

1978

Danniel S. Dennis et al v. Scott M. Matheson et al : Appellants' Supplemental Memorandum

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

FILED

MAY 11 1978

15814
Clerk, Supreme Court, Utah

DANNIEL S. DENNIS, et al. :
Plaintiffs and Respondents, : APPELLANTS' SUPPLEMENTAL
-vs- : MEMORANDUM
SCOTT M. MATHESON, et al., : Case No. 15814
Defendants and Appellants, :

The District Court granted plaintiffs' Motion for Summary Judgment and held that H.B. No. 48 which appropriated money for low income housing was null and void because the legislature had failed to follow constitutionally mandated procedures in enacting the legislation.

The bill in question was introduced and properly passed in the House and then sent to the Senate which properly amended the bill (by specifying the fund from which the appropriation was to be paid) and returned it to the House. No complaint is made as to procedure to this point.

The House ultimately voted electronically to accept the amendment but the vote was not printed or recorded in the Journal although the Speaker did declare that the motion to accept the amendment had passed. The District Court found this procedure constitutionally defective in that the final vote was not taken by yeas and nays and entered upon the journal of the House nor did it appear that it was passed with the assent of a majority of all members of the House, as required by Article

The House after accepting the amendment as aforesaid voted to circle the bill in spite of a point of order made by Representative Judd that under joint rule No. 27.01 when the House voted to concur in the Senate amendment, the bill should have then been ordered to enrollment.

It further appears that on the last day of the 1978 Budget Session of the 42nd Legislature, H.B. No. 48 was uncircled but not voted on.

The Speaker signed the bill which was enrolled and the Governor signed the bill.

ARGUMENT

The evidence that the bill did not receive the assent of the elected members of the House (the Constitutional majority) is that Representative Harrison kept a private journal and would testify that the vote on acceptance of the Senate amendment was 34 affirmative and 25 negative. Other evidence of what transpired is the tape recording now customarily made in both houses.

Appellants respectfully urge that under the rule of Ritchie v. Richards, 14 Utah 345, 47 Pac. 670 (1896) this court has determined that if a claim of defect in enactment is made against an enrolled bill, the Court may look to the journals to determine whether the journal shows a non-compliance with mandatory constitutional requirements. This being the case, it is submitted that neither the tapes nor private journals are admissible to impeach an enrolled bill.

The House Journal is merely silent to the result regarding the vote on the amendment, not that the vote did not occur nor that the motion failed of passage. Ritchie mandates a presumption that the Legislature acted within proper constitutional limits if the journal is silent ' ' 'unless an omission of some matter which the Constitution expressly requires to be entered therein be shown by such journals or either of them." 47 Pac. 670, 676.

Apparently what must be shown upon the journal is the constitutional majority upon final passage. Appellants contend that in the context of this rather unique case, the journals of both houses show concurrence of a constitutional majority in each house because the amendment here is virtually a correction of a typographic error. We urge that the court simply examine the amendment which merely changed the words "Liquor Profits" to "General Fund Liquor Profits", and determine that bill both before and after this purely technical amendment is substantially the same. The vote on final passage of the substance of the act is then shown by both the journal entries by yeas and nays.

The legislature enacted the substance of the legislation in each house. We believe that the court can look to the bill itself to determine when final passage occurs since the Constitution does not prescribe in certain terms when "final passage" happens.

Appellants also urge that a motion to circle is not a motion to reconsider a bill. Clearly if the joint rules are to

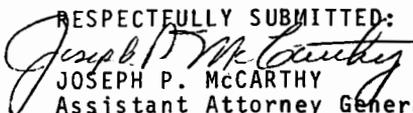
have any effect, Rule 27.01 operates to enroll a bill when an amendment is accepted. This being so, a motion to circle (which is simply a motion to defer consideration of a bill) cannot apply to the enrolled bill.

RELIEF REQUESTED

Appellants ask this Court to reverse the decision of the trial court. The relief is sought not only because the decision exalts form over substance in the case at bar, but because appellants fear that an adverse decision could generate constitutional assaults on much other legislation for claimed procedural defects in enactment, particularly if the court permits the use of evidence not disclosed by the journals or the bills.

Appellants also ask the court, in the event it determines that it should affirm the decision of the District Court, to limit the decision to the case at bar and to prospective future acts of the legislature and to deny retroactive application of the decision to legislation enacted by prior legislatures.

RESPECTFULLY SUBMITTED:


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