18-9538

No. 18A987

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

MARK ANTHONY HEAD — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

MARK ANTHONY HEAD
Pro-Se Petitioner
Reg. No. 16602-042
c/o Dismas Charities
100 Tishomingo Street
Tupelo, Mississippi 38804

ORIGINAL

QUESTIONS PRESENTED

I

WHETHER THE COURT OF APPEALS ERRED IN FAILING TO CONSTRUE THE APPELLANT'S MOTION UNDER RULE 60 (b) AS AN OBLIGATION BY THE DISTRICT COURT TO ASSERT JURISDICTION AND RULE ON THE MERITS.

I I

WHETHER THE COURT OF APPEALS ERRED IN ITS APPLICATION OF HOWARD v. KING IN DENYING THE APPELLANT RELIEF BASED UPON APPELLANT'S STATUS AS HAVING PROCEEDED IN FORMA PAUPERIS.

I I I

WHETHER PROCEDURAL ERRORS IN THE PASSAGE OF LEGISLATION BY THE LEGISLATIVE BRANCH GIVES RISE TO A SUBSTANTIVE CLAIM CONCERNING THE CONSTITUTIONALITY OF THE BILL AND ITS APPLICATION.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner MARK ANTHONY HEAD ("Mark Head") respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals For The Fifth Circuit appears at Appendix A to the petition and is reported at 747 Fed. App'x 266, 2019 U.S. App. LEXIS 751.

The opinion of the United States District Court, Northern District of Mississippi appears at Appendix B to the petition and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals For The Fifth Circuit decided Mark Head's case was January 9, 2019.

No petition for rehearing was timely filed in Mark Head's case.

An extension of time to file the petition for a writ of certiorari was granted to and including June 8, 2019 on March 29, 2019 in Application No. 18-A-987.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

UNITED STATES CONSTITUTION

Article I, § 1	Appendix C, Page 24
Article I, § 5	Appendix C, Pages 19, 21, 22, 26, 29
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18 U.S.C. § 921 et. seq.	Appendix C, Page 18
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62 Stat. 683	Appendix C, Pages 6, 7
62 Stat. 1436 & 1437	Appendix C, Pages 14, 24
Public Law 80-772	Appendix C, Pages 7, 9, 15, 16, 17, 23, 24, 29
Title 18 U.S.C.	Appendix C, Pages 7, 9, 17, 23, 24, 29

STATEMENT OF THE CASE

I

Mark Head's underlying Motion to the District Court made several admittedly inapplicable claims. Amid these was a valid claim the District Court was without jurisdiction to have convicted him of his instant offense conduct.

The District Court made a sweeping ruling all of his claims were "impertinent," ignoring/overlooking his valid issue, requiring the District Court to defend its jurisdiction and rule on the merits of the underlying Motion. Mark Head appealed, articulating the Court's error and asking for its proper remand.

The Fifth Circuit made much the same error, completely mischaracterizing the underlying Motion as "not apply[ing] in this criminal case." The Circuit also misapplied F. R. Civ. P. 1. The Circuit then attacked the underlying Motion in areas not appealed, failing to address, and thus rule on the meritorious arguments presented in the Appeal, falling victim to essentially the same folly as the District Court had, requiring vacateur and remand.

I I

Notwithstanding the errors made by the Fifth Circuit which Mark Head articulated in Question I presented, the Circuit then compounded its error by seizing upon an inapplicable legal precedent and dismissing the Appeal. The Circuit cited Howard v. King, 707 F.2d 215, 219-220 (5th Cir. 1983), which applies to those who

are proceeding In Forma Pauperis at the circuit level, whereby a preliminary assessment prior to entertaining the appeal is undertaken to qualify the existence of at least one issue determined to be non-frivolous, prior to the appeal's review.

The Circuit dismissed the appeal due to its misapprehension of Mark Head as proceeding in pauper status and for no other reason.

Mark Head was not proceeding as an indigent, thus was not subject to the preliminary hurdle. Rather, he was entitled to a full review on his Appeal's merits. Mark Head was shortchanged.

Thus, the Fifth Circuit erred in their faulty assessment of Mark Head's status, thinking he was proceeding as an indigent, ultimately denying him relief on the merit of his claims, for which this Court should grant Certiorari, vacate the dismissal and remand for disposition on the merits.

I I I

When Public Law 80-772 came into being, its passage involved three distinct procedural errors. The first was that it violated the bicameral requirement of the U.S. Constitution, although ultimately different versions of the bill were not presented to the President for his signature.

Then, the House version of the bill rejected by the Senate was mistakenly certified as "truly enrolled," instead of the amended version, rendering a second procedural error, because

with the rejected version being certified as "truly enrolled," it left the seal on a document which was abandoned and with it, any protections afforded by the "Enrolled Bill Rule," not to mention the uncertified amended version presented as genuine legislation.

Third, when the House sought to pass the Senate's amended version, it did not have a quorum. To remedy the shortfall, it passed H.R. 219, which permitted business such as passage of a Senate's amended version of a prior legislated bill without the constitutionally required quorum. However, H.R. 219 was not passed by both Houses of Congress and signed by the President, as required, since it proposed substantive changes in constitutionally mandated procedure, thus H.R. 219 was in and of itself unconstitutional, as was the subsequent passage of the amended Senate version shepherded by an unconstitutional House resolution.

Normally, courts would be precluded and foreclosed from reviewing such a conundrum, but for the failure of the bill's being truly enrolled, such opens the door for the instant review. Based upon any one of the foregoing procedural shortfalls which were constitutional violations, or taken as a group. Public Law 80-772 must be declared unconstitutional, and remedied. In its wake, Mark Head's conviction is void and must be vacated.

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REASONS FOR GRANTING THE PETITION

I

When a lower court misjudges a motion, and makes a sweeping ruling absent its having digested the issues raised and argued, it does the aggrieved party an injustice. Such is the basis for appeals. In fact, the members of the appellate division are eminently more qualified than the jurists who adjudicate district court cases. That is not to say district judges are not adequately equipped to review matters presented, as their staff of clerks are amongst the brightest graduates of law schools and institutions of higher learning. That said, errors sometimes of a grevious nature are still committed, due to human factors, of which there can be several.

Mark Head submitted an underlying Motion which was a cluster of claims, some of them so far beyond the scope of Rule 60, that there is simply no excuse for having litigated most of them. This very fact was clearly and conspicuously set forth in his Appellate Brief (See Appendix C, Pg. 10, ¶ 3). That should have alerted the Fifth Circuit that those inapplicable claims present in his underlying Motion were no longer at issue. However, based upon the ruling of the Fifth Circuit, it did not benefit from the preface he articulated therein.

Instead, the Fifth Circuit chose to tersely state that the underlying Motion was "[n]ot appl[icable] in this criminal case" (See Appendix A, Pg. 1, ¶ 2). Nothing could be further from the truth.

A Rule 60(b)(4) motion, by its very nature seeks to void a judgment which a court among other bases, was without jurisdiction to enter. Mark Head's underlying motion sought that and little more. Truly, in looking back at some of Mark Head's admittedly inapplicable claims, such as alleging Brady violations, and challenging the propriety of judges' investiture, citing various purported disqualifying factors, none of these claims sought to specifically void his judgment.

Further, the fact there was no relief requested of voiding the judgment as a result of the foregoing spurious allegations of discovery issues and judicial qualifications, points to the shoddy composition by Mark Head in parts of his underlying Motion.

The rub though, is that the Fifth Circuit should have ignored these passages as having been conceded inapplicable. Moreover, since they were not appealed, the Fifth Circuit should never seized upon them as the major basis of their decision. Such rendered their Opinion as inapplicable as the poor issues originally raised. They distracted the Court from a jurisdictional issue Mark Head asserted.

Mark Head had already conceded those claims to be inapplicable. So, why did the Fifth Circuit: (1) target almost its entire Opinion on ISSUES NOT EVEN RAISED ON APPEAL: (2) fail to address the one cogent argument, which was the district court made the same error in overlooking/ignoring the salient jurisdictional issue; and (3) then cite Federal Rule Of Civil Procedure, Rule 1, as the basis for dismissing the Appeal? Mark Head argues the answers are frightfully uncomplicated, requiring a simple resolution in his favor by this Court.

There is no better way for Mark Head to have directed the focus and gravamen of his argument away from spurrious issues than to have NOT RAISED them in the first place. It also usually helps to acknowledge dead issues. Mark Head provided both to the Fifth Circuit. Yet, for reasons known only to the Panel, they still missed the boat.

By ruling on claims not asserted by Mark Head were inapplicable, the Fifth Circuit did no more than confirm what Mark Head submitted as the foundation for his meritorious argument. The Opinion, like Mark Head's Appeal, should not have stopped there.

In his brief, Mark Head set forth the fact that in the midst of the jumble of claims, there was one of a jurisdictional issue, which is non-discretionary (See Jackson v. FIE Corp., 302 F.3d at 522 (5th Cir. 2002)). Their own precedent requires them to rule on whether or not the district court adjudicated the core issue, and nothing else, stating, "[T]he district court has no discretion — the judgment is either void or it is not." (Id. at 267). Sadly, the district court failed to meet its obligation in its finding of categorical "[i]mpertinen[ce]." as opposed to finding the judgment was or was not void (See Appendix B. Pg. 1, ¶ 1). Thus, the district court failed to carry the day, and the Fifth Circuit did no better.

Mark Head argued in his Claim I that this error was one which denied him a ruling on the merits and required a remand. But, the Fifth Circuit failed to enforce its own precedent by ignoring

the "void or not void" issue, and in so doing, committed abject error. As a result, Mark Head's issue is still an orphan, looking for parental direction and the ruling on the merits he is entitled to as a matter of law. Stated another way, addressing issues not appealed in no way removes the obligation as of right for Mark Head to receive the full benefit of the Fifth Circuit's review, which was not delivered. As such, Mark Head should be granted Certiorari, his adverse ruling should be vacated, with the matter remanded to the Fifth Circuit with instructions to further require the district court to rule on the merits of the one claim on jurisdiction.

Finally, the Fifth Circuit miserably applied Federal Rule of Civil Procedure, Rule 1 to the Appeal. It leaves one scratching their head in an attempt to discern why it was even mentioned.

Rule 1 states in pertinent part, the district court's rulings should be "[c]onstrued, administered and employed by the court to secure the just, speedy, and inexpensive determination of every action and proceeding" (Fed. R. Civ. P., Rule 1). Mark Head avers there is no more complete and utter failure to discharge its duty than that exhibited by the district and appeals courts in concert with the instant matter.

First, the outcome is manifestly unjust when the issue raised goes unaddressed. There is no justice in shirking responsibility, which is what occured in both lower courts. Courts are obligated to adjudicate, not side-step issues. It is almost better to have to live with an adverse ruling than no ruling, although each is untenable.

Second, there was nothing speedy with the district court's ruling, because it set off a lengthy appeal on a meritorious issue, which Mark Head has commendably persisted in. Likewise, the Fifth Circuit further prolonged the matter, in its rush to judgment on issues not appealed, requiring the instant Petition in the name of justice and equity.

Third, it is hardly inexpensive, as this matter has needed valuable judicial resources to counteract the avoidance of judgment on the merits by the district court, then seconded by the Fifth Circuit. Of a lesser degree, Mark Head has incurred considerably more expense than he should have been subjected to, had the courts done their jobs. Once again, herein lies the rub.

It is difficult for Mark Head to argue the merits on appeal of an issue which both the lower courts have failed to address. It forces his hand to point to inaction as the basis for asking for the relief, simply in the form of action, properly directed. Perhaps, this Court will see the job at hand as simple, without having to dwell on balancing legal issues, and simply require of the Fifth Circuit and ultimately the district court to render what it should have entered at first — a ruling on the meritorious claim the judgment in his case was void for lack of jurisdiction, stemming from the underlying arguments which have thus far been cleverly unaddressed, but demand adjudication. Mark Head asks this Court, pursuant to Fed. R. Civ. P., Rule 1, to GRANT Certiorari on this question, vacate the incorrect and compound rulings, and remand for proper treatment on the meritorious district court claim.

II

It is vitally important that parties preserve valuable judicial resources, and enable our courts to properly apply the law, achieving among other things, relief to those who are deserving. However, our courts have often been subjected to frivolous claims which have little more value than to express an appellant's frustration over difficulty in accepting the lower court's decision.

Our great justice system provides a means for indigent litigants to still be heard, even if they find themselves incarcerated. Such is why this court has held those in custody are constitutionally guaranteed "[m]eaningful access to the courts." (Lewis v. Casey, 518 U.S. 343, 356, 110 S.Ct. 2174, 135 L. Ed.2d 606 (1996). However, such does not legitimize using access to the courts without pecuniary cost as a means to file frivolous claims and in the process, abuse these constitutionally guaranteed provisions.

For this reason, circuit courts understandablv screen the claims of In Forma Pauperis ("IFP") appellants to ascertain if there is at least one non-frivolous issue being litigated, prior to reviewing the briefs on their merits.

In the case where the fee for an appeal as of right has been paid, the pre-screening does not, and should not occur. The appellant is entitled to the benefit of a review of the

appeals case he paid for, with an analysis and proper application of the law on its merits.

In the instant matter, Mark Head filed his timely Notice of Appeal of the adverse ruling by the district court on his underlying Motion, claiming a jurisdictional grounds for voiding his judgment of conviction, pursuant to Fed. R. Civ. P., Rule 60(b)(4). (See Doc. No. 78, May 25, 2018). Subsequently, he filed his Motion For Leave To Appeal In Forma Pauperis, (Doc. No. 79, May 25, 2018). Then, on June 12, 2018, the district court denied his Motion To Appeal In Forma Pauperis (Doc. No. 80).

In her denial of Mark Head's IFP application, Judge Sharion Aycock stated her rationale centered on her opinion, "[t]here is no basis to pursue an appeal; the appeal is frivolous." (Doc. No. 80. ¶ 3, lns. 2-3).

The Order further provided Mark Head with the opportunity to challenge this finding, pursuant to Baugh v. Taylor, 117 F.2d 197 (5th Cir. 1997). Mark Head did not exercise his right to challenge this finding through a second application, this time with the Fifth Circuit.

Mark Head was thus left with the choice of either abandoning his meritorious appeal altogether, or paying the fee and having the matter heard as of right. He chose to raise the money, pay the fee and receive a review of his claims.

Mark Head avers, the Fifth Circuit then treated him erroneously, violating his right to due process by dismissing his

case pursuant to Howard v. King, 707 F.2d 215, 219-220 (5th Cir. 1983).

In Howard, the Court exercised its right to dismiss the appeal because of two interdependent facts: (1) the appellant was proceeding IFP; and (2) the issue appealed was frivolous. There were no other pertinent facts at issue. Thus, Mark Head's dismissal is clearly based upon that Fifth Circuit precedent, whereby Mark Head was viewed as an IFP appellant who made a frivolous claim, as a result of prescreening on his IFP application, and in the process, deprived of his right to a full review on the merits, having paid the fee.

Mark Head's case is clearly and unambiguously discerned from Howard v. King, supra, as set forth herein. Case in point: Mark Head was not an IFP appellant. That alone is sufficient to demonstrate the Fifth Circuit erred in its ruling. But, a closer look will reveal the Fifth Circuit's rush to judgment, prejudicing Mark Head.

The Fifth Circuit misapprehended the applicable law, embracing an incorrect factual scenario in denying Mark Head's Appeal, since it chose to seize upon a dismissal pursuant to precedent which was inapplicable.

The Fifth Circuit could have easily avoided its error, by taking notice that Judge Aycock had denied IFP (Doc. 80), meaning that absent his challenging the denial through another IFP application at the circuit level (which he did not), Mark Head had to have paid the fee, or the Appeal would not have proceeded.

Ironically, the Appellate Docket reflects in more than one place, the fee having been paid. Such leaves a quandry as to how this was overlooked, resulting in the mischaracterization by the Fifth Circuit of Mark Head having proceeded as an indigent.

Stated another way, between the Order denying his initial IFP application and the subsequent notations in the Appellate Docket, confirming his paid status, there was little basis to infer Mark Head was an IFP Appellant. By invoking Howard v. King, supra, the Fifth Circuit undeniably held Mark Head's Appeal was a pauper litigant. Only, he was not.

Finally, this plain error committed by the Fifth Circuit could easily have been remedied at the circuit level had Mark Head filed a timely motion for rehearing and made the same argument to the Panel. However, by the time Mark Head received the Opinion of the Fifth Circuit, and was able to sort out the components of its decision, including his having researched Howard v. King, supra, the ten (10) day period for the timely filing of a motion for rehearing had expired.

Mark Head respectfully submits that the foregoing timeline set by the Fifth Circuit for submitting a motion for rehearing which he was unable to comply with in no way diminishes Mark Head's deserving of relief in the instant claim, for which he has been denied his right to due process. He therefore asks this Court to grant Certiorari, vacate the dismissal and remand the matter to the Fifth Circuit for a full review on his merits.

III

In the vast majority of cases, legislation enacted in Congress is a mechanism which proceeds meticulously and error free to its final result. In a few cases, there have been some inconsistencies, some of which were challenged by aggrieved parties, claiming the procedure was interrupted, or for some other reason was improper, arguably invalidating the law enacted.

As courts have explained, laws whose validity have been challenged have turned not upon whether the procedural recipe was accompliched in a fitting manner, but rather upon whether or not the subject law had been "truly enrolled," which has the effect of rendering any issue regarding potential procedural defects moot. In truth and in fact, a bill truly enrolled and then properly attested is law regardless of whether or not it took the proper sequence along the assembly line of its creation.

Whereas that only addresses the validity of a law which has been found to be truly enrolled, this Court decided a case over a century ago which went beyond the question of whether or not a law was validly enacted. In <u>Field & Co. v. Clark</u>, 143 U.S. 649 (1892), this Court created a rule which became known as the "enrolled bill rule."

That rule went so far as to completely preclude any form of judiciary review as to whether a bill properly passed both Houses of Congress, by removing standing from anyone making a

challenge, provided the law in question was found to have been truly enrolled.

The enrolled bill rule is a veneer and force field which is impenetrable, provided it was properly attached to the law it was properly certified and attested to.

However, what happens if in fact, there was a substantive error in the process which resulted in a bill being thought to be truly enrolled? In other words, what happens if there was a material error in the process which resulted in the bill not having been truly enrolled mechanically, although it was presumed to have been? This kind of concern is ordinarily not critical if the underlying legislation which otherwise enjoys the protection due to the notion it is truly enrolled, was in and of itself not attacked for procedural invalidity. But, if there is legislation which was enacted outside the rules, then further found to have not been enrolled properly to start with, is this not a godsend, where two wrongs will result in a right?

Mark Head presents such a perfect storm in which not only the underlying legislation was passed improperly, in the form of constitutional violations in its passage, but in fact, the so-called true enrollment was never properly accomplished, leaving the presumed (but not) enrolled bill inapplicable and the law itself invalid, with judicial review now properly attached.

In other words, not only was there underlying procedural errors in the passage of the law, but part of the procedural

errors involved the enrollment process, leaving the law subject to the substantive claim concerning its underlying constitutionality squarely before this Court.

Mark Head readily concedes the significant gravitas of the instant matter. But, at the same time, Mark Head bring forth a law that was so inherently mishandled in its passage, that it is not surprising the enrollment process itself which will lay bare its otherwise presumed protection under the enrolled bill rule was equally, fatally flawed. Mark Head submits this is for the better, obviously because it requires the nullity of his instant conviction, but more importantly, in the name of integrity of our great justice system, it is now incumbent on our legislative branch to rewrite the law and make it the unassailable and unimpeachable valid code it was originally well-intended to be.

In order to properly understand the procedural errors in the enrollment process, rendering the protections otherwise enjoyed pursuant to the enrolled bill void and of no force, it is necessary to see the underlying law as it was saddled with its three (3) constitutional violations, simply because the fatally flawed enrollment attempt was a procedure of the failed passage of Public Law 80-772. In other words, the failed attempt to truly enroll the bills passed by the House and the Senate, were part of the entire process.

Mark Head cannot attack the underlying constitutional violations of Public Law 80-772, unless he can first demonstrate it

was never truly enrolled, independent of the effect of Public Law 80-772 itself. If Mark Head could not effectively prove Public Law 80-772 was never properly certified and authoritively attested to, it would not matter how flawed 80-772 might be, because the enrolled bill rule would foreclose any court inquiry.

H.R. 3190 In Congress

H.R. 3190 was introduced to the House of Representatives, in April of 1947, differing from the five previous and tangentially similar bills in that it sought to revise and codify the Federal Laws relating to crimes and criminal procedure. (See Appendix C, Pg. 3, ¶ 2, lns. 4-5; ¶ 3, ln.4).

"[T]his bill was ordered to be engrossed and read a third time, and passed" the House on May 12, 1947 (See Appendix C, Pg. 3, ¶ 3, lns. 9-14).

On July 27, 1947, Congress adjourned without the Senate passing H.R. 3190 (See Appendix C, Pg. 4, ¶ 3, ln. 2). It reconvened on November 17, 1947, but "adjourned sine die on December 19, 1947," without passing H.R. 3190. See Kennedy v. Sampson, 511 F.2d 430. 444, Appendix n. 4 (D.C. Cir. 1974).

The Senate tackled H.R. 3190 in June of 1948, making many amendments to the House version. The Senate wanted "the amendments adopted en bloc," including a new jurisdictional section for Title 18. (See Appendix C, Pg. 5, ¶ 1, lns. 1-3). On June 18, 1948, H.R. 3190 "as amended" passed the Senate (Appendix C, Pg. 5, ¶2, lns. 2-3). It was further moved that "the Senate insist upon

its amendments" by the House (Appendix C, Pg. 5, ¶ 2, ln. 5); and "[o]rdered that the Secretary request the concurrence of the House of Representatives in the amendments." (Id. at lns. 7-8).

The House received the bill with the amendments and concurred in said amendments (See Appendix C, Pg. 14, ¶ 1, lns. 2-4), but never voted on H.R. 3190 as amended (See Appendix C, Pg. 14, ¶ 1, lns. 4-5), showing the only vote by the House on H.R. 3190 occured on May 12, 1947). Thus, two distinct bills with distinct text existed, one of which passed the House on May 12, 1947, and the other passed by the Senate on June 18, 1948.

Mark Head does not aver that Public Law 80-772 was invalid, based upon this bicameral violation. It is only noteworthy, because they were the only two versions of Public Law 80-772 to pass their respective houses and be enrolled.

There was subsequent action on the Senate amended version of H.R. 3190 which has its own fatal flaws. However, based upon the foregoing alone, it sets the scene for the unimpeachable argument that although the Senate Bill passed was truly enrolled and signed by the President, the same cannot be said for the House version, notwithstanding its fatal flaws in passage. In other words, the House (Senate Amended) version was never properly "truly enrolled." Conclusively, unless each version of a bill passed by the two Houses of Congress are truly enrolled in a procedurally correct manner, that specific law is not truly enrolled. That, in and of itself does not make it invalid. But,

it does create the vulnerability that it no longer enjoys the protection of the enrolled bill rule. Only without the protection of the enrolled bill rule, does the law, open itself up to judicial review, with its being subject to a declaration of being unconstitutional on the grounds it was not legislated procedurally correct, if such can be independently demonstrated.

Why Public Law 80-772 Was Never Truly Enrolled

Both Houses resolved: (1) to adjourn on June 20, 1948, until December 31, 1948; and (2) "notwithstanding the adjournment of the two Houses until December 31, 1948, the Speaker of the House of Representatives and the President Pro Tempore of the Senate be, and they are hereby, authorized to sign ENROLLED BILLS and joint resolutions duly passed by the two houses and found [by way of a certificate attached] to be truly enrolled." (See Appendix C, Pg. 14, ¶ 2, lns. 6-7)(emphasis added).

Both Houses adjourned on June 20, 1948. Following adjournment, as required by statute 1 U.S.C. § 106, mandating in pertinent part that "[w]hen [a] bill ... shall have passed both Houses, it shall be printed and shall then be called an enrolled bill [evidenced by the attachment of a certificate] ..." and House rules.

Mr. Lecompte, Chairman of the Committee on House Administration reported to have found H.R. 3190 "truly enrolled." (See Appendix C, Pg. 14, ¶ 3, lns. 8-9). Mr. Lecompte reported as he did, because of the procedure that following passage of a House bill by both Houses the "Chairman of the Committee on House

Administration ... affixes to the bills examined a certificate that the bill has been found "truly enrolled." (See Appendix C, Pg. 15, ¶ 2, lns. 4-8).

The fatal flaw in the attempt to truly enroll Public Law 80-772, stems from the fact, the only H.R. 3190 Mr. LeCompte found "truly enrolled" and to which he INCORRECTLY ATTACHED HIS CERTIFICATE OF ENROLLMENT was the original H.R. 3190 passed by the House on May 12, 1947, and rejected by the Senate. (See Appendix C, Pg. 15, ¶ 3, lns. 10-12).

This version, of course, was never presented to the President for signature as part of Public Law 80-772, substituted by the Senate amended version which bore no enrollment certificate.

This conclusively demonstrates that Public Law 80-772 was never truly enrolled and thereby does not enjoy the protection of the enrolled bill rule.

Some may attempt to argue that the Senate amended version of H.R. 3190 bears the signature of the Speaker of the House, who signed a worthless document with no certificate attached, as being truly enrolled. In addition, as will later be shown, the Speaker did not sign the worthless Senate amended version (for true enrollment purposes) in open Session. Thus, the attempt to truly enroll the Senate amended version, notwithstanding arguments on its proper passage (or not), carries no legal force, because the certificate is the culmination of the reading three times and the printing measures. For many procedural reasons, no certificate equals no true enrollment. App'x C, Pg. 15, ¶ 3, lns. 5-10.

With both Houses adjourned and without quorums, the Speaker of the House signed the Senate's amended H.R. 3190 on June 22, 1948, (See Appendix C, Pg. 16, ¶ 2, ln. 3). The House Journal for that legislative day expressly states the signings by "[t]he Speaker" was "pursuant to the authority granted him by House Concurrent Resolution 219," which only authorized signing of bills "duly passed by both Houses and found truly enrolled." This demonstrates the Speaker signed the Senate's amended version of H.R. 3190 absent any authority, leaving Public Law 80-772 without being truly enrolled and absent any protection of the enrolled bill rule, independent of the certification failure, demonstrated, initially, compounding the enrole attempt nullity. It is thus appropriate to now delve into the procedural legislation of Public Law 80-772, and if found to be unconstitutional for reasons not associated with its never having been enrolled, courts, now armed with the standing to review procedural defects, can declare the law null and void, and in so doing, void the conviction of Mark Head, then allow Congress to reconstitute Title 18.

The Senate's Amended H.R. 3190 Was Passed Absent A Quorum

It is elementary that a bill "does not become a law unless it follows each and every procedural step charted in Article I, § 7, Cl. 2, of the Constitution," See Landgraf v. USI Film Products, 511 U.S. 244, 263 (1964)(citing INS v. Chada, 462 U.S. 919, 946- 951 (1933)), such requires three procedural steps," (See Clinton v. New York, 524 U.S. 417, 448 (1993). They are: (1) a bill containing

the exact text was approved by a majority of the Members of the House of Representatives; (2) the Senate approved precisely the same text; and (3) that text was signed into law by the President, Id.

It is clear that the Senate amended H.R. 3190 and passed the legislation in that house. It is also clear the President signed the House version which was not truly enrolled. But, the House failed to properly pass the Senate's amended version, and for good reason.

Mark Head avers that without the certificate affixed to the bill as authority for the Speaker and President Pro Tempore to sign the bill post-adjournment, pursuant to H.Cong.Res. 219, expressly and only authorizing such officers "to sign enrolled bills ... duly passed by the two Houses and found truly enrolled," (See 62 Stat. 1435-1436, or to sign it all by House precedent, supra, there was another factor missing.

Specifically, Congress had adjourned and no "legislative powers" remained. (See Article I, U.S. Constitution, "[a]ll legislative powers ... shall be vested in a Congress ... , which shall consist of a Senate and a House of Representatives."); (See also Appendix C, Pg. 24, ¶ 2, lns. 11-12). ("'the House is not a House without a quorum.'"). It is patently clear that the entire Congress, based upon the fact they were adjourned, was missing.

H.Cong.Res. 219 Does Not Eviscerate The Constitutional Quorum Requirement

H. Cong. Res. 219, employed to expedite passage of H.R. 3190, is the most egregious mishap for codification and revision of Federal Criminal Law and procedure in American history — by

permitting legislative business to continue post-adjournment. All legislative business requires a quorum (See Art. I, § 5, Cl 1), and Congress cannot abrogate that requirement. Moreover, resorting to resolution is impermissable to evade constitutional constraints, unless PASSED BY BOTH HOUSES AND PRESENTED TO THE PRESIDENT, as in the case of bills. (See Art. I, § 7, Cl. 3); see also INS v. Chada, 462 U.S. 919, 947, 952 (1983)(explaining limitations and the purpose of Article I, § 7, Cl. 3; Metropolitan Wash. Airports Auth. v. Citizens For Abatement Of Airport Noise, Inc., 501 U.S. 252, 275-277 (1991)(same). "If Congress chooses to use a [] resolution ... as a means of expediting action, it may do so, if it acts by both Houses and presents the resolution to the President." Consumer Energy Council Of America v. F.E.R.C., 673 F.2d 425, 476 (D.C. Cir. 1982) aff'd mem. sub nom.; Process Gas Consumers Group v. Consumer Energy Council Of America, 463 U.S. 1216 (1983). Mark Head asserts that this Court should declare H. Cong. Res. 219 to be unconstitutional for the foregoing reasons.

Even assuming arguendo that H. Cong. Res. authorized the officers of the two Houses to sign post-adjournment, the very H.R. 3190 that had not been certified as "truly enrolled," (Senate amended version), the resulting statute is nonetheless "null and void," "not in effect," and "not a valid statute," because such signing is clearly legislative business constitutionally mandating the presence of a quorum. (See Art. I, § 5, Cl.1).

After the Chairman of the Committee on House Administration "affixes a certificate" that a bill originating in the House "has

been found truly enrolled," (Appendix C, Pg. 26, ¶ 3, lns. 3-4), it is then "laid before the House." Id., ln. 4.. This means "the House in session" and "'as organized and entitled to exert legislative power,' that is, the legislative bodies 'organized conformably to law for the purpose of enacting legislation." (Pocket Veto Case, 279 U.S. at 682 (quoting Missouri Pacific Railway Co. v. Kansas, 248 U.S. 276, 281 (1919)).

Mark Head asserts the law mandates that the "enrolled bill ... shall be signed by the presiding officers of both Houses, 1 U.S.C. § 106, by which tradition and precedent was codified, and both text and context affirm the well-settled acknowledgement and requirement that the signing by the officers of the two Houses must occur in the presence of quorums. The terms "presiding officers" and "houses" confirm each other. There can be no "presiding officer" of an empty chamber, just as there can be no "'House without a quorum.'" (Appendix C, Pg. 27, ¶ 2, lns. 8-9).

Clearly, "[t]he Speaker may not sign an enrolled bill in the absence of a quorum" is precedent too long established to suspect this stage of legislative business is neither legislative nor "business" as that term is constitutionally employed. (See Art. I, §5, Cl.1).

Mark Head contends it is no accident that the Founders defined the exceptions to the quorums requirement, expressly excluding therefrom the parliamentary practice of signing enrolled bills by witness of the very House through which they pass. As a stage in the legislative business toward final enactment of a

bill, the signing thereof by officers of the House is clearly "action requiring a quorum ... the ascertained absence of" which renders the statute "null and void." supra.

Presentment To The President Is Legislative Business Requiring A Quorum

Unlike the signing of bills by officers of the House, implicitly considered part of the legislative business of Congress, and codified by 1 U.S.C. § 106, presentment of a bill to the President is an explicit part of the "'single, finely wrought and exhaustively considered procedures' specified in Article I." Metropolitan, 501 U.S. at 274 (quoting INS v. Chada, 462 U.S. at 951).

Just as the courts have understood presentment to the President pursuant to the mandate of Article I, § 7, Cl. 2, to "only contemplate a presentment by the Congress in some manner, [because] ... [at] that point the bill is necessarily in the hands of the Congress." (See United States v. Kapsalis, 214 F.2d 677, 680 (7th Cir. 1954)), after which "no further action is required by Congress, (See La Abra Silver Mining Co. v. United States, 175 U.S. 423, 454 (1899)), the practice, rules and precedents of the Houses have always determined presentment to be a "transac[tion]" of the "business" of "the House." (See Appendix C, Pg. 28, ¶ 2, lns. 10-12). When enrollment and signing by the officers of the House occurs "too late to be presented to the President before adjournment," such signing and presentment must wait and continue at the next session as a "resumption of [legislative] business." (Id. at lns. 15-16)(recognizing presentment required prior to adjournment).

Mark Head avers that presentment being "action ... required by Congress," La Abra, 175 U.S. at 454, which consist[s] of a Senate and House of Representatives," (Art. I, § 1, House precedents enforcing the quorum clause require the legislative "transaction" of "business," supra, prior to adjournment, because "[w]hen action requiring a quorum [is] taken in the ascertained absence of a quorum ... the action [is] null and void." (Constitution of the United States, § 55, p. [19]. Therefore, a house becomes constitutionally disqualified to do further business" without a "quorum." supra.

It is way too late to suppose presentment is no part of the constitutionally mandated legislative business of Congress, supra, INS v. Chada, 462 U.S. at 945, 947, 951. As such, the Constitution requires " [a] majority of each [House] [as] constitut[ing] a quorum to do business," (Art. I, § 5, Cl. 1), to present a bill to the President "before it becomes a Law," (Art. I, § 7, Cl. 2). Mark Head has demonstrated herein that any remaining statute is "not a valid statute." supra.

Mark Head has shown conclusively and collectively, in painstaking sequential manner, several unassailable facts. First, he has set forth the reality that the only H.R. 3190 ever to properly pass the House was the original version, passed in 1947, but not for the purpose of advocating the nullification of Public Law 80-772, nor to argue that House bill in confederation with its Senate version, containing a bloc of amendments violated the bicameral requirement of the Constitution, simply because these two versions

were never presented together for signature by the President. It does however, form the basis for illustration as to how this mess came about.

The original House H.R. 3190 does serve an invaluable role in that it received the certification from Mr. Lecompte as truly enrolled, which in turn provided the vulnerability for Public Law 80-772 to lose its protection of the enrolled bill rule, so now this Court has the prerogative to judicial review and can properly strike this down, provide Mark Head relief, and be rewritten so as to do justice to our system and in the process, provide a restoration to the presently lacking integrity of this very codification.

Further, Mark Head has shown how the law was never properly enrolled, thus making it available for review herein. That allowance has revealed in no uncertain terms that the enrolled bill rule's protection does not attach to Public Law 80-772, due to the Speaker having signed the enrollment absent any authority, because it did not bear the certificate, placed instead of the version never incorporated to the bill presented and signed. The Law was justifiably open for dissection to uncover the fatal flaws in its passage, which Mark Head further set forth.

Specifically, Mark Head has provided absolute proof that H. Cong. Res. 219 was never properly adopted with respect to that which it was intended to do — allow the House to pass and enroll the Senate amended version of H.R. 3190, post adjournment, rather than in open Session, as required. That is because H. Cong. Res. 219 was never passed by both Houses as it was to have been,

because it sought to enact a change to constitutional procedure. Instead, it was treated like an ordinary House resolution, and was thus unconstitutional — every bit as much as the Public Law 80-772 it attempted to shepherd into enactment.

Finally, without a quorum, the Senate amended version had no business being presented to the President, as it was never passed by the House and truly enrolled. End of story.

An examination of the enrollment effort of Public Law 80-772 has been proven as ineffectual, which further led to the well-pled Petition, for which granting Certiorari is appropriate.

Therefore, under any theory, the United States cannot assert jurisdiction over crimes and offenses, until new legislation is properly enacted, as no grant of jurisdiction exists at present, under any statute in effect.

The Circuits Are Split On Their Handling Of Public Law 80-772

The circuits are split among themselves, and truly under the same set of facts; that has never changed. What is different in this Petition regarding split circuits, as opposed to a more common treatment of the phenomenon, is the properties of their respective alignments. They fall into four categories.

The first group encompasses the First, Fourth, Sixth, Eighth, Ninth, and Eleventh Circuits, which share the common thread of making no mention whatsoever of this matter in any appeal, after

an exhaustive search and key word research has been employed, in light of the public library's limited resources for access and this Petitioner's lack of formal legal training. Thus, Mark Head has grouped these circuits in the category of "no opinion," or worse: no mention. Mark Head has reached the conclusion that in light of the foregoing, there is little use looking into the district court cases in these circuits, due to the fact that they, for all intents and purposes have not been appealed.

The second category is a new one, which includes the instant matter. Mark Head has provded a clear and cogent argument to the Fifth Circuit, setting forth the same principles, many of them in infinitely greater detail (hence Appendix C), excepting, of course any treatment of disparity among circuits, although the government conducted a witch hunt among the district courts throughout the circuits in opposition, in a vain effort to not deal with the well pled merits articulated by Mark Head.

The Fifth Circuit disappointed, also side-stepping the issues, labelling them "frivolous," before mischaracterizing the very nature of the Appeal, and in so doing, never addressing the merits, one way or the other. Mark Head expresses shock and dismay that the Fifth Circuit would be so dismissive over the most egregious legislative fiasco in American history.

The third category encompasses the Second, and the Tenth Circuits, which simply invoke the enrolled bill rule in adjudicating in favor of the government in each and every case. To a

point, this is understandable, so long as the enrollment process of Public Law 80-772 was never called into question. Certainly, their opinions do not reveal a challenge having been made to anything more than the way the law was enacted, and in most cases, inartfully done by the movants, albeit some legitimate shortcomings were set forth, there is no standing, absent the enrollment of 80-772 first being demonstrated to be invalid and no protection under the rule enjoyed; an absolute prerequisite.

The fourth and final category, is those circuits, namely the Third and the Seventh, which have taken the matter to task. Mark Head will now address the Second and Tenth, then the substantive holdings of the Third and Seventh.

In United States v. Bogle, 522 Fed. App'x 15, 2013 U.S. App. LEXIS 10377 (2d Cir. 2013), the Second Circuit made an accross-the-board ruling that "Marshall Field's enrolled bill rule precludes challenges to this very bill, based upon alleged procedural irregularities in its enactment." 522 Fed. App'x at 22. This is only partially true. In Mark Head's instant Petition, it should be found that the enrolled bill rule only applies in cases where the enrollment process was conducted properly. Conversely, where indisputable evidence is presented, demonstrating an invalid enrollment procedure, the law has no protection from judicial inquiry as to potential allegations of procedural errors in its enactment, voiding, in some cases, its validity. In other words, whereas an attack on the enactment of a law is normally sacrosanct, such does

not apply if it can be demonstrated historically, the protection process was without integrity.

In United States v. Farmer, 583 F.3d 131, 152 (2d Cir. 2009), the Court found:

> The only evidence upon which a court may act when the issue is made as to whether a bill asserted to have become law was or was not passed by Congress is an enrolled act attested to by declaration of the two Houses through their presiding officers, an enrolled bill thus attested is coclusive evidence that it was passed by Congress.

583 F.3d at 152.

In Farmer, the issue was whether or not there was a quorum in the passage of the bill raised by the Appellant. The Appellant never took issue with the enrollment process, itself. This ruling is incorrect for the following reason with respect to Public Law 80-772, which was the law at issue, irrespective of the quorum claim raised.

When the Court specified "an enrolled act," there was no finding the enrollment act was correct, nor was there an argument of same, as stated above. Had the enrollment procedure itself been at issue first, it would become clear the exercise of attaching protection from judicial inquiry would have fallen short of meeting its burden. Thus, a prerequisite challenge to the enrollment of a bill itself in the form of procedural integrity is a necessary component in the overall challenge potentially, to a statute's validity or constitutionality on the basis of procedural failings in the enactment of said piece of legislation.

There is no legal basis for a court to foreclose a challenge to the enrollment process itself, because as the protection of valid law, the enrollment procedure's integrity, or lack of, cannot be presumed to enjoy the protection of the rule; the procedure does not protect itself — the rule only protects the statute. The integrity of the enrollment procedure is the test as to whether or not a law enjoys preclusion from judicial inquiry pursuant to the enrolled bill rule.

The Tenth Circuit heard an appeal in United States v. Gonzalez-Arenas, 496 Fed. App'x 866 (10th Cir. 2012), in which the appellant argued, "'a quorum was not present for a vote taken in the House of Representatives when § 3231 was passed into law by the act of June 25, 1948, Public Law 80-772,' and that district court therefore lacked subject matter jurisdiction."

The court held "This argument is foreclosed by the enrolled bill rule, under which a bill certified by the presiding officer of each chamber [of Congress] as was the case with § 3231, 54 Cong. Res. 568 (1948) is complete and unimpeachable." (2012 U.S. App. LEXIS 4).

Unfortunately, the Court did not look close enough to see that the bill was not certified, as evidenced by the required certificate attached to each version, but rather attested without authority, and therefore did not enjoy the protection of the enrolled bill rule, as that Court found, incorrectly.

The Tenth Circuit's adjudication of the improper attachment of the protection of the enrolled bill rule to Public Law 80-772

could well have provided Gonzalez-Arenas the relief he sought had he challenged the enrollment procedure in this case. Such is why this Court is respectfully asked to find the procedure for the enrollment process of 80-772 was in fact, invalid and such is the standard for any future challenge to a bill's enrollment process. Properly enacted and truly enrolled, Public Law 80-772's successor would then for the first time in Title 18 history since 1948, be "complete and unimpeachable."

The Third Circuit tackled a claim similar to the instant Petition, but lacking the proof the enrolled bill rule's protection did not attach, in In Re Moleski, 546 Fed. App'x 78 (3d Cir. 2013). Moleski argued, as part and parcel of two earlier submissions using the same attack, that the statute providing the district court with subject matter jurisdiction is void, and that the district court therefore lacked the jurisdiction over his criminal action.

The Third Circuit held, "we will grant relief to Moleski only if he can show that the district court's lack of subject matter jurisdiction is clear and indisputable," (citing In Re School Asbestos Litigation, 921 F.2d 1310, 1314 (3d Cir. 1990), for its substantive ruling, before also citing United States v. Collins, 510 F.3d 697, 698 (7th Cir. 2007), who found, essentially the same unsupported claim to be "ubbelievably frivolous." Needless to say, had Moleski taken the particular procedural faux pas of the failure to properly enroll Public Law 80-772

initially, this issue might never have continued to be the subject of misguided attacks, lacking the proof of invalid enrollment, demonstrating the law does not properly enjoy protection pursuant to the enrolled bill rule. Instead, the procedural defects in its enactment would be laid bare, which in turn would render "[t]he district court's lack of subject matter jurisdiction [] clear and indisputable." Id.

Moleski made the same barren attack on the procedural fatality of Public Law 80-772 in two subseqent appeals, thinking the same flawed attack would somehow render a different result—the iconic definition of insanity.

Prior to Moleski's three vain attacks, the Third Circuit took measure of the claim, making a factual finding, notwithstanding the enrolled bill rule demurrer. In United States v. Potts, 251 Fed. App'x 109 (3d Cir. 2007), the Court stated, "The 1948 amendment to that statute, Public Law 80-772, passed both Houses of Congress, and was signed into law by President Truman on June 25, 1948."

That is only half true. And, in the case of court holdings, something half true is wholly incorrect. Specifically, the claim by the appellant involved an allegation there was a sine die recess between the 1947 adjournment and the 1948 Session, arguing the bill was dead and the Senate could not consider it thereafter. However, the sine die adjournment was between two Sessions of the 80th Congress, not at the end, thus the Senate properly took up

H.R. 3190 in the second Session in 1948, having retained its dominion. The Senate made its amendments and passed it back to the House. None of this is problematic with 80-772. The House was unable to follow suit to the Senate's amendments in 1948, making the finding of the Potts Court regarding 80-772 having passed both Houses of Congress incorrect. Therein lies the error by the Court in that matter.

In the Potts case, the Court cited United States v. Risquet, 426 F. Supp. 2d 310 (E.D. Pa. 2006), where that district court opined, "although the Third Circuit has not addressed the specific issue of § 3231's enactment, other [district] courts have retained jurisdiction pursuant to the statute despite challenges to its validity." (2006 U.S. Dist. LEXIS, at 3).

The Risquet Court then took the matter to task from a completely different angle by finding, "Even if the 1948 amendment to § 3231 were somehow defective, this Court would retain jurisdiction over the case, because the predecessor to § 3231, which defendant does not challenge, provides for such jurisdiction as well." (Risquet, 426 F. Supp. 2d, at 312).

Mark Head respectfully disagrees with the Court's finding, because the former jurisdiction provision for crimes defined in the former Title 18 was to be found, not in Title 18 itself, but in the former Title 28, United States Code, at Section 41(2). This Section was positively repealed with the enactment of the new and current Title 28, by Public Law 80-773, act of June 25,

1948, Chapter 546, § 39, et. seq., 62 stat. 991, et. seq., and thus no longer exists. There were no procedural mishaps in passage of Public Law 80-773, in repealing the former jurisdiction and it was properly found to be truly enrolled.

This means the Court's finding with respect to § 3231's predecessor is reduced to mere dicta. However, inasmuch as the Court correctly observed Risquet did not challenge the validity of § 3231's predecessor, Mark Head has demonstrated herein said predecessor cannot under any circumstances be invoked for jurisdictional purposes, or otherwise.

In United States v. Troy Lawrence, 2006 U.S. Dist. LEXIS 5501 (N.D. Ill. 2006), the Court found that "Mr. Lawrence has offered no legitimate evidence or case law contrary [to the passage of Public Law 80-772]. Of course, even if the 1948 amendment to § 3231 were somehow questionable, this Court would retain jurisdiction over this case, because the predecessor to § 3231 to which Mr. Lawrence offers no challenge provides for such jurisdiction as well." (U.S. Dist. LEXIS at 7-8).

Mark Head contends that this dicta by the Lawrence Court, is as a result of the defendant once again failing to challenge the predecessor of § 3231, notwithstanding its being incorrect in findings and holdings by the district courts as well as the Third and Seventh Circuits, respectively on the same set of facts, regarding the procedural enactment of Public Law 80-772.

The Seventh Circuit in United States v. Miles, 244 Fed. App'x 31, (7th Cir. 2007), held that, "[i]n fact the bill in the first

Session of the 80th Congress and the Senate in the second, with the House voting to pass the Senate version." (244 Fed. App'x at 33). Should this Court find H. Cong. Res. 219 unconstitutional, as averred herein, we would know this holding would not carry the day, as it is impermissable for passage in its intended manner, due to that resolution's not having been enacted properly. Furthermore, the House had no quorum, nor did it record a vote.

Faced with the foregoing fact regarding the absence of a quorum in United States v. Small, 487 Fed. App'x 302 (7th Cir. 2012), the Seventh Circuit no longer had an invalid argument it could deny on its merits, as it had with the mischaracterization of a sine die adjournment by a defendant/appellant, as in Miles. This forced the Court to take refuge behind the enrolled bill rule in holding:

> On appeal, Small argues that the district court improperly asserted subject matter jurisdiction over his case because, he says, the federal criminal jurisdiction statute 18 U.S.C. § 3231 was passed without a quorum in the House of Representatives and is therefore invalid. But, Small's argument is foreclosed by the enrolled bill rule...

(2012 U.S. App. LEXIS at 2).

Had Miles challenged the enrollment process, which he offers no argument thereof, the Court would likely have been bound to have held in his favor.

The Circuits have migrated from properly disallowing the bicameral argument, and also the sine die mischaracterization in allegations Public Law 80-772 was not properly enacted, to be

faced with what Mark Head submits is an unassailable argument that the House never passed the Senate amended version, to then refusing to deal with it on its merits, by incorrectly invoking a protection of the enrolled bill rule, which does not attach for reasons articulated in the instant Petition. Granted, the Circuits have all ruled against the parties in each case; that they have in common, never granting relief, but for a progression of incorrect reasons, culminating in the denial of justice to Mark Head, as well as the continued existence of an invalid statute — a blight on the integrity of the Justice System, merely requiring a rewrite, albeit the voiding of Mark Head's conviction.

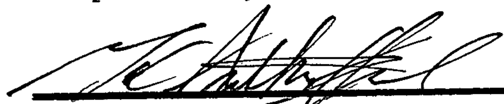
This Court should find: (1) the enrolled bill rule does not attach to Public Law 80-772, for the aforesaid reasons; (2) H. Cong. Res. 219 is unconstitutional; (3) the statute, absent the protection of the enrolled bill rule is invalid due to procedural errors in its [failed] enactment; and (4) Mark Head's conviction is void, after careful review of the instant matter.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Dated: May 18, 2019

Respectfully submitted,



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