

## SECURE 2.0

# Court Rules 2023 Budget Bill Not Legally Enacted—Where Does That Leave SECURE 2.0?

According to a Federal court in the Northern District of Texas, the Consolidated Appropriations Act, 2023 (CAA), the legislation of which SECURE 2.0 was a part, was “passed in violation of the Constitution’s Quorum Clause.”



**Publish Date:**

October 08, 2024

**By:**

**Paul Mulholland**

Content Writer and Reporter



According to a Federal court in the Northern District of Texas, the *Consolidated Appropriations Act, 2023* (CAA), the legislation of which the SECURE 2.0 Act was a part, was “passed in violation of the Constitution’s Quorum Clause.”

Although it has no significance for SECURE 2.0 at present, it is worth keeping an eye on, according to American Retirement Association Chief Legal Officer Allison Wielobob.

## **The Pregnant Workers Fairness Act**

In February, the U.S. District Court for the Northern District of Texas ruled that the Pregnant Workers Fairness Act (PWFA) could not be enforced against the State of Texas. The PWFA was also passed as part of the CAA.

According to the opinion, *State of Texas v. Merrick Garland*, the PWFA cannot be enforced against Texas because the U.S. Constitution requires a majority of the House to be present when conducting its business.

When the CAA passed the House by 225-201, 226 of the House’s 435 members voted by proxy. The House had allowed members to vote by proxy since 2020 to allow members greater flexibility during the pandemic, but that voting rule is no longer in effect.

The PWFA requires employers to make reasonable accommodations for pregnant employees, such as allowing them to sit or stand and take more frequent bathroom breaks.

## **The Quorum Clause**

The Quorum Clause of the Constitution reads, “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business.”

The Department of Justice, the defendants in the case, pointed out that this text does not actually state that members must be physically present.

As noted by Judge James Wesley Hendrix in his decision: “The defendants contend that the Quorum Clause ‘defines only the minimum number of Members who must participate for either House to conduct business, while being silent on the manner of how Members may participate,’ and that the members who voted by proxy were participating and therefore count towards a quorum.”

The court remained unpersuaded and wrote, “For over 235 years, Congress understood the Constitution’s Quorum Clause to require a majority of members of the House or Senate to be physically present to constitute the necessary quorum to pass legislation” and added that “by including members who were indisputably absent in the quorum count, the Act at issue passed in violation of the Constitution’s Quorum Clause.”

## **The CAA and SECURE 2.0**

The court issued a limited ruling and only excused the State of Texas from having to comply with the PWFA, saying, “though the Court finds that the passage of the Consolidated Appropriations Act violated the Constitution, Texas does not seek an injunction of – and the Court does not enjoin – the entire Act. Rather, the Court enjoins only the application of the Pregnant Workers Fairness Act against Texas.”

“In other words, the Court saw its task as remedying only the specific harm asserted by Texas,” Wielobob said. “All other employers must comply with PWFA, and the rest of the CAA still stands, including SECURE 2.0. Still, the Court cautioned that the CAA provides ‘extensive funding for the federal government’s operations and several pieces of permanent legislation. But there is no too-big-to-be unconstitutional exception for congressional action.’”

Thomas Clark, a partner with the Wagner Law Group, said, “No party has sought to invalidate the entire CAA,” and “it should be noted that it isn't clear or likely that if the 5th Circuit agrees with the district court that it will automatically affect SECURE 2.0.”

On May 1, the Department of Justice appealed the case to the U.S. 5th Circuit Court of Appeals – the same circuit court that overturned the Department of Labor’s fiduciary rule in 2018 and will soon hear an appeal from the DOL to reinstate the Retirement Security Rule. The case has not yet been heard.

In August, Senate Minority Leader Mitch McConnell (R-Ky.) wrote an amicus to the 5th Circuit. He wrote that when the House adopted the proxy voting rule, he “spoke out in strong opposition to the practice, in part because of the legal controversies it could present.”

However, “Despite his fierce opposition to proxy voting, Senator McConnell believes it critical that courts nevertheless respect each house of Congress’s power to ‘determine the Rules of its Proceedings.’ U.S. Const. art. I, § 5, cl. 2. Accordingly, Senator McConnell urges the Court to reverse.”

## SUBSCRIBE

Sign up to Receive NAPA-Net Daily.

---

## Comments

Please log in or create a free account to comment on this article.

[Log In or Create Account](#)

**Advertisement**