

No. 18-9538

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 THE REHEARING OF AN ORDER
DENYING A PETITION FOR A WRIT OF CERTIORARI

MARK ANTHONY HEAD
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PETITION FOR REHEARING

COMES NOW the Petitioner, MARK ANTHONY HEAD ("Mark Head"), in proper person, and hereby petitions this Court for a Rehearing of its Order of October 7, 2019, denying his Petition For A Writ Of Certiorari. Mark Head asserts that intervening circumstances of a substantial or a controlling effect, along with other substantial grounds not previously presented militate in favor of Certiorari to such an extent, this Court should rehear the matter, and GRANT Certiorari, accordingly.

In support of his instant Petition, Mark Head offers the following for this Court's review:

BRIEF PROCEDURAL HISTORY

Mark Head was indicted on January 14, 2015 on one count of Selling, Distributing or Dispensing a Controlled Substance (Doc. 15). He pled guilty on August 12, 2015 (Doc. 45). He was then sentenced on November 10, 2015 to fifty-seven (57) months imprisonment and three (3) years Supervised Release (Doc. 54).

On April 16, 2018, Mark Head filed his good faith Motion For Emergency Relief From Void Judgment (Doc. 73). On April 27, 2018, the District Court denied the Motion (Doc. 74).

Mark Head then filed a timely Notice of Appeal, (Doc. 78), and the Fifth Circuit took up the matter, affirming the denial of his Rule 60(b) Motion on January 9, 2019, prompting Mark Head to seek Certiorari from this Court, as no Motion for

Rehearing was submitted to the Fifth Circuit.

An Extension Of Time to File a Petition For A Writ Of Certiorari was granted to and including June 8, 2019, on March 29, 2019, in Application No. 18-A-987. Mark Head then timely filed his Petition For A Writ Of Certiorari.

On October 7, 2019, this Court denied Mark Head's Petition. Thence this Petition for Rehearing.

REASONS THIS COURT DENIED CERTIORARI

Research by Mark Head has determined there are two (2) distinct reasons why this Court may have denied Certiorari on his Question III Presented. First, there may have been what was perceived as intervening circumstances of a controlling effect which precluded this Court from taking up the matter that Public Law 80-772 was never properly enacted and therefore void. Those circumstances would be the "Enrolled Bill" Rule, which precludes a Court from reviewing the matter. This Court could have decided that even Mark Head's cogent argument the Enrolled Bill Rule did not attach due to its own inapplicability during the enrollment process of Public Law 80-772 being fatally flawed was precluded by the rule, itself.

Second, although Mark Head demonstrated that the Circuits are split on the issue of Public Law 80-772's validity, albeit in the unorthodox manner of either refusing to address it or worse: incorrectly holding it is valid, Mark Head failed to demonstrate what is held close to the top of this Court's priorities. That

is, that this matter is very much in the Public Interest to be impartially reviewed and the stain of sterile law that Title 18 represents set aside, with new legislation of a similar nature, but properly enacted and properly deemed truly enrolled taken up by Congress and set in place.

Mark Head will demonstrate herein, that the very intervening circumstances of a controlling effect that presumably denied him Certiorari prior to the instant Petition, are the very circumstances of a controlling effect which REQUIRE a narrow and therefore more appropriate interpretation of the Enrolled Bill Rule's underlying Supreme Court precedent, and thus grant Certiorari.

Further, Mark Head will submit substantial grounds, not previously presented to clear any last impediments to Certiorari being granted herein.

ARGUMENT

Chicken Or The Egg?

Which came first? The chicken or the egg? That is the age-old conundrum concisely described when referring to a matter in which a problem is presented in such a manner that its procedural impediment or governing precedent serves to disallow the fair consideration of a solution which arguably would benefit those considering same, when they can simply weigh the two and choose correctly. In the instant matter, it involves the patently void Title 18 in the role of the "Chicken," with its up until now, seemingly impenetrable force field, the Enrolled Bill Rule,

acting in the role of the "Egg." Title 18 is fatally flawed as a matter of record, yet has heretofore evaded its corrective successor, due to no methodology having been adopted which would bring Congress to the point whereby it could legislatively right the wrong, replacing Title 18 with a successor whose procedure in its enactment passes muster.

Working against such expediency, is the underlying comfort of our Judiciary being mindful Title 18 is currently serving our Country's needs as is; its only flaw is a legislative shortfall in the procedure by which it was enacted. Truly, its successor need not vary much, if any, apart from enacting it procedurally sound.

The Chicken

In his original Petition For A Writ Of Certiorari, Mark Head made the cogent argument that Public Law 80-772 was fatally flawed in its procedural enactment, but incorrectly enjoyed the protection of the Enrolled Bill Rule, which is the veneer precluding any court from reviewing a legislative mishap in its enactment which by any standard of justice and equity demands its being declared void and a successor enacted. Although there is no constitutional requirement that truly enrolled bills be attested to by the respective leader of a House, Public Law 80-772 was not passed in the manner prescribed by the Constitution and is therefore unconstitutional and must see the misstated protection pierced.

