

Court Cases Concerning Legislative Quorum Requirements

By: Terry Adams, Principal Analyst
November 19, 2020 | 2020-R-0284

Issue

Identify court cases that address legislative quorum requirements in Connecticut and other jurisdictions.

The Office of Legislative Research is not authorized to issue legal opinions, and this report should not be considered one.

Summary

We did not find any Connecticut or federal court decisions concerning the [state constitution's](#) quorum requirement for legislative business, which is a “majority of each house” (Art. III, § 12). Additionally, we searched [Rules and Precedents of the General Assembly](#), published by the Legislative Commissioners Office, but did not find any quorum-related rulings relevant to this report. However, we did find three cases that indicate Connecticut courts generally do not consider challenges to the legislative process unless the challenge presents a constitutional question. Below we describe these cases in more detail.

Courts in other jurisdictions are divided as to whether they will adjudicate challenges to a law that are based on alleged defects in the legislative process. Some jurisdictions follow what is known as the “enrolled bill rule,” under which an enrolled act is conclusive evidence that it was passed in accordance with constitutional requirements. Others consider an enrolled act as presumptively but not conclusively correct, meaning that courts may look beyond the act (e.g., to the legislative journals) to determine whether it was passed in accordance with constitutional standards. This

report describes these two approaches and a selection of quorum-related cases in other jurisdictions.

Connecticut Legislative Process Cases

Although we did not find any Connecticut cases concerning the quorum requirement for legislative business, we did find three cases concerning judicial scrutiny of the legislative process. Collectively, the cases indicate that Connecticut courts generally do not consider challenges to the legislative process unless the challenge presents a constitutional question.

Connecticut Supreme Court

In a 1906 case, the plaintiff (a savings bank) challenged the validity of a particular tax (*State v. Savings Bank of New London*, 79 Conn. 141). The bank alleged, among other things, that the House violated its own rules and parliamentary law when enacting the tax. In rejecting this argument, the court held that, absent a violation of a constitutional restriction, it could not pass upon the regularity of legislative proceedings:

Rules of proceedings are the servants of the House and subject to its authority. This authority may be abused, but when the House has acted in a matter clearly within its power, it would be an unwarranted invasion of the independence of the legislative department for the court to set aside such action as void because it may think that the House has misconstrued or departed from its own rules of procedure (*id.*, at 152).

The court echoed this point in a 1984 case (*Schieffelin & Co. v. Department of Liquor Control*, 194 Conn. 165). The plaintiffs, a group of liquor distributors, challenged a state liquor law governing wholesale permits. Among other things, they alleged a due process violation of both the U.S. and Connecticut constitutions because a public act that amended the liquor law was enacted in violation of the Senate's rules.

In rejecting this claim, the court pointed to the state constitution, which provides that each house "shall determine the rules of its own proceedings...and shall have all other powers necessary for a branch of the legislature of a free and independent state" (Art. III, § 13). The court, citing *Savings Bank of New London*, held that it could not grant the plaintiffs any relief:

In the final analysis, if legislation is passed without prior notice to the public, without a public hearing and in violation of the joint rules of the General Assembly, the only remedial process that is available to those aggrieved by such action is political rather than judicial (*id.*, at 185).

Connecticut Appellate Court

A 1987 Appellate Court case, involving a defendant charged with driving under the influence (DUI), further illustrates the Supreme Court's holdings (*State v. Sitka*, 11 Conn. App. 342). In this case, the defendant argued, among other things, that a particular public act amending the state's DUI law was not validly enacted. The basis of his claim was that when the Senate passed the bill, it immediately transmitted the bill to the House, but the Senate Journal did not show that this was done by a two-thirds vote as required by the Senate Rules.

The defendant argued that this violated the state constitution's provision empowering the legislature to adopt rules for its proceedings (Art. III, § 13). He also argued that the rules are constitutionally mandated and that suspensions of the rules are subject to judicial scrutiny.

In rejecting these arguments, the court reiterated *Savings Bank of New London*'s holding that courts cannot pass upon the regularity of legislative proceedings absent a violation of a constitutional restriction. It also held that the state constitution does not require any particular set of rules or method for suspending them:

Since the houses of the legislature have the power to set their own rules, they have the power to depart from one or several of them. Even if the senate failed to act by a two-thirds majority vote to suspend the rules, that would not give rise to a constitutional question (*id.*, at 347, internal references omitted).

Thus, absent a constitutional violation, the court held that a public act's validity could not be impeached by resorting to the legislature's journals.

Enrolled Bill Rule

Courts in other jurisdictions are divided as to whether they will adjudicate challenges to a law that are based on alleged defects in the legislative process. As described earlier, courts in some states regard an enrolled act as conclusive evidence of its correctness (*i.e.*, the enrolled bill rule), while others consider an enrolled act as only presumptively correct.

Corpus Juris Secundum describes the two approaches as follows:

Jurisdictions are divided as to whether an enrolled act is conclusive evidence as to the correctness of its contents and as to its passage in the mode prescribed by law. Where the enrolled act is regarded as conclusive, the courts lack power to go beyond it for the purpose of determining its subject matter or whether it was passed in accordance with constitutional requirements. The legislative journals are not admissible to impeach the enrolled act....

Other jurisdictions repudiate the rule making a duly authenticated and enrolled act absolutely conclusive and hold that, while there is a presumption that an act was legally enacted so that the enrolled bill creates a prima facie case of compliance, the presumption is not conclusive, and courts look behind the enrolled act to determine whether the legislature observed constitutional requirements in its passage (82 C.J.S. *Statutes* § 100).

Existence of a Quorum

Courts in other jurisdictions are similarly divided about whether they find quorum-related challenges to be justiciable. According to *Sutherland*:

Legislative action by a house consisting of less than a quorum is void in those jurisdictions where courts look behind the enrolled bill. However, in those states where the enrolled bill is conclusive proof of proper legislative action, courts do not consider evidence to show that the bill was not passed by the necessary quorum. Courts ordinarily do not inquire into the correctness of journal entries even where journals are consulted as evidence of whether an act was properly passed (1 *Sutherland Statutory Construction* § 6:3 (7th ed.)).

Cases

Numerous federal and state cases examine constitutional quorum requirements with respect to transacting legislative business. Below we provide a selection of three of them.

U.S. Supreme Court. The leading precedent concerning the U.S. Constitution's quorum requirement for Congress (i.e., a majority of each house) is from the U.S. Supreme Court's 1892 decision in *United States v. Ballin* (144 U.S. 1), which addressed whether a quorum existed when the House passed a particular piece of legislation.

With respect to judicial review of congressional rules, the Court stated the following:

The Constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more just.... The power to make rules is not one which once exercised is exhausted. It is a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal (*id.*, at 5).

Turning then to the question of how to determine the presence of a quorum, the Court noted that the Constitution did not prescribe any method for making this determination. Thus, "it is therefore within the competency of the house to prescribe any method which shall be reasonably certain to ascertain the fact" (id., at 6).

The Court held that a House rule that counted for quorum purposes members who were present but not voting was valid. Reviewing the House Journal, it held that a quorum being present, the legislation was properly passed.

Alabama Supreme Court. In a 2005 case, the Alabama Supreme Court held that the question of what constituted a vote by "a majority of each house," as required by the Alabama Constitution, was a political question left to the legislature (*Birmingham-Jefferson Civic Center Authority v. City of Birmingham*, 912 So.2d 204).

In this case, the court deferred to the legislature's practice of deeming a bill properly passed if it received a majority of votes cast in the presence of a quorum, even if the total number of affirmative votes did not comprise a majority of a quorum (e.g., because of members abstaining). It noted that the state constitution contained no standard by which the judiciary could review the legislature's voting rules or limitation on what constitutes a "majority of each house." Thus, the question was nonjusticiable.

Rhode Island Supreme Court. In a 1961 case, the Rhode Island Supreme Court ruled that a quorum was not present when the state House of Representatives passed a particular piece of legislation (*Moore v. Langton*, 92 R.I. 141). It rejected the respondent's argument that because a quorum was present when session began on the day in question, it should be presumed to exist for the remainder of the day. Instead, the court reviewed the House Journal, which showed that the total number of members voting on the legislation in question did not add up to a quorum.

Sutherland notes that a chamber's rules have in some cases established the legality of legislative activity that would otherwise be unconstitutional. "Thus, while present, but not-voting, members cannot be counted for purposes of establishing a quorum in the absence of a house rule, where a rule has been adopted permitting it, such members may be counted for purposes of establishing a quorum" (1 *Sutherland Statutory Construction* § 7:5 (7th ed.)). However, the court found that Rhode Island's House Rules contained no such provision.

TA:kl