

Anti-nuke referendum is unconstitutional

by Edward Spannaus

A proposed referendum which would have permitted New York City residents to vote on the construction of a proposed U.S. Navy base for ships capable of carrying nuclear weapons was thrown off the ballot as unconstitutional by New York State courts before the Nov. 5 elections. The ruling of the State Supreme Court, subsequently upheld by the state's appellate courts, was remarkable in its vigorous defense of the basic principles of the United States Constitution.

The ruling, issued by Justice Charles A. Kuffner of the State Supreme Court for Richmond County (Staten Island), was unique not only for its comprehension—all too rare in these troubled times—of the Framers' purposes in creating the Constitution—but also in that the case involved a state court which overruled a local action, on grounds of the supremacy of federal constitutional law.

"The City of New York may not legislate, by referendum or otherwise, in such fashion as to hinder the effectuation of national security objectives," wrote Justice Kuffner.

"We are one people. The United States Constitution vests in the Federal Government the obligation to provide defense to the entire nation and all of its people without regard to their location. A necessary correlative to the duty imposed upon the Federal government is the right it enjoys to make and effectuate decisions respecting the deployment of defense systems, within the United States, unfettered by local regulation designed to impede its efforts."

If the purpose of the proposed referendum were "purely to obstruct the Federal Government because of local disagreements with national defense policies, the local referendum must give way."

The actual purpose of the referendum, contended Kuffner, is to hold a plebiscite on nuclear weapons at taxpayers' expense—an improper purpose. He cited a statement by one of the proponents regarding the referendum:

"It would send a very clear message to City Hall and to Washington and throughout the world that the arms race had gone on long enough."

This, said Justice Kuffner, also is grounds for throwing

out the referendum, on the basis that it would be merely an advisory referendum, whose effect would not be to prevent the United States Navy from constructing the port, but just to force the federal government into the expenditure of additional time and effort.

Purposes of the Constitution

Justice Kuffner's conclusion is written in language which evokes memories of earlier times, when our judiciary was possessed of judges who passionately understood the context in which our Constitution was written, and the necessity of its supremacy over all state and local law:

"The United States Constitution confers the duty of defending our nation, as a whole, upon the Federal Government. It is perhaps the gravest responsibility of all, for without an unfettered ability to defend ourselves from predatory foreign forces, all other powers conferred upon the federal government, as well as all of our cherished rights guaranteed by that same document mean precious little. The common defense was one of the purposes for which the people established the Constitution. The experience of the Revolutionary War, in which the states were only loosely associated to carry on a unified defense, and of the old Articles of Confederation, in which only limited powers of defense were granted to a central government, convinced the delegates at the Constitutional Convention of 1787 to create a national government with adequate powers, distinct from those retained by the sovereign states.

"This Court has a solemn duty to uphold that great plan, and if a state or local law exists which might upset that delicate balance existing between the federal and state sovereignties, the state or local law must give way.

"The powers of the federal government to provide a defense and maintain the armed forces emanate not from the people of New York City alone, but from the people of the United States, whose laws made in pursuance of those powers are declared to be supreme. Only the people of the United States have been entrusted with controlling those measures which affect all. The City of New York alone should not be permitted to compel the Navy to change its decisions when they relate to military strategy, like the tail wagging the proverbial dog. . . ."

Justice Kuffner concluded by citing the great (and usually forgotten) *Commentaries on the Constitution* of Justice Joseph Story, the great 19th-century American jurist:

"It is important also to consider, that the surest means of avoiding war is to be prepared for it in peace. . . . How could a readiness for war in time of peace be safely prohibited, unless we could in like manner prohibit the preparations and establishments of every hostile nation? The means of security can be only regulated by the means and the danger of attack. . . . It will be in vain to oppose constitutional barriers to the impulse of self-preservation."