Mark Head made certain that the issue he argued and the question he presented under "QUESTION III PRESENTED" was that an act legislated by Congress which was improperly deemed truly enrolled, procedurally, did not enjoy the protection of the Enrolled Bill Rule. Thus, if the underlying legislation was also procedurally deficient, independent of the Enrolled Bill Rule's inapplicability, courts would be required to void the law.

Up until now, the courts have followed precedent in holding the underlying legislation is sacrosanct if deemed truly enrolled and attested to same, but never has one challenged the procedure of truly enrolling as a prerequisite to the attestation on its being procedurally compliant.

Mark Head argued that a procedure which affords protection to a law, does not also benefit from the protection it conveys to the underlying legislation. Mark Head asserts the procedure of conveying the protection is subject to challenge. He placed the enrollment process itself under scrutiny and demonstrated clearly and convincingly that the protection which presumably protects Public Law 80-772 is fatally flawed, notwithstanding the underlying legislation's veracity. His conclusion was that due to Public Law 80-772 NOT enjoying the protection of the Enrolled Bill Rule, it could in fact be examined by a court and found to be void when the procedural defects violating the Constitution were laid bare.

This Court, in its considering the Petition of Mark Head could only have held in one of two ways: First, that the

protection of the Enrolled Bill Rule does not extend to the methodology or procedure by which a law is first deemed truly enrolled prior to its being attested by either the Speaker of the House or Preident of the Senate. This Court arguably did not hold such to be true, or it would have likely granted Mark Head Certiorari.

The Egg

Second, it could have concluded the Enrolled Bill Rule extends its protection as to how the act was deemed truly enrolled as well, whether or not the procedure by which it arrived to the point of being presented for signature by the respective head of a Congressional House, be it the House or Senate was in fact done outside the Rules, even if irrevocably and fatally flawed, as demonstrated by Mark Head in his examination of how Public Law 80-772 was not properly truly enrolled and the signature of the Speaker of the House was arguably void as a result. This represents the "Egg," and was apparently where this Court allowed the chips to fall in the instant matter.

THIS COURT INTERPRETED THE ENROLLED BILL RULE TOO BROADLY

Mark Head respectfully submits that this Court decided Public Law 80-772 enjoyed the protection of the Enrolled Bill

Rule, whether or not it was deemed truly enrolled procedurally compliant prior to the attestations by the Speaker and President of the Senate, respectively. Such had the inescapable effect as to broaden the Enrolled Bill Rule to encompass itself.

Mark Head asserts that this Court, instead of simply looking to the Enrolled Bill Rule as controlling only the protection afforded the underlying legislation from review, extended the "hands off" approach to how the legislation was procedurally deemed to have integrity as well, i.e., the enrolling process, such was not provided for by the intervening and controlling circumstances which gave rise to the Enrolled Bill Rule's birth — namely the Supreme Court case Field & Co. v. Clark, 143 U.S. 649 (1892).

In Field, this Court in considering a challenge to an Act of Congress alleging two distinct bills had been passed by each House, created the Enrolled Bill Rule (See also Public Citizens v. Clerk, United States District Court for the District of Columbia, 486 F. 3d 1342, 1349-1350 (D.C. Cir. 2007)(paraphrasing with select quotations Field's reasoning and the creation of the Rule).

The Field case involved the "nature of the evidence upon which a court may act when the issue is made as to whether a bill originating in the House ... or Senate, and asserted to have become law, was or was not passed by Congress. (Field, 143 U.S. at 670)(See United States v. Munoz-Flores, 495 U.S. 385, 391, n. 4 (1990)). There, the appellants rested their claim that the bill in question did not pass both Houses on the Journal Clause,

Article I, § 5, Cl. 3. Id.

Mark Head asserts the claim in Field rested upon the fact that "the Journal of either House fail[ed] to show [the bill in question] passed in the precise form in which it was signed by the President." Id. at 672.

In other words, the appellants in Field, sought to have an Act held invalid based not upon positive evidence, but by a failure of evidence to show the same text passed both Houses.

This Court found the suspicion aroused by absent evidence that legislative officers and the President could foist an unpassed bill upon the people was without more than a "possibility ... too remote to be seriously considered by the present case." Id.

However, Mark Head takes issue in his Petition with the fact the process by which the House Speaker signed the bill WAS NOT THE ACT of truly enrolling it. Rather, the Speaker in this example is supposed to be attesting through his signature, that the bill in question was already truly enrolled. And, the acid test is whether the proper certificate evidencing the true enrollment is affixed to the document he, the Speaker is signing. If the certificate is attached, the bill is truly enrolled and the Speaker's attestation merely completes the procedure. However, if there is no certificate, the Speaker's signature has no more value than that of an autograph for a loyal fan.

In the case of Public Law 80-772, it was never truly enrolled, because the certificate was attached to the House version which

never went to the President, because H.R. 3190 was amended from its original version after the Senate made its amendments, creating the version which was submitted to the President and signed into law, absent ever being truly enrolled. Even though the Speaker signed the version which went to the President and became law, the prerequisite of truly enrolling that version was never accomplished, as painstakingly detailed in the original Petition For A Writ of Certiorari on pages 20 and 21. However, even though Public Law 80-772 was never truly enrolled, it is law, but does not enjoy the protection of the Enrolled Bill Rule, and is thus subject to review which can only end in its being voided.

Without question though, had the underlying legislation of Public Law 80-772, even not enjoying Enrolled Bill Rule protection, been procedurally flawless in its enactment, there would be no challenge whatsoever.

Thus, when this Court arguably looked to the Enrolled Bill Rule as providing protection not only to the underlying legislation, but ALSO to the enrollment process itself, it failed to narrow the scope of focus sufficiently to see, if in fact as the enrolled bill requires, that it was TRULY enrolled, meaning among other things, that it had the indispensable Certificate affixed, which was required under Congress' own Rules governing the enrollment process. And, in the case of the ill fated attempt to enroll the hopelessly flawed and procedurally meritri-cous Public Law 80-772, it was not! Here is why:

The Field Enrolled Bill Rule establishes that:

The signing by the Speaker of the House of Representatives, and, by the President of the Senate, in open session, OF AN ENROLLED BILL, is an official attestation by the two Houses of such bill as one that has passed Congress ... and, when a bill thus attested, receives [the President's] approval, and is deposited in the public archives, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable.

Field, 143 U.S. at 672 (emphasis added).

A simple examination of the rule reveals that in order for either the Speaker of the House of Representatives or the President of the Senate to attest that the Houses have passed the subject legislation, they must be presented with an "ENROLLED BILL" in open session. As explained earlier, if the Certificate which in the instant matter, Mr. Lecompte DID NOT AFFIX to the Senate amended version of H.R. 3190, such removed the authenticity presumed by the Speaker which would have otherwise deemed the bill he signed to be "truly enrolled" and thus has no value for purposes of attaching the protection of the Enrolled Bill Rule to, in this instance, Public Law 80-772.

The collateral effect of this element missing in the enrollment process is very definite: Public Law 80-772 is open to scrutiny and review by the courts, and if procedural error(s) are found which would be violative of the Constitution, that law

MUST be held to be VOID! Such is the only just fate for Public Law 80-772, as argued herein. Likewise, Mark Head's conviction must also be declared void.

Thus, the very Enrolled Bill Rule with its genesis in Field, as the intervening and controlling circumstance governing the underlying legislation and holding it sacrosanct from judicial review or scrutiny, also EXPRESSLY disclaims, and does not include the enrollment process itself (part of which is attaching a certificate reflecting the bill was passed), but rather is a PREREQUISITE to securing the signature.

Mark Head avers that had this Court taken a narrow interpretation of the Enrolled Bill Rule's requirements and NOT simply broadly interpreted the signature as the sole requirement, Certiorari would likely have been granted in light of the aforementioned intervening circumstances of a substantial or controlling effect.

In the instant case, the "Chicken" came first, and without the chicken, there would be no egg. A rehearing is appropriate, while Mark Head will also assert substantial grounds not previously presented as well.

SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

Mark Head never argued in his original Petition, the fact the issue of the illegitimacy of Title 18's enactment and the

further reality the very enrollment process which in the case of Public Law 80-772 did not provide the veneer of protection to preclude the courts from considering the matter is the perfect storm, and therefore very much in the public interest.

The perfect storm consists of first, the failed process of truly enrolling Public Law 80-772 as the underlying legislation, which second, opens it up for this Court to now hold it is void, was due, NOT ONLY the the missing certificate of H.R. 3190 and rendering the enrollment process a nullity, but the fact that the very Senate amended version was also passed absent a quorum in the House of Representatives. Such is in the public interest.

The public interest is never served when a federal law, in this case Public Law 80-772, is botched in more ways than the government would care to admit to the public. Even though Public Law 80-772 is currently being enforced, it is unconstitutional, requiring it be voided, with Congress passing a similar or like bill, only adhering to the procedure required by the Constitution.

Every day the internet's stark and candid depiction using valid, source documents laying bare this greatest legislative fiasco in United States lawmaking history, grows not at an arithmetic, but a geometric rate, further informing and educating the public. At some point, if this matter is not addressed by this Court, there will likely be a watershed of convictions being nullified later when this Court finally does rule, and

only then will justice be served, albeit delayed.

Mark Head respectfully submits that his conviction being justly voided, since he uniquely raised this complex argument involving the legitimacy of the enrollment process, is a small price to pay, and a minimum expense for the Judiciary to put this national embarrassment behind us. Such is certainly in the public interest and is substantial.


CONCLUSION

Mark Head accepts without a petition for rehearing the denial of both his Question I presented and his Question II presented in his original Petition For A Writ Of Certiorari.

However, for all the foregoing reasons, but especially in light of the intervening circumstances of a substantial or a controlling effect, and other substantial grounds not previously presented, this Court should REHEAR Mark Head's Petition For A Writ Of Certiorari with respect to his Question III presented, and GRANT Certiorari, accordingly.

Dated: October 24, 2019

Respectfully submitted,



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