


2-17-2014

Chapter 11: The First Defeat of the Override Attempt—in the Senate Committee on Env't&Public Works

Zygmunt J.B. Plater

Boston College Law School, plater@bc.edu

Follow this and additional works at: http://lawdigitalcommons.bc.edu/darter_materials

 Part of the [Environmental Law Commons](#), [Land Use Planning Commons](#), [State and Local Government Law Commons](#), and the [Water Law Commons](#)

Digital Commons Citation

Plater, Zygmunt J.B., "Chapter 11: The First Defeat of the Override Attempt—in the Senate Committee on Env't&Public Works" (2014). *Snail Darter Documents*. Paper 47.

http://lawdigitalcommons.bc.edu/darter_materials/47

This Archival Material is brought to you for free and open access by the The Snail Darter and the Dam at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Snail Darter Documents by an authorized administrator of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

[from book manuscript text prior to condensation]

Chapter 11

The First Defeat of the Override Attempt—in the Senate Committee on Env't&Public Works

The focus is a full Committee hearing to be chaired by Senator Jennings Randolph of West Virginia, an old pol nearing the end of his 34-year career in Congress. We work hard on Senator Randolph. Rupe Cutler, our Michigan friend in the Department of Agriculture, has a friend, Ralph McGuinness, a friend of Randolph's, who pushes the chairman to defend the Act. Introduced by Ollie Houck I have three long evening phone calls with Zip Little, the chairman's hometown buddy who thinks Baker is a snake and promises to lobby Randolph for the darter. Christine Stevens, the hard-charging wildlife socialite ally heading the animal welfare group, has a long afternoon talk with the chairman. Her husband, head of the Kennedy Center, has often donated money to Randolph's campaigns. Kathy Fletcher in the President's Domestic Council pushes White House staffers to call the chairman and other Committee members on our behalf, though Ollie Houck cautions that Carter's pull on the Hill has dwindled to almost nothing.

Because the GOP so regularly leans against environmental protection, we work the Committee's Democrats hardest. Muskie will be good; he considers himself the father of American environmentalism. New York's Moynihan generally votes for environmental protections if we can get him to show up. Gary Hart also is often preoccupied with other matters. Alaska's Mike Gravel is a loose cannon, but his staff tells us he likes to stick it to Establishment targets like TVA. Only Bentsen from Texas and North Dakota's Burdick, both industry flacks, are doubtful Democrats.

Baker can beat us if he gets Bentsen and Burdick and holds all the Republicans on the Committee. But Senator Wallop's staff tells us he vividly remembers Jean Ritchey's testimony for the farmers last year when the senator was shocked by her account of how most of her family's land was being taken by TVA for resale. They think Wallop will buck Baker on this one. McClure of Idaho normally is a pork barreler, but his staff tells us he's not eager to vote for Tellico Dam; four years ago, with help from Baker and Nixon aide John Ehrlichman he had rammed through an override of review procedures for the Teton Dam near Rexburg, Idaho, and shortly after it was finished two years ago the dam burst, killing a dozen people downstream and causing \$2 billion in damages. John Chafee of Rhode Island will stand strong for us, his staff says. He's a friend of Christine's and bemoans the Republican Party's retreat from its traditional conservation principles. Stafford of Vermont is a New England Republican, and that means he too is ready to vote against the pork and preacher crowd that have taken over the GOP. Even Domenici of New Mexico shows interest. He is getting pressure from environment-minded constituents who criticize his zero rating in the League of Conservation Voters' annual scorecards, and we have gotten the League to tell senators this vote will be scored, giving Domenici a chance to improve his rating.

We try to get the press to focus on the upcoming hearing. There's a short editorial in the Times, but no one else picks up on it. CBS has taped a segment on the dam, but executive producer Al Wasserman tells me they won't run it because "the dam is old hat now after the God Committee story."

By the day of the Committee vote, however, we get the strange sense that we're winning. At the start of the hearing on the morning of May 9, Baker seems wryly amused. "This snail darter is becoming the bane of my existence, the nemesis of my golden years!" He expresses anger that the God Committee did not do "what Congress intended," that is, overriding the darter and getting him out of a tight political place. He declares that the darter is "not really endangered," because many people in the papers and talk radio have said they've seen snail darters in creeks and puddles across the land. But he doesn't press hard against the Committee members, Republican or Democrat. Is he pulling his punches? Half the committee members, many of them potential Baker votes, don't show up. As the vote approaches after an hour of discussion, Baker makes a short summary statement, passes a note to Domenici with a warm pat on the back, and then excuses himself from the room saying "I have to meet with the President."

Randolph calls the vote. We win, 10-6! The four GOP senators who had sounded sympathetic to us, including Domenici, have shown up and voted against Baker. On the Democratic side, Moynihan forgets to come and vote with us, but Chairman Randolph and five Democrats are there and vote No for us. We have faced our Donnybrook and defeated the most powerful Republican in the Senate!

Note to journal, late that night: "What a process, where even when you win you can respect so few of the individual decisions. If we were to do a read-out on why we got these ten winning votes, the real reasons would be shocking." Aside from Chafee and Culver, and maybe Wallop, it seems that every committee member was voting for extraneous political reasons. Why, for instance, did we get the vote of Jennings Randolph, a porkbarreler who usually works closely with Baker? None of the reasons turned on the merits of the issue. Randolph seems to have voted with us—

...because he didn't want to undercut John Culver, his earnest freshman senator subcommittee chairman.

...because Roger Stevens, the husband of Christine Stevens who pushed Randolph for us, had donated so much money to Randolph's campaigns.

...because Marion Edey told Randolph's counsel Phil Cummings that this would be a "freebie": the League of Conservation Voters would register this vote as erasing a prior anti-environmental vote Randolph had made.

...because we got the Chairman's old home-town buddy Zip Little back in West Virginia to tell him to vote our way,

...because, persuaded by Kathy Fletcher, White House congressional liaison staffers had called him and the members of his committee.

...because Howard Baker, starting to run for president, had indicated to Randolph that he could live with a negative outcome in the Committee.

...and so on...

As far as we can discern, the actual economic and legal merits of the debate had nothing to do with Randolph's vote, nor with most of the other votes we'd won, not to mention those we'd lost. When there's an absence of press coverage, at least, the strong merits of a case seem beside the point in standard Washington congressional procedure. "It's off-putting," the journal entry continues, "but when you realize this process goes on every day, you realize you can't avoid it. You get sucked into the political gaming and have to do it if you have the opportunity. Yet you lose something when you give up your belief that legislators' votes are guided by the merits. Hill staffers recognize it—when they realize you have come not to expect their bosses to vote on the facts, they just talk with you in terms of the game. Liz Raisbeck is a relative newcomer to the citizen ranks, still holding to the belief that factual arguments matter, and the Hill staffers sense that—so to that extent she can still hold them to arguments on the merits [implicitly assuming that the issue's merits do matter]." Once the wool is lifted from your eyes, however, it's hard to avoid being cynical.