First is the common-sense notion that if the electorate intended to allow the Legislature to enact trailer bills by a majority vote after passing the budget bill, subdivision (e)(2) of article IV, section 12 is superfluous. Subdivision (d) of article IV, section 12 requires the subject matter of the trailer bill to be budget related. But subdivision (e)(2) further limits the trailer bills that can be enacted as urgency legislation by a simple majority vote by compelling the Legislature to identify those bills in the budget bill itself. If, as the Legislature suggests, it can comply with subdivision (e)(2) with a mere reference to blank bills, then subdivision (e)(2) does not perform any

function of limiting the bills to those related to the budget at the time the budget is passed, but instead sets up a shell game whereby the Legislature can identify nothing more than a bill number in the budget bill, pass it, and only then add substance to the bill. We will not presume the electorate intended subdivision (e)(2) to create such a transparent loophole in the budgeting process.

Second, the meanings of the two key words, “identified” and “bills,” used in article IV, section 12, subdivision (e)(2) belie the interpretation suggested by the Legislature. According to the Encarta World English Dictionary (1999) page 894, to identify means “to recognize somebody or something and to be able to say who or what he, she, or it is.” According to the American Heritage Dictionary, Second College Edition, to identify is “[t]o ascertain the origin, nature, or definitive characteristics of.” (American Heritage Dict. (2d college ed. 1985) p. 639.) The mere number of a bill does not allow legislators or voters to recognize what the bill really is, or to ascertain any of its definitive characteristics. Thus, to refer to a spot bill number is not to “identify” the bill because the content remains a secret to be disclosed only after the budget bill is passed. Yet subdivision (e)(2) clearly demands that the bill be identified at the time the bill is passed.

Moreover, the term “spot bills” is a misnomer because a spot bill does not meet the definition of a bill at all. According to the Legislature in its “Overview of Legislative Process” (<<http://www.leginfo.ca.gov/bil2lawx.html>> [as of Jan. 10, 2013]), “All legislation begins as an idea or concept. Ideas and concepts can come from a variety of sources. The process begins when a Senator or Assembly Member decides to author a bill.” A spot bill, however, does not contain an idea or concept. Rather, it reserves a spot for a later conceived idea or concept, thereby defeating the electorate’s intent to pinpoint the idea or concept at the time the budget is passed. Similarly, according to Merriam-Webster’s Collegiate Dictionary (11th ed. 2006) at page 121 and the American Heritage Dictionary, *supra*, at page 178, a bill is a “draft of a law presented to a legislature for

enactment” and a “draft of a proposed law presented for approval to the legislative body,” respectively. A spot bill contains no “draft of a law.” Very simply, a designated number does not constitute a bill within the meaning of article IV, section 12, subdivision (e)(2).

We therefore conclude that article IV, section 12 does not allow the Legislature to name empty spot bills in the budget bill and only after the budget bill is passed to fill those placeholders with content as urgency legislation. The Legislature’s practice of identifying spot bills defeats the very purpose of article IV, section 12, subdivision (e)(2) to limit budget legislation to bills that appear in the budget bill by doing violence to the meaning of both “identified” and “bills.” We resolve this narrow issue of constitutional interpretation because it is likely to recur during future efforts to pass an annual budget. In deference to our coordinate branches of government, we defer other questions related to “appropriations” and whether a bill is “related to the budget” to future cases in which those issues are necessary for resolution.

DISPOSITION

Petitioners’ prayer for relief is narrowly tailored to a request for a writ of mandate ordering respondent Secretary of State to reorder the propositions on the November ballot, relief we can no longer provide.⁴

Because the constitutional issue is recurring, is of continuing public interest, and is likely to evade review, however, we have considered the merits of the constitutional challenge and agree with petitioners that enacting Assembly Bill No. 1499 as urgency legislation by a simple majority was unconstitutional pursuant to article IV, section 12, subdivision (e)(2).

⁴ Because the issue we have addressed was not adequately framed by petitioners and the petition was filed with little time before the ballots and voter information guides were to be printed, we denied petitioners’ request for a stay.

The petition for a writ of mandate therefore is denied. Petitioners shall recover costs in this original proceeding. (Cal. Rules of Court, rule 8.936(a), (b)(1).)

RAYE, P. J.

We concur:

NICHOLSON, J.

BUTZ, J.