
# Journal of the American Society of Legislative Clerks and Secretaries

Volume 29 Winter 2024

# Journal of the American Society of Legislative Clerks and Secretaries

## 2023-2024 Committee

Chair: Heshani Wijemanne (CA)
Assistant Secretary of the Senate

Vice Chairs: Sarah Curry (OR)
Journal Clerk of the House of Representatives

J.W. Wiley (LA)
First Assistant Secretary of the Senate

*ex officio*…….Yolanda Dixon (LA)
*ex officio*…….Josh Babel (AZ)
*ex officio*…….Timothy Sekerak (OR)
*ex officio*…….Ron Smith (LA)
*ex officio*…….Sabrina Lewellen (AR)

### Members

Megan Selin Allen (UT)
Morgan Barton (MO)
Elizabeth Eilers (AK)
Joy Engelby (MO)
Kelly Fogleman (LA)
Jeff Hedges (TX)
Nigel Hicks-Tibbles (VT)
Kenyatta Honeycutt (LA)
Krystle Isvoranu (AZ)
Becky King (KY)
Sean Kochaniewicz (WA)
Anne Landgrebe (WV)
Julieanna McManus (NV)
Bernadette McNulty (CA)
Julie Martyn (WI)
Brooke Mason (NC)
Charles May (CA)
Jennifer Novak (ID)
Derek Page (IL)
Natalia Ravelo (Puerto Rico)
Sarah Ritter (AK)
Tara Robbins (TN)
Rhonda Schierer (KY)
Lou Taylor (AK)
Morgan Tripamer (MO)
Theresa Utton-Jerman (VT)
Erick Vázquez González (Puerto Rico)
Francisca Zabala (CA)

## INFORMATION FOR AUTHORS

The editors of the *Journal of the American Society of Legislative Clerks and Secretaries* welcomes manuscripts which would be of interest to our members and legislative staff, including topics such as parliamentary procedures, precedent, management, and technology. Articles must be of a general interest to the overall membership.

Contributions will be accepted for consideration from members of the American Society of Legislative Clerks and Secretaries, members of other National Conference of State Legislatures staff sections, and professionals in related fields.

All articles submitted for consideration will undergo a review process. When the Editorial Board has reviewed a manuscript, the author(s) will be notified of acceptance, rejection or need for revision of work.

## STYLE AND FORMAT

Articles should follow a format consistent with professional work, whether it is in the style of the Chicago Manual, the MLA, or APA. Articles should be submitted in MS Word, single spaced with normal margins.

All references should be numbered as footnotes in the order in which they are cited within the text. Accuracy of the content and correct citation is expected of the author. Specialized jargon should be avoided as readers will skip material they do not understand. Charts or graphics which may assist readers in better understanding the article's content are encouraged for inclusion.

## SUBMISSION OF ARTICLES

Articles for the 2025 Journal should be submitted electronically, not later than September 1, to the Chair:

Heshani Wijemanne
Heshani.Wijemanne@sen.ca.gov

Inquiries from readers and potential authors are encouraged. You may contact the Chair by telephone at (916) 651-4171 or by email at Heshani.Wijemanne@sen.ca.gov.

Letters to the editor are welcomed and may be published at the conclusion of the journal to provide a forum for discussion.

# From the Editors

This year, we have been pleasantly overwhelmed with content for the Professional Journal and we hope the trend continues. As most of you know, the Professional Journal has had much difficulty with securing content for publication. Understandably so, making the commitment to write a piece takes time and effort, outside the demands of our jobs and personal lives. The Professional Journal Committee would like to extend great appreciation and thanks to our writers, for taking that time to create meaningful work for the Society.

We hope you all will take the time to read each of the articles that your colleagues have worked so hard to write for you. Each piece is interesting, informative, and important.

As always, please get in touch with the Professional Journal Committee if you have an interest in submitting a piece for publication.

Sincerely,

The Editors


Krystle Isvoranu


Joshua Babel

# A Move to Expel or Censure: Arizona's Changing Landscape

*By: Krystle Isvoranu, Chief Clerk of the Arizona House of Representatives*
*Joshua Babel, Deputy Clerk of the Arizona House of Representatives*

## Introduction

The Arizona Constitution grants the authority to each Legislative house to determine its own rules of procedure and to punish its members for disorderly behavior. The Constitution also grants the authority for each house to expel any member with the concurrence of two-thirds of its members. This provision for expulsion has been used only five times in Arizona's history, with two of those instances taking place in the last five years. Similarly, the ability to censure, nowhere specifically mentioned in the Constitution or in procedural rule, has been used only a handful of times. However, as political polarization intensifies, so too does the demand for members to be able to hold each other accountable.

## Expulsions in Arizona

The Arizona Constitution provides that "Each house may punish its members for disorderly behavior, and may, with the concurrence of two-thirds of its members, expel any member."[1] It also requires that, "Each house, when assembled, shall choose its own officers, judge of the election and qualification of its own members, and determine its own rules of procedure."[2] What qualifies as "disorderly behavior," which the Constitution does not define, has been a fluid concept, determined instead by the will of the members.

Arizona's legislative expulsion process has been used four times in the House and once in the Senate. In the House, the process to expel has always been done by a vote on a legislative measure, specifically a House Resolution, that expelled the member and declared their seat vacant. The first use of the expulsion provision was in 1948 – a mere 36 years into Arizona's statehood – when two Representatives were expelled after a fight broke out in the House Chamber in September of that year. A special House committee was appointed to investigate the incident and subsequently submitted a report that was read on the floor to all members. Following the reading of the report, the

[1] Arizona Constitution, Art. 4, Part 2, Section 11.
[2] Arizona Constitution, Art. 4, Part 2, Section 8.

members voted to go into executive session where they voted on two resolutions[3], one to expel each member.[4] Next, in 2018, a House member was expelled by House Resolution following a special investigation under the House's Workplace Harassment Policy that was conducted in response to multiple allegations of sexual harassment made against the member.[5] Finally, in 2023, a member was expelled through the adoption of a House Resolution following an investigation by the House Ethics Committee into the member's involvement in facilitating a guest presentation to a committee hearing that impugned sitting members of the legislature.[6]

In each of these instances, to comply with the Arizona Constitution's three-day reading requirement, an emergency was declared and with a two-thirds vote, the resolutions were brought directly from introduction to a vote in a matter of minutes. Although the procedure that the House has used to expel members has been consistent, the most recent expulsion made a slight but notable departure from that norm. Specifically, although the Speaker signed the Resolution's introductory set, the Resolution was introduced by "House of Representatives" as opposed to a particular member sponsor, and shows in the system accordingly. The resolution was adopted with 46 ayes, 13 nays and 1 not voting, resulting in the member's expulsion.

By contrast, the Senate expelled a member in 1991 by adoption of a "Declaration of Expulsion," which "declare[d]" the member expelled and announced a vacancy.[7] In that instance, several members of the Arizona House and Senate were indicted on criminal charges after an undercover law enforcement investigation revealed corruption at the Arizona Legislature. The Senate Committee on Ethics subsequently conducted its own investigation and held public hearings regarding one of the indicted Senators. Following this investigation, the Senate used the Declaration to announce the Committee's findings to the chamber and its recommendation of expulsion. The Declaration was voted on and ultimately adopted by the body with the requisite two-thirds concurrence.

**Censures in Arizona**

According to chamber Journal records, a formal censure has only been used twice by the Arizona Legislature, both in the last two years. In 2022, the Arizona Senate censured one of its members by motion. The Senator making the motion described the "unbecoming" conduct of the member and cited the Arizona Constitution's authority for each house to "punish its members for disorderly behavior" as well as Section 221(b) of Mason's Legislative Manual of Legislative Procedure regarding privileges of the house. The motion to censure was made, debated, and it carried with a vote of 24 ayes and 3 nays.

In 2023, the Arizona House followed a similar procedure. After conduct by a member that resulted in an Ethics Complaint, the Ethics committee conducted a hearing and issued a report finding that the member had engaged in "disorderly behavior." Although the House has established custom and precedence of using a Resolution to put forth findings about a member's behavior before asking the

[3] House Resolution No. 5 and House Resolution No. 6, Seventh Special Session, 1958.
[4] Arizona House Journal, Seventh Special Session, October 1, 1958, pg. 108.
[5] House Resolution 2003, Fifty-third Legislature, Second Regular Session, 2018.
[6] House Resolution 2003, Fifty-sixth Legislature, First Regular Session, 2023.
[7] Arizona Senate Journal, Wednesday March 20, 1991, pg. 182.

House to vote on any particular punishment, doing so here was not feasible. In this instance, to move forward immediately on a Resolution would have required waiving the constitutional three-day reading requirement, which would have itself required a two-thirds concurrence. But, the members bringing forth the motion to censure did not have the votes for such a waiver. Thus, the Members proceeded for the first time *without* a legislative measure or any written text to vote on when disciplining a member and instead made an oral motion to censure.

Before a vote on the motion to censure took place, however, the Speaker Pro Tempore rose under a Privilege of the House and made a substitute motion to expel the member in question. Again, for the first time, the motion to expel was made without a Resolution or any accompanying language. The motion to expel was defeated and the members again had the motion to censure before them.

Presumably because much of the House's official actions require a majority of the entire body, many anticipated that the motion to censure likewise required at least 31 votes to carry – a majority of 60 members in the House. But this requirement applies to bills, not this type of motion. Specifically, the Arizona Constitution provides, "A majority of all members elected to each house shall be necessary to pass any bill, and all bills so passed shall be signed by the presiding officer of each house in open session."[8] Nothing in the Arizona Constitution or the House Rules, however, requires more than a simple majority of *those voting* to discipline a member through a motion to censure. Moreover, Mason's Manual Section 42-8 states:

> *"There must be an affirmative vote. To make a decision or take an action, there must be a vote in the affirmative of at least a majority of the votes cast. The constitution may require more than a majority vote for certain purposes. Parliamentary law requires only a majority vote, but the rules of a legislative body may require more than a majority vote for certain, stated purposes."*

Because the censure was by oral motion, not by written Resolution, as had been done in the past, 31 affirmative votes was not the requirement. Instead, only the affirmative vote of at least a majority of the votes cast was required. This ruling did not sit well with the members that had voted against the censure, which ultimately carried by a vote of 30 ayes and 28 nays.

In the future, it is difficult to say if members will return to wanting a legislative measure to serve as the methodology for implementing discipline. The members gain a lot of freedom by not needing to waive the three-day reading requirement to take disciplinary action. Similarly, the voting threshold is lower when the members are voting on something other than a legislative measure. In a time of increased pressure to act immediately, members might want to use the quickest and easiest method to arrive at their desired outcome – possibly at the expense of dispensing with a 70-year-old practice. The constitutional restraint of needing a two-thirds vote to expel will likely serve as the only guardrail on a constantly-changing process.

[8] Arizona Constitution, Art. 4, Part 2, Section 15.


Obie Rutledge


Timothy Sekerak


James Goulding


McKenzie Barker

# Oregon's First Legislative Expulsion

*Written By:*

*Obie Rutledge, Secretary of the Oregon Senate*

*Timothy Sekerak, Chief Clerk of the Oregon House of Representatives*

*Edited By:*

*James Goulding, Senate Publications Coordinator & McKenzie Barker, Senate Measure Liaison*

**Background & Context**

At the end of 2020, Oregon was reeling from the COVID-19 pandemic, as well as catastrophic wildfires that had engulfed significant portions of the state that summer. The governor and legislative leaders decided to call the legislature into its third special session of the year. By proclamation the governor called the assembly in on December 21, 2020. The stated purpose was to enact legislation before the end of the year to provide protections and economic relief to Oregonians affected by COVID and wildfire recovery emergencies, but legally there are no restrictions on what the Oregon Legislature may take up during a special session.

Additionally, President Joe Biden had recently been declared the winner of the 2020 Presidential Election. Together, these factors created a storm that hit the Oregon Capitol on December 21, 2020. When the special session was underway, several dozen protesters gathered outside the Capitol protesting COVID-19 health restrictions and calling on lawmakers and the governor to reopen the state economy. They also believed the Capitol should be open to the people, thereby allowing them to present their protests to members in person. The protestors included members of the Proud Boys, Patriot Prayer, and supporters of QAnon.

**Capitol Breach & the Ensuing Chaos**

The Oregon Capitol was physically closed to the public in accordance with both House and Senate rules adopted for the special session:

> House Rule 3.07 (3) The Capitol shall be physically closed to the public for the duration of the Special Session. Accredited representatives of the news media may be physically present in the Capitol during hours that legislative proceedings are taking place.

Even though the Capitol was occupied only by staff and members, all sessions and committee meetings were contemporaneously streamed on the internet and broadcast on two television monitors that were stationed at the east and west side entrances of the Capitol; this was to ensure that the public was able to observe all legislative deliberations regardless of whether they had the means for an internet connection.

At 8:29 a.m. on December 21, 2020, in a video recorded by building security cameras, Representative Mike Nearman appears to hold the door open to allow protestors into the Capitol's west side front entrance. Coincidentally, that is about the same time the House was adopting special session rules. [1]

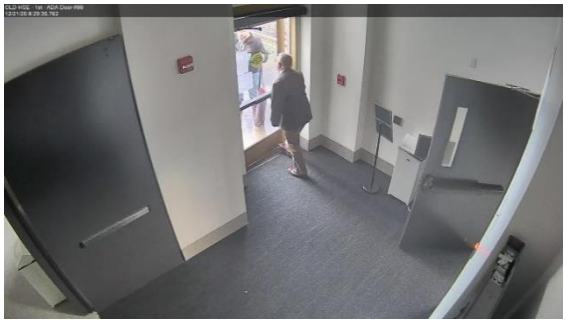


*Figure 1. Rep. Nearman opening a door to the Capitol building for protesters, as captured on a security camera.*

At first, only a few protesters stepped across the threshold. The first ones through the door urged others to follow them inside, which turned into a more aggressive action to enter the Capitol. The police quickly responded to the scene and endeavored to first order, then physically push, the protesters back out of the building through the door they had entered.


*Figure 2. Salem police responding to the protesters who had gained access to the Capitol building.*

[1] **Video of Rep. Nearman and Breech of Capitol, 12/21/2020**

During the several minute altercation, police officers were hit with bear spray and mace as well as physical force and resistance. The chemicals that were released into the building caused breathing issues for some police, legislative members, and staff in far flung portions of the building. Elsewhere, the building exterior was vandalized while protestors worked to break-down locked entry doors; during the mayhem, another protestor assaulted two journalists that had been outside covering the story. It was a terrifying day for members and staff. As the entrance began to buckle, it dawned on us how little was between this group and the staff in the Chief Clerk's Office.

*Figure 3. Salem police were met with resistance by protesters.*


*Figure 4. Protesters tried to force entry by breaking doors around the Capitol building.*

**Rule 27 Complaint & Conduct Committee Process**

Shortly after the video of Rep. Nearman appearing to hold the door open was made public, the acting Legislative Equity Officer for the Oregon Legislative Assembly received a conduct complaint and conduct report related to Rep. Nearman under Oregon Legislative Branch Rule 27. Rule 27 prohibits conduct by members of the Capitol community that constitute harassment and create a hostile work environment. Once reports or complaints are received, they are assigned to an external investigator who investigates and prepares a written report with their findings[2]. Debate ensued internally as to whether discrimination and harassment rules were fit for the type of conduct in this matter. A respectful workplace policy with more general behavioral guidelines might have been a more applicable basis for complaint, but that policy went into effect on January 1, 2021, and was not retroactive. Meanwhile, events proceeded slowly. Outside of the Rule 27 process, the House Speaker removed Rep. Nearman from his committee assignments on the first day of session, January 11, 2021.

Later that day on the House floor, Rep. Nearman announced that he had voluntarily agreed to interim safety measures and would provide 24-hour notice before entering the Capitol, relinquish his Capitol

[2] **https://www.oregonlegislature.gov/leo/Pages/rule27.aspx**

keycard badge, and would not provide members of the public unauthorized access to the Capitol building.

Under Rule 27, bipartisan conduct committees, made up of an equal number from both major political parties, and elected by their respective chamber, have the authority to make certain decisions related to members. These include imposing interim safety measures after complaints have been submitted and before determining whether a violation of the rule had occurred, following the investigator's final report.

For members, interim safety measures must be narrowly tailored to preserve the member's ability to perform core legislative functions while addressing immediate safety concerns. They can only be imposed after the member is given notice of the proposed measures and has an opportunity to be heard by the committee.

After hearing from the independent investigator and Rep. Nearman, the House Committee on Conduct voted on January 15, 2021, to impose four interim safety measures, including the three items previously announced. The fourth required him to remain in his legislative office when at the Capitol unless conducting legislative business in designated areas such as the House Chamber. The latter was recommended by the investigator to balance safety and his ability to conduct legislative business.
Conduct committees receive a formal written investigation report of a complaint involving a member when completed. They then must hold a public meeting within 21 days of receiving that report. In that meeting, the committee hears from and asks questions of the investigator, the respondent, and the one or more complainants. It then makes findings of fact to determine whether based on those facts, the respondent has violated Rule 27. If the committee determines there was a violation, it can impose remedial measures, including a reprimand, monetary fine, or other appropriate remedy. It can also recommend expulsion by passing a resolution to be adopted by the full house.

The committee received the investigator's report on May 26 and scheduled its public meeting for June 9. The meeting agenda and investigator's report were posted on the legislative website on June 2[3]. The June 9th meeting of the House Conduct Committee never took place.

**"Operation Hall Pass"**

As you can see, this was a long slow process that was ongoing from December 2020 to late May 2021. This was about to change.

[3] **https://olis.oregonlegislature.gov/liz/2021R1/Committees/HCOND/2021-06-09-17-30/MeetingMaterials**

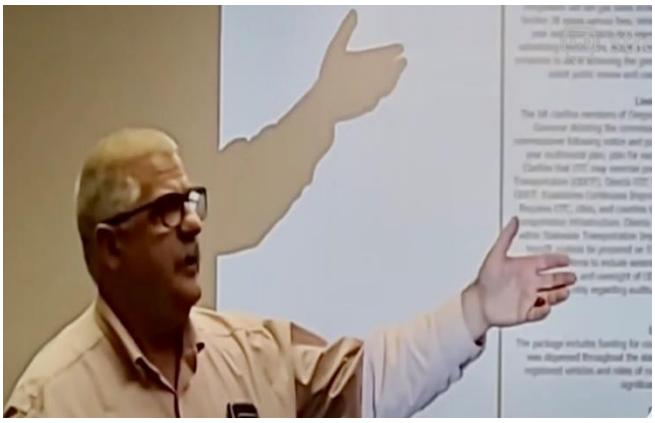


*Figure 5. Representative Mike Nearman sharing his phone number and discussing how protesters might be allowed to enter the state Capitol building.*[1]

On June 4, Oregon Public Broadcasting reported that Rep. Nearman was the focal point in an incriminating Dec. 16, 2020, video. This video, which was dubbed "Operation Hall Pass" by the participants, was recorded five days prior to the special session. In the video, Rep. Nearman tells an audience how to contact him whenever they want help to gain access to the locked Capitol. Five days later, the Capitol is breached after Rep. Nearman appears to intentionally allow protestors into the building at the same door mentioned in the video. There is no report documenting anyone from that audience contacted Rep. Nearman on that day.

Once this video hit the press, House leadership put the investigation into overdrive. The question was, did this apparent pre-meditated action and apparent rule violation qualify as "disorderly behavior" in accordance with House Rules and the Oregon Constitution?

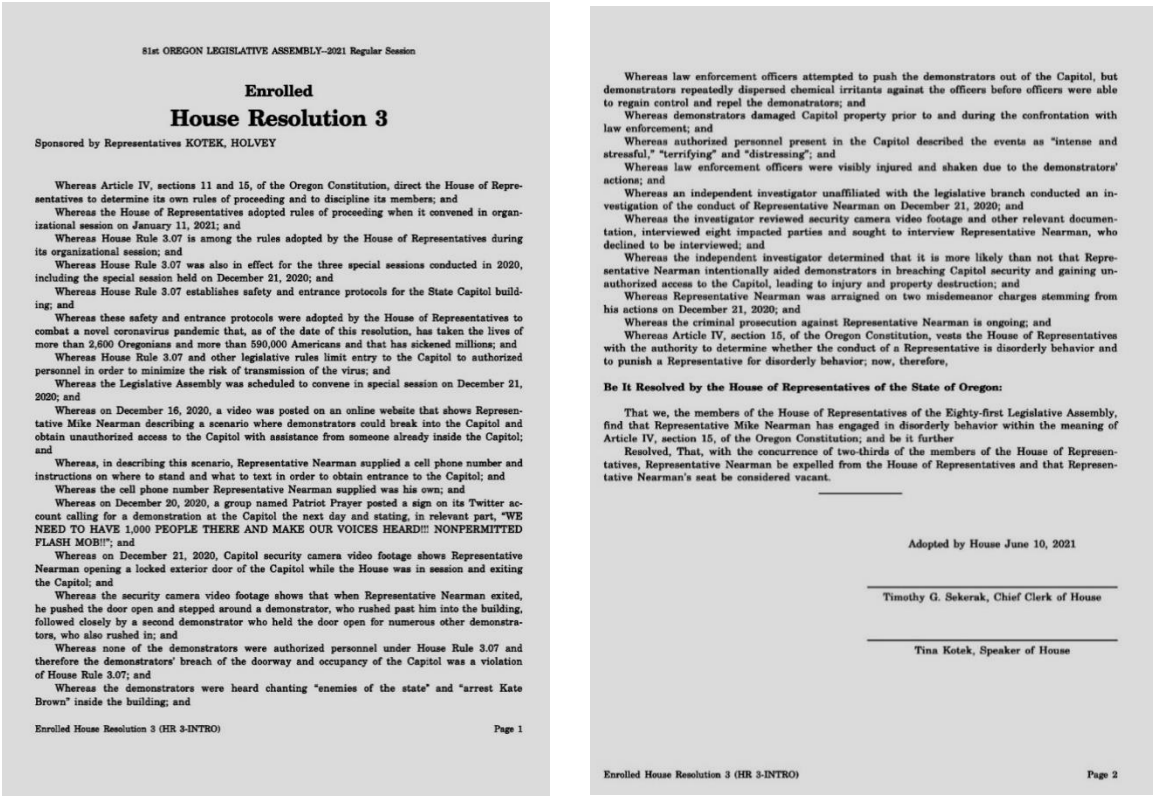
**Expulsion via Resolution**

At this point, it became clear that an expulsion was possible, if not likely, as pressure to act decisively was reaching a crescendo. As the title states, this was Oregon's first expulsion experience. The Clerk's Office could find no record of a previous expulsion or even an attempt at one in either the House or Senate. We had nothing in Oregon to research to formulate an orderly and equitable process. At this point the authors would like to acknowledge the value of the Society as a resource to clerks and secretaries who find themselves in uncharted territory. The best practices and lesson learned gleaned from Society seminars and programs was invaluable to us in guiding a chamber through a deliberative and transparent process in the context of extremely volatile political passions. Speaking with colleagues in other states, we made one important recommendation to leadership: if an expulsion was coming, it should be in the form of a resolution, as opposed to a motion. This addressed three issues. First, a resolution would have to go through the same steps as any other measure, including the committee process with an emphasis on due process. Second, because Oregon does not amend on the floor, that gave some comfort to leadership the measure would not be altered once it came up for a final vote. Finally, in Oregon a measure creates a more complete record for our "Legislative Information" system which in turn helps with public transparency – allowing the public to locate and follow the measure through the process.

Unfortunately, at this point in the session most committees had, by rule, lost the ability to introduce new measures on their own volition. Certain committees are exempt from the deadline, but the House Conduct Committee was inadvertently left off that list. Consequently, rather than seeking to amend House Rules to give the committee that power, the Speaker used one of the five opportunities granted by rule for each member to introduce their own measures after the deadline to draft and introduce the

measure to be used as the vehicle for legislative action. With that, although it was never the desire of the Speaker to introduce a member bill with all the attendant political implications associated with partisanship, House Resolution 3 was introduced on June 7, 2021.

As you can see from Figure 6 (next page), the resolution as drafted posits that Rep. Mike Nearman engaged in disorderly behavior within the context of 26 whereas clauses that spell out the case against him, and most significantly, that with the concurrence of two-thirds of members that he should be expelled. Due to the resolution being a legislative measure, it needed to go through the full committee process for review, and recommendation, and possible amendment.



81st OREGON LEGISLATIVE ASSEMBLY–2021 Regular Session

**Enrolled**

**House Resolution 3**

Sponsored by Representatives KOTEK, HOLVEY

Whereas Article IV, sections 11 and 15, of the Oregon Constitution, direct the House of Representatives to determine its own rules of proceeding and to discipline its members; and

Whereas the House of Representatives adopted rules of proceeding when it convened in organizational session on January 11, 2021; and

Whereas House Rule 3.07 is among the rules adopted by the House of Representatives during its organizational session; and

Whereas House Rule 3.07 was also in effect for the three special sessions conducted in 2020, including the special session held on December 21, 2020; and

Whereas House Rule 3.07 establishes safety and entrance protocols for the State Capitol building; and

Whereas these safety and entrance protocols were adopted by the House of Representatives to combat a novel coronavirus pandemic that, as of the date of this resolution, has taken the lives of more than 2,600 Oregonians and more than 590,000 Americans and that has sickened millions; and

Whereas House Rule 3.07 and other legislative rules limit entry to the Capitol to authorized personnel in order to minimize the risk of transmission of the virus; and

Whereas the Legislative Assembly was scheduled to convene in special session on December 21, 2020; and

Whereas on December 16, 2020, a video was posted on an online website that shows Representative Mike Nearman describing a scenario where demonstrators could break into the Capitol and obtain unauthorized access to the Capitol with assistance from someone already inside the Capitol; and

Whereas, in describing this scenario, Representative Nearman supplied a cell phone number and instructions on where to stand and what to text in order to obtain entrance to the Capitol; and

Whereas the cell phone number Representative Nearman supplied was his own; and

Whereas on December 20, 2020, a group named Patriot Prayer posted a sign on its Twitter account calling for a demonstration at the Capitol the next day and stating, in relevant part, "WE NEED TO HAVE 1,000 PEOPLE THERE AND MAKE OUR VOICES HEARD!!! NONPERMITTED FLASH MOB!!"; and

Whereas on December 21, 2020, Capitol security camera video footage shows Representative Nearman opening a locked exterior door of the Capitol while the House was in session and exiting the Capitol; and

Whereas the security camera video footage shows that when Representative Nearman exited, he pushed the door open and stepped around a demonstrator, who rushed past him into the building, followed closely by a second demonstrator who held the door open for numerous other demonstrators, who also rushed in; and

Whereas none of the demonstrators were authorized personnel under House Rule 3.07 and therefore the demonstrators' breach of the doorway and occupancy of the Capitol was a violation of House Rule 3.07; and

Whereas the demonstrators were heard chanting "enemies of the state" and "arrest Kate Brown" inside the building; and

Enrolled House Resolution 3 (HR 3-INTRO) Page 1

Whereas law enforcement officers attempted to push the demonstrators out of the Capitol, but demonstrators repeatedly dispersed chemical irritants against the officers before officers were able to regain control and repel the demonstrators; and

Whereas demonstrators damaged Capitol property prior to and during the confrontation with law enforcement; and

Whereas authorized personnel present in the Capitol described the events as "intense and stressful," "terrifying" and "distressing"; and

Whereas law enforcement officers were visibly injured and shaken due to the demonstrators' actions; and

Whereas an independent investigator unaffiliated with the legislative branch conducted an investigation of the conduct of Representative Nearman on December 21, 2020; and

Whereas the investigator reviewed security camera video footage and other relevant documentation, interviewed eight impacted parties and sought to interview Representative Nearman, who declined to be interviewed; and

Whereas the independent investigator determined that it is more likely than not that Representative Nearman intentionally aided demonstrators in breaching Capitol security and gaining unauthorized access to the Capitol, leading to injury and property destruction; and

Whereas Representative Nearman was arraigned on two misdemeanor charges stemming from his actions on December 21, 2020; and

Whereas the criminal prosecution against Representative Nearman is ongoing; and

Whereas Article IV, section 15, of the Oregon Constitution, vests the House of Representatives with the authority to determine whether the conduct of a Representative is disorderly behavior and to punish a Representative for disorderly behavior; now, therefore,

**Be It Resolved by the House of Representatives of the State of Oregon:**

That we, the members of the House of Representatives of the Eighty-first Legislative Assembly, find that Representative Mike Nearman has engaged in disorderly behavior within the meaning of Article IV, section 15, of the Oregon Constitution; and be it further

Resolved, That, with the concurrence of two-thirds of the members of the House of Representatives, Representative Nearman be expelled from the House of Representatives and that Representative Nearman's seat be considered vacant.

Adopted by House June 10, 2021

Timothy G. Sekerak, Chief Clerk of House

Tina Kotek, Speaker of House

Enrolled House Resolution 3 (HR 3-INTRO) Page 2

*Figure 6. House Resolution 3, which states that Rep. Nearman engaged in disorderly conduct and should be expelled from the House of Representatives.*

## The House Special Committee on December 21, 2020

The Speaker appoints members to a new committee, the "House Special Committee on December 21, 2020" after House Resolution 3 is introduced. The committee is composed of 6 members: three members from each party. The Speaker *Pro Tempore* was designated Chair and, very significantly, the committee membership included both of the chamber's top partisan caucus leaders.

The June 9 House Conduct Committee meeting was canceled to allow this new committee to meet, originally with the expectation that House Conduct would be rescheduled the following week.

The goal was to have the special committee meet on Thursday, June 10. The committee chair, Chief Clerk, Speaker's Office, and committee staff had many questions to work through in 72 hours: what changes are needed to the usual committee rules for such a process, what guidance to provide the public, and the due process considerations for Rep. Nearman.

Meanwhile the resolution is referred to the special committee on Tuesday June 8 and the meeting agenda is made public.

A template set of rules is used for all House committees during a session. To the template for the special committee, we added a purpose statement, removed provisions around subcommittees and minority reports, and added provisions specific to witness participation. The rules included statements clarifying that witness are appearing voluntarily; witnesses may not be compelled to testify or answer questions; only committee members may ask question of witnesses; and witnesses may present documents and physical evidence to the committee.

At the time, all committees were meeting virtually. Written testimony could be submitted by mail or electronically through the website. Anyone wishing to testify during the meeting needed to register online or could show up to give testimony through a kiosk at the Capitol.

This was all new, and there were strong emotions involved. We believed we needed to plan for a large amount of written and oral testimony.

We did not want to encourage the submission of anonymous testimony, but when individuals wanted to keep their name private due to safety concerns, we allowed written testimony to be submitted directly to the committee chair who would submit the testimony under his name. This precedent had been established in other committees. On June 9, this guidance was added to the posted agenda.
The usual caveats were included on the agenda – registration did not ensure someone would be able to testify and testimony could be time limited. It was decided that all testimony, except from Rep. Nearman or his attorney, would be limited.

Preparation for committee decorum included a thorough review of the committee chair's legal authority, preparing a chair statement for the opening of the meeting about how the meeting would go, and deciding on the consequences if members of the public violated the chair's stated guidelines, including removal from the virtual meeting.

Member due process and advice from Legislative Counsel consisted of notice and opportunity to refute the case. Official notice of the proceedings was provided to Rep. Nearman and his attorney on June 9 and the agenda included time for him to testify before the committee.

**The day had arrived. The process was in place.**
On June 10, 2021, at 3:00 p.m. the committee adopted rules and the Chair laid out the purpose of the meeting - to determine whether events that will be presented constitute disorderly behavior for which expulsion of a member is appropriate.

The Chair presented written materials and videos, including referencing content in the investigator's report prepared under the Rule 27 conduct process.

Rep. Nearman made a statement and refused to answer questions under the advice of his attorney. He blamed leadership for having the building closed and violating the rights of citizens to be in the building under the Oregon Constitution. He claimed that he was being expelled for letting the public into the public's building while the legislature was conducting the public's business.
During public testimony, two witnesses supported Rep. Nearman; while seven other witnesses supported the adoption of House Resolution 3.

The Chair opened the work session on House Resolution 3 and read it into the record. A motion was made to find that Rep. Nearman had engaged in disorderly behavior.

Committee members discussed why they were supporting House Resolution 3 and deeming Rep. Nearman's actions as disorderly conduct. The following conclusions were made:

- That Rep. Nearman put member safety and the Legislative Assembly's important work to address evictions and other pandemic and wildfire relief at risk.
- That Rep. Nearman did not see the impact of his actions.
- That Rep. Nearman made an error in judgement when letting the protesters into the building.
- That Rep. Nearman resisted calls to resign, leaving expulsion as the only option.

Believing this was a fulfillment of their authority under the Oregon Constitution, both for setting the conditions for the legislature's operations and in upholding and safeguarding its integrity and reputation, members then voted unanimously to recommend that the House adopt the resolution and it was sent to the full House for consideration. The one and only meeting of the committee took less than 90 minutes. [4]

**Chamber Process & Expulsion.**
Six days following the release of the "Operation Hall Pass" video, the Oregon House of Representatives was poised to act on an unprecedented expulsion resolution. Because the state constitution does not require resolutions to be read three times, the Oregon House reads them only twice, once for introduction and once for final reading and consideration. This allowed the House to take action on the measure the same day it was reported out of committee.

At this point, many believed Representative Nearman would resign. Reliable sources told us that his own caucus had informed him they would support adoption of the resolution.

The House reconvened for an evening floor session at 7:30 p.m. for approximately one hour on June 10, 2021. Rules were suspended to allow Rep. Nearman to speak for as long as he wished.

[4] **https://olis.oregonlegislature.gov/liz/2021R1/Committees/HC1221/2021-06-10-15-00/Agenda**

Rep. Nearman's defense on the floor centered around his belief that the Capitol should be "physically open" to the public – citing Article IV, Sec. 14 of the Oregon Constitution – which says, "The deliberations of each house… shall be open."

For their part, several members rose to support the resolution. They believed "That Representative Mike Nearman engaged in disorderly behavior within the meaning of Article IV, section 15, of the Oregon Constitution…" The vote was 59 – 1, the only "no" vote was Rep. Nearman.[5]

**What happened after House District 23 became vacant?**
Following the vote to expel, the Speaker directed the Chief Clerk to notify the Secretary of State that House District 23 was vacant. Former Rep. Mike Nearman then walked out of the chamber through the rear side aisle doors without escort or incident and left the building immediately via the underground parking garage. He did not return but his staff remained in his office and on the job after all this transpired.

In Oregon, we do not have special elections to fill legislative seats. They are filled by the relevant county commissioners upon the formal recommendation of party precinct officials. It is important to note, many of Rep. Nearman's constituents believed what he did was right, and they supported his actions and his reappointment to the seat in the House. Following his expulsion, former Rep. Mike Nearman was nominated, along with four other persons, to the county commissioners to fill the seat he had just vacated.

In early July, less than one month after his expulsion, county commissioners resoundingly rejected the opportunity to re-appoint former Representative Mike Nearman to his old seat in the House. Before the commissioners appointed his replacement, we were trying to understand what, if any recourse the House had on an appointed member coming immediately back to the House following expulsion. The state constitution provides that:

> Article IV, §15. "Either house may punish its member for disorderly behavior, