

SUP CT

IN THE SUPREME COURT OF THE STATE OF NEVADA

Frank M. Peck,

Appellant,

vs.

State of Nevada,

Respondent.

Sup Ct No. 72849

Dist Ct No. CR96 7687

FILED

PETITION FOR REVIEW

NRAP Rule 40B

JAN 22 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

Comes now, the Appellant, Frank M. Peck prose hereinafter Mr. Peck with his PETITION FOR REVIEW NRAP Rule 40B.

This PETITION is made and based upon all papers and pleadings on file in this case as well as the attached points and authorities, Exhibits, Declaration of Mr. Peck and "conflicting prior decision of the Nevada Supreme Court "NHP v STATE 107 NEV 549 (1991) Certified Question # 1: "AN ASSEMBLY CONCURRENT RESOLUTION DOES NOT HAVE THE FORCE AND EFFECT OF NEVADA LAW" id STATE v. ROGERS, 10 NEV 250 (1875) AND (EXHIBIT - 1) JOINT SENATE / ASSEMBLY CONCURRENT RESOLUTION FILE NO. 1 AND NO. 2 THAT "DOES NOT CONTAIN THE ENACTING CLAUSE" IS "FATAALLY DEFECTIVE", UNCONSTITUTIONAL AND VOID, AND IS NOT LAW, 28 USC SEC 2254, Newly discovered facts 28 USC 5 2244 (b)(2)(B)(i)(ii), U.S. Supreme Court Authority.

Dated / served with Dec 14 2017 S.Ct Order, ON 12-22-17
Dated 12-23-17

RECEIVED
JAN 16 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

[Signature]

Frank M. Peck # 57106

4050 Box 650

Ludlow Springs, NV. 89070

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18-02984

Points and authorities

W re to the COURT OF APPEALS ORDER filed Dec 14, 2017.

Served on Mr. Peck on 12-22-17. Question, WHETHER:

The Court of Appeals order is contrary to: #5

1. Marbury v. Madison 5 US 137 (1803) "The Constitution of these United States is the supreme law of the land, Any law that is repugnant to the Constitution is NULL AND VOID OF LAW"
2. Old Wayne Mut. L. Assoc. v. McDonough, 205 US 8, 27 S.Ct. 236 (1907) ("A court cannot confer jurisdiction where NONE EXISTED AND CANNOT MAKE A VOID proceeding valid. It is clear and well established law, that a VOID ORDER can be challenged in any court, at any time.
3. Main v. Thiboutot, 100 S.Ct. 2502 (1980) ("The law provides that ONCE State or Federal jurisdiction has been challenged, IT MUST BE PROVEN!")
4. Ex Parte Smith, 126 P. 655, 671 (Nev 1912) ("It is the duty of the court to determine whether it has jurisdiction of any case presented") A [habeas] petitioner cannot be faulted for not properly, timely, and or not previously raising a jurisdictional defect which the court had a duty to do itself.
5. Chambers v. United States, 22 F.3d 939, 945, 9th Cir (1994) ("Whatever the scope of the Cause and Prejudice requirement, it clearly does not bar [habeas] review when a defendant raises a jurisdictional claim, such as the invalidity of the statute" which gave the court its jurisdiction).
6. NHP v. State 102 NEV 547 at 549, Rogers infra (Nv 1875).

And Factually, the Court of Appeals did not resolve the claim that the Senate, Assembly "RESOLUTION" does not contain the mandatory enactment clause and is therefore ripe for federal review.

Ignorance of the law was not the impediment, Extrinsic fraud, withholding of material facts / evidence was the impediment. "External to the defense" [THAT] NRS 200.366 is unconstitutional and VOID ab initio. Hence, NO STATUTE, NO JURISDICTION! No Const. power to adjudicate. State's revision commission's powers, duties were not transferred to the legislature until July 1, 1963!, when "Abolished".

Each and EVERY LAW requires an enactment clause, not just "THE LAW", that ENACTS ALL LAWS "Every-law" singularly ENACTED NOT EN MASS.
FACT:

And the Court is WRONG AS the Record Reflects "The JURY REACHED VERDICTS ON THE SUBSTANTIVE COUNTS 1-2". They SAID SO ON THE RECORD! They HUNG ON the voluntariness that was immaterial to NG! WRONGFUL CONVICTION [IS] A FUNDAMENTAL MISARRIAGE OF JUSTICE"

"The Senate / Assembly Concurrent Resolution CAN NOT provide ENACTMENT of SB-2 without the mandatory "ENACTMENT CLAUSE" and is VOID AB INITIO" State ex rel CHASE v ROGERS, 10 NEV 250, 1875 NEV. LEXIS. 24 (NEV 1875) SEE ALSO: AGO 85 (7-25-1951) (A JOINT RESOLUTION ADOPTED BY BOTH HOUSES, CANNOT BECOME A VALID LAW [I F] IT DOES NOT CONTAIN THE ENACTING CLAUSE REQUIRED BY THIS SECTION (AGO 85 7 25 1951) SECTION 23 Article IV. AND NO LAW SHALL BE ENACTED EXCEPT BY BILL followed by direct democratic VOTE.

A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators Stoll v. Gottlieb, 305 U.S. 165 171 (1938); Ex Parte Smith 126 P. at 671 (court may not give itself jurisdiction when not conferred by law). "An unconstitutional law is no law at all and cannot legitimately confer a court with jurisdiction." And "a jurisdictional defect cannot be procedurally defaulted in a habeas action." Kelly, 29 F.3d at 1113.

Further, Contrary to: Poindexter v. Greenhow, 114 U.S. 270, 303 (1885) (To take away all remedy for the enforcement of a right is to take away the right itself. But that is NOT within the power of the State. "The Rule of Law is dependant [ON] Rules that cannot be IGNORED".

The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, AS Amended by chapter 385, Statutes of Nevada 1955 providing that the official engrossed copy of a bill may by resolution be used as the enrolled bill enacted before the regular legislative session of 1957 were repealed prior to JAN 21 1957 AND of no force or effect on that date and further voided by the fact no enactment clause appears in Senate/Assembly Concurrent Resolution voiding SB-2 - NRS 200.366. (See EX-1) This Resolution cannot be used to pass ANY Bill into law, rendering ANY LAW using this vehicle "NULL AND VOID". Sec 5, 4, SB-2

The United States Supreme Court has spoken, "We [judges] have no more right to decline the EXERCISE of jurisdiction which is given, than to usurp that which is not given". THE ONE OR THE OTHER WOULD BE TREASON TO THE CONSTITUTION". U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 LEd.2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 404, 5 LEd. 257 (1821).

The enablement vehicle SENATE/ASSEMBLY SB-2 illegally passed denied the court of its jurisdiction to act.

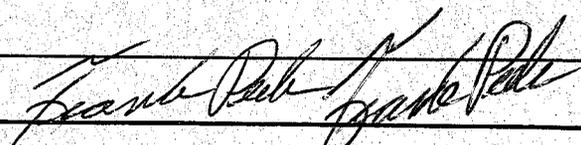
The law creating the law[s] is fatally flawed. NRS 200.366 is not actually A LAW.

SENATE CONCURRENT RESOLUTION CANNOT PROVIDE THAT THE official engrossed copy of SENATE BILL NO 2 BE USED AS AN ENROLLED BILL OR RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, WITHOUT THE "MANDATORY ENACTMENT CLAUSE", NEV CONST ARTICLE 4 SEC 23, STATE EX REL CHASE V ROGERS, 10 NEV. 250, 1875 NEV. LEXIS 24 (NEV 1875), AGO 85 (7-25-1957). SEE ALSO NHP V STATE 107 NEV 547 (NEV 1991) (CERTIFIED QUESTIONS OF LAW TO THE NEVADA SUPREME COURT PURSUANT TO NRAP 5. AT 549 SINCE CONCURRENT RESOLUTION, NO 29 AND OTHER SIMILAR RESOLUTIONS DO NOT CONTAIN THE REQUISITE ENACTMENT LANGUAGE, THEY CANNOT REPRESENT THE LAW OF THIS STATE. NOR DOES SB 2 APPEAR TO BE ENGROSSED.

Conclusion

Therefore, Mr. PECK'S conviction is constitutionally infirm. The COURT OF APPEALS ORDER MUST BE REVERSED AND MR PECK'S conviction VACATED.

Dated 12-22-17


Frank M. Peck # 57106
HDSP Box 650
Indian Springs NV 89070
Appellant pro se

Declaration, certificate of service and affirmation

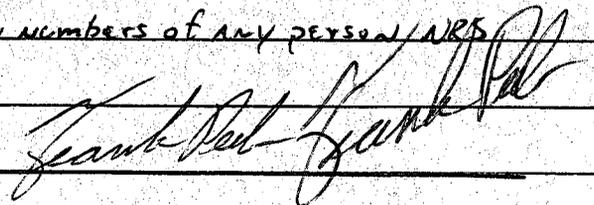
I Frank M. Peck do hereby swear under the penalty of perjury that the following is true and correct:

1. I am the debt in CR 96 2687 S Ct No. 72849.
2. All assertions in the attached PETITION FOR REVIEW are true based on personal knowledge and information believed to be true and DOCUMENTARY EVIDENCE NEWLY DISCOVERED and newly obtained and [therefore] exhibited here for the 1st time.
3. I bring this PETITION FOR REVIEW in good faith and for no dilatory or improper reason 28 USC 2254.
4. A true, correct, complete copy of said PETITION has been mailed to the Clerk of the Nevada Supreme Court 201 S Carson, Carson City, NV 89701 for filing and E-SERVICE on registered parties DA, AG, Pursuant to NRPC Rule 5 (b)(2)(D) and NEECR Rules 6 (a)(b) and 9 (b)(c) having same legal force/effect as service of paper document.
5. Service via NOTICE is imperative as WDOC has discontinued carbon paper and currently allows Mr Peck (1) opportunity to make legal copies per week.
6. Dated done and mailed this th ^{Jan} 2018 day of ~~December~~ 2017.

Signed under the penalty of perjury NRS 208.165, 28 USC 1746.

Dated 12-22-17

Affirmation: Contains no social security numbers of any person NRS 239 B.030.



Frank M. Peck # 57106

4050 Box 650

Indian Springs, NV. 89070

2 of 21 Debt/Appellant, pro se.

INDEX OF EXHIBITS

Exhibit 1

Pages 2

Description: SENATE Concurrent Resolution No. 1 -
Committee on Judiciary File No. 1 And Assembly Concurrent
Resolution No. 1 - Committee on Judiciary File No. 2 "Lacking /
Devoid of the MANDATORY ENACTING CLAUSE" or "Engrossment,"
(STATUTES OF NEVADA 1956-57)

Exhibit 2

PAGES 1

Description: Article IV New Const, sec 23.
"MANDATORY CONSTITUTIONAL PROVISIONS / IMPERATIVE
MANDATE OF THE PEOPLE".

Exhibit 3

Pages 2

Description: Attorney General Opinion AGO 85 (7-25-1951)
Constitutional law - "A SENATE joint Resolution IS NOT LAW
WITHOUT THE MEANING OF THE CONSTITUTION."

Exhibit 4

Pages 4

Description: JAN 21 1957 Revision Bill (SB-2) "UN-
ENGROSSED". Enrolled in accordance with the
provisions of Senate Concurrent Resolution No. 1.
The Bill shows no sign of engrossment.

Exhibit 1

Exhibit 1

Resolutions and Memorials

Senate Concurrent Resolution No. 1—Committee on Judiciary

FILE NO. 1

SENATE CONCURRENT RESOLUTION—Providing that the official engrossed copy of Senate Bill No. 2 may be used as the enrolled bill.

WHEREAS, The provisions of sec. 8 of chapter 3, Statutes of Nevada 1949, as amended by chapter 385, Statutes of Nevada 1955, provide that the official engrossed copy of a bill may by resolution be used as the enrolled bill; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the official engrossed copy of Senate Bill No. 2 shall be used as the enrolled bill as provided by law.

Assembly Concurrent Resolution No. 1—Committee on Judiciary

FILE NO. 2

ASSEMBLY CONCURRENT RESOLUTION—Expressing congratulations and gratitude to Russell West McDonald upon completion and enactment of Nevada Revised Statutes.

WHEREAS, The 48th session of the legislature of the State of Nevada, by unanimous vote of the members thereof, has enacted into law the Nevada Revised Statutes as the law of the State of Nevada to supersede all prior laws of a general, public and permanent nature; and

WHEREAS, Nevada Revised Statutes constitutes a complete revision and reorganization of all general statutes enacted during the 95 years that Nevada has existed as a state and territory, and is the first such revision in the history of our state; and

WHEREAS, The preparation of Nevada Revised Statutes was a monumental undertaking requiring a degree of intelligence, knowledge, technical ability and dedication possessed by few men; and

WHEREAS, The State of Nevada was fortunate that the Justices of the Supreme Court of the State of Nevada, in their capacity as the Statute Revision Commission, were able to secure as director of the commission Russell West McDonald, a native-born Nevadan, educated in the public schools of our state, a Rhodes scholar and a graduate of Stanford Law School, who was eminently qualified in all respects to perform the tremendous task imposed upon him; and

WHEREAS, The enactment of Nevada Revised Statutes marks the culmination of nearly 6 years of exceptionally devoted public service on the part of Russell West McDonald as statute reviser and legislative bill drafter; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislature of the State of Nevada hereby extends

STATUTES OF NEVADA 1956-57

LA
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Statute "1"

to Russell West McDonald its most hearty congratulations upon the completion and enactment of Nevada Revised Statutes and expresses to him its gratitude and that of the people of the State of Nevada for the years of selfless, dedicated and devoted effort which he has contributed in the public service to the preparation of Nevada Revised Statutes; and be it further

Resolved, That a copy of this resolution, signed by all of the members of the 48th session of the Nevada legislature, be duly certified by the secretary of state of the State of Nevada and be transmitted forthwith to Russell West McDonald.

Assembly Concurrent Resolution No. 2—Committee on Legislative Functions

FILE NO. 3

ASSEMBLY CONCURRENT RESOLUTION—Memorializing the late United States Senator and governor, Edward P. Carville.

WHEREAS, The people of our state suffered a tremendous loss on the 27th day of June, 1956, by the passing of the beloved and esteemed Edward P. Carville; and

WHEREAS, Edward P. Carville, affectionately known as "Ted," was a native of Mound Valley, the son of a pioneer Nevada family, was educated in the schools of this state, and was a graduate of Notre Dame University; and

WHEREAS, Few persons have ever held so many high offices of honor and trust as the late "Ted" Carville, who, in addition to his role as a civic leader and outstanding attorney, served with distinction as district attorney, district judge, United States District Attorney, and finally as our governor and United States Senator, and his industriousness, selfless dedication and integrity were the keys to his success as a lawyer and public servant and will forever remain as a radiant example for our future statesmen; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That we express this day our profound sorrow and condolences to the family of the late Senator Carville and tender them our deepest sympathy, and that we further acknowledge to them the irreparable loss which the calling of the late Senator Carville means to this state and nation; and be it further

Resolved, That the written form of this resolution be given such permanency as is possible for us to give by spreading it upon a memorial page of the journals of the assembly and the senate of this day in memory of and as a solemn tribute to Edward P. Carville; and be it further

Resolved, That a duly certified copy of this resolution be prepared by the secretary of state of the State of Nevada and be transmitted forthwith to the bereaved family of the deceased.

Exhibit 2

Exhibit 2

23. Enacting clause; law to be enacted by bill.

The enacting clause of every law shall be as follows: "The people of the State of Nevada represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

NOTES TO DECISIONS

This constitutional provision is mandatory and an act not in the proper form is void and unenforceable. State ex rel. Chase v. Rogers, 10 Nev. 250, 1875 Nev. LEXIS 24 (Nev. 1875).

This section is an imperative mandate of the people in their sovereign capacity to the Legislature, requiring that all laws to be binding upon them shall, upon their face, express the authority by which they were enacted, and an act which does not show such authority upon its face is not a law. State ex rel. Chase v. Rogers, 10 Nev. 250, 1875 Nev. LEXIS 24 (Nev. 1875).

Each of the words are necessary in the enacting clause.

The words "represented in senate and assembly," expressive of the authority which passed the law, are as necessary as the words "the people" or any other words of the enacting clause. State ex rel. Chase v. Rogers, 10 Nev. 250, 1875 Nev. LEXIS 24 (Nev. 1875).

OPINIONS OF ATTORNEY GENERAL

The enacting clause is mandatory.

* A joint resolution adopted by both houses cannot become a valid law if it does not contain the enacting clause required by this section. AGO 85 (7-25-1951).

Exhibit 3

Exhibit 3

to this section, the director has the power to provide the procedure and the standards to be observed in the purchase of the materials and supplies.

Respectfully submitted,
W. T. MATHEWS, *Attorney General.*

85. Constitutional Law—A Senate Joint Resolution Is Not a Law Within the Meaning of the Constitution.

CARSON CITY, July 25, 1951.

HON. HUSTON MILLS, *State Highway Engineer, Carson City, Nevada.*

DEAR MR. MILLS: Reference is hereby made to your letter of July 19, 1951, wherein you state the following matter and propounded an inquiry thereon:

The 45th Nevada Legislature, during its session, passed Senate Joint Resolution No. 7, which provides for the appointment of a three-man board consisting of one legislative representative from each legislative house, and one highway technician, to become a part of the Western Interstate Committee on Highway Policy Problems to study and make recommendations concerning uniform action on matters affecting highway safety, etc.

The resolution provides that such members shall be allowed per diem and traveling expenses, not to exceed \$500 for each member in any one 12-month period, and that the per diem and traveling expenses shall be paid from the State Highway Fund.

We request your opinion as to the constitutionality of the Act. Can the Legislature appropriate money from the State Highway Fund by resolution?

OPINION

An examination of Senate Joint Resolution No. 7 discloses that in the closing paragraph thereof it was sought to make an appropriation of \$500 for each member of the board provided for in the resolution in any one 12-month period and which appropriation was made from the State Highway Fund. The question is, was a constitutional appropriation of public moneys made by such provision in the resolution?

Section 19, Article IV, of the Constitution provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law."

Section 23, Article IV, provides: "The enacting clause of every law shall be as follows: 'The People of the State of Nevada, represented in Senate and Assembly, do enact as follows,' and no law shall be enacted except by bill."

Section 35, Article IV, provides, inter alia: "Every bill which may have passed the legislature shall, before it becomes a law, be presented to the governor. If he approve it, he shall sign it; but if not, he shall return it with his objections, to the house in which it originated."

Exhibit 4

Exhibit 4

~~Enact Nevada Revised Statutes as the law of the State of Nevada to supersede all prior laws of a general, public and permanent nature.~~

AN ACT to revise the laws and statutes of the State of Nevada of a general or public nature; to adopt and enact such revised laws and statutes, to be known as the Nevada Revised Statutes, as the law of the State of Nevada; to repeal all prior laws and statutes of a general, public and permanent nature; providing penalties; and other matters relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY,
DO ENACT AS FOLLOWS:

Section 1. Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada.

Sec. 2. Designation and Citation. The Nevada Revised Statutes adopted and enacted into law by this act, and as hereafter amended and supplemented and printed and published pursuant to law, shall be known as Nevada Revised Statutes and may be cited as "NRS" followed by the number of the Title, chapter or section, as appropriate.

Sec. 3. Repeal of Prior Laws. Except as provided in section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed.

Sec. 4. Construction of Act.

1. The Nevada Revised Statutes, as enacted by this act, are intended to speak for themselves; and all sections of the Nevada Revised Statutes as so enacted shall be considered to speak as of the same date, except that in cases of conflict between two or more sections or of any ambiguity in a section, reference may be had to the acts from which the sections are derived, for the purpose of applying the rules of construction relating to repeal or amendment by implication or for the purpose of resolving the ambiguity.

2. The provisions of Nevada Revised Statutes as enacted by this act shall be considered as substituted in a continuing way for the

Exhibit "A"

provisions of the prior laws and statutes repealed by section 3 of this act.

3. The incorporation of initiated and referred measures is not to be deemed a legislative reenactment or amendment thereof, but only a mechanical inclusion thereof into the Nevada Revised Statutes.

4. The various analyses set out in Nevada Revised Statutes, constituting enumerations or lists of the Titles, chapters and sections of Nevada Revised Statutes, and the descriptive headings or catchlines immediately preceding or within the texts of individual sections, except the section numbers included in the headings or catchlines immediately preceding the texts of such sections, do not constitute part of the law. All derivation and other notes set out in Nevada Revised Statutes are given for the purpose of convenient reference, and do not constitute part of the law.

5. Whenever any reference is made to any portion of Nevada Revised Statutes or of any other law of this state or of the United States, such reference shall apply to all amendments and additions thereto now or hereafter made.

Sec. 5. Effect of Enactment of NRS and Repealing Clause.

1. The adoption and enactment of Nevada Revised Statutes shall not be construed to repeal or in any way affect or modify:

- (a) Any special, local or temporary laws.
- (b) Any law making an appropriation.
- (c) Any law affecting any bond issue or by which any bond issue may have been authorized.
- (d) The running of the statutes of limitations in force at the time this act becomes effective.
 - (a) The continued existence and operation of any department, agency or office heretofore legally established or held.
 - (b) Any bond of any public officer.
 - (c) Any taxes, fees, assessments or other charges incurred or imposed.
 - (d) Any statutes authorizing, ratifying, confirming, approving or accepting any compact or contract with any other state or with the United States or any agency or instrumentality thereof.

"A"

appears to have been the intent of the legislature or the people.

Sec. 6. Severability of Provisions. If any provision of the Nevada Revised Statutes or amendments thereto, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of the Nevada Revised Statutes or such amendments that can be given effect without the invalid provision or application, and to this end the provisions of Nevada Revised Statutes and such amendments are declared to be severable.

Sec. 7. Effective Date. This act, and each and all of the laws and statutes herein contained and hereby enacted as the Nevada Revised Statutes, shall take effect upon passage and approval.

Sec. 8. Omission From Session Laws. The provisions of NRS 1.010 to 710.590, inclusive, appearing following section 9 of this act shall not be printed or included in the Statutes of Nevada as provided by NRS 218.500 and NRS 218.510; but there shall be inserted immediately following section 9 of this act the words: "(Here followed NRS 1.010 to 710.590, inclusive.)"

Sec. 9. Content of Nevada Revised Statutes. The following laws and statutes attached hereto, consisting of NRS sections 1.010 to 710.590, inclusive, constitute the Nevada Revised Statutes:

