

Hi, this is Chris Micheli with the Sacramento governmental relations firm of Aperia & Micheli, and an adjunct professor at McGeorge School of Law. Thanks for joining today's podcast, where we're going to discuss the enrolled bill rule here in California.

The judicial branch of government is generally reluctant to review the record-keeping practices of the Legislature that is used to determine the validity of statutes. This limitation on judicial inquiry is known as the enrolled bill rule. And basically, it's a legal doctrine that holds that if an act in the Legislature is "properly enrolled, authenticated, and filed," then it is presumed that all of the required and necessary steps for passage of legislation were in fact properly taken by the Legislature. Interestingly, the courts have generally said even the Daily Journal of the Assembly and Senate can't be utilized, or is not available to impeach that authentication process.

There is in the California Constitution, in Article III, Section 3, the enumerated separation of powers doctrine, and basically the reasoning behind this judicial limitation of looking into the record-keeping practices of the legislature is that the judicial branch should not impinge on the constitutionally-set forth powers of the legislative branch in governing its, the Legislature's, internal affairs. Now, there has been some criticism of this legal principle, the enrolled bill report, as recently as 2009, though, the courts have concluded that the rule is in full force and effect in the state of California. Now, capital observers often note that the enrolled bill rule is part of the governing rules between the legislative and judicial branches of our state government, and again, its purpose is that the legislative rules and procedures are respected by the separate but co-equal branch of government, the judicial branch.

So basically, when a legal question is raised with a court whether a bill that was passed by the Legislature, sent to the governor's desk, what the inquiry is, that is whether the requirements of the California Constitution, which specifically look at Article IV, Section 8B, whether the legislative branch complied with that provision. So what are the provisions of Section 8B of Article IV include? Well, one is that each bill is to be read by its title on three days in each house, unless that house dispenses with that constitutional requirement, including a roll call vote, entered in the Daily Journal, et cetera. The second key provision of Section 8B is that no bills are to be passed unless the bill with amendments has been printed and distributed to the members of the Legislature. Now, if these constitutional requirements have not been met, then a court could invalidate a statute passed by the Legislature.

Existing state case law provides that once a bill has been authenticated and enacted, it would violate the separation of powers doctrine for a court to use any sort of extrinsic evidence to determine whether the legislature failed to satisfy the constitutional requirements of enacting a statute. If we look back almost a hundred years ago, the California Supreme Court in a case called *Taylor v. Legislature*, which was decided in 1927, the state Supreme Court said that, "A statute that is properly enrolled and authenticated conclusively establishes not only the contents of the law, but the due performance of all steps requisite to its passage by the Legislature. This is the general law and has long been the rule of decision in this state." That was the decision of the California Supreme Court. And of course, that principle that they referred to is the enrolled bill rule, and it was described by the state Supreme Court in 1927 as having long been the rule of decision in the state.

It was, as far as I can tell, first articulated by the California Supreme Court in an 1866 decision called *Sherman v. Story*, and in that 1866 California Supreme Court decision, the high court refused to consider any uncontradicted legislative journals as well as oral testimony that had alleged that certain proposed amendments that had been rejected in the California Assembly were apparently mistakenly incorporated into the final version of the bill as it passed the Senate. Now, in a later decision called the *County of Yolo v. Colgan*, which was decided by the California Supreme Court in 1901, the high court rejected a claim that had been based on an entry in the Senate Daily Journal. And that entry basically noted that the bill had not received the requisite number of votes for passage. And so those challenging

this statute said that it was invalid, but the Supreme Court ruled that the separation of powers doctrine provided that while the Constitution has prescribed the formalities that have to be observed by the Legislature in passing bills and ultimately creating statutes, the power to determine whether these formalities had been complied with is vested in the Legislature itself.

So despite the Senate Daily Journal noting that the bill had not received the requisite 21 votes, because the Legislature ultimately said that this bill had properly gone through the process, the court under the enrolled bill rule said that it's up to the Legislature itself to make that determination, not for the courts to second guess it.

In *Planned Parenthood Affiliates v. Swoap* in 1985, there was a two-house conference committee that was considering the annual budget bill. And basically, the budget bill that proposed in each house excluded a certain provision, which was specified as Section 33.35. Now, the conference committee proposal was approved by both the Senate and the Assembly, and it was enacted into law. Now later, staff discovered that there was an error, that the Section 33.35 had not in fact been removed from the budget bill, and so that's what was challenged. And the court said that it lacked the power to strike that section from the enacted budget bill, because the legislature had already determined that this bill was duly enacted.

So now the court, the appellate court, couldn't go back and essentially strike that provision even though that had been the stated intent of both the Senate and the Assembly. The court said... They cited "the salutary principle that has long been established in California, that the judicial branch may not go behind the record in the statute." And so the appellate court, the court of appeal, ruled that because Section 33.35 received the required approval of each house of the Legislature, and therefore was duly enrolled and approved by the governor, that evidence couldn't be impeached by this extrinsic evidence showing that each house of the legislature had approved the bill, excluding that Section 33.35. Now, the California courts have identified at least one exception to the enrolled bill rule, and that exception was discussed at length in a case called *People v. The County of Santa Clara*. It was a California Supreme Court decision that was rendered in 1951, and it was a case in which a defect was identified in the local adoption of charter amendments.

And basically, there was a recitation on the face of the resolution that was adopted by the California Legislature addressing this local charter enactment. And in the Levin decision, again, *People ex rel. Levin v. County of Santa Clara*, but often cited as the Levin decision, the court cited the general principle that we know when an act of the Legislature is valid on its face, properly enrolled, authenticated, and filed, it is conclusively presumed that all of the steps required for its passage have been properly taken, and even the journal of the legislature is not available to impeach it, the court said. But then the appellate courts, again in Levin, engaged in a discussion of case law and different treaties that review the scope of the enrolled bill rule. And what the appellate court ruled in the end, how they concluded, they said, "Thus, the holding is that if irregularity in the proceedings of the local authorities appears on the face of the legislative resolution, the approval by the Legislature is not conclusive as it would be if it was not revealed by the resolution."

So basically, what the court said in Levin is that there is this exception to the enrolled bill rule, and it applies where there's a procedural defect in the local adoption of charter amendments that could be evidenced on the face of the resolution that was adopted by the Legislature. Obviously, a very narrow exception to the enrolled bill rule in California. Thanks for joining our podcast today looking at the enrolled bill rule here in the state of California. Thanks for joining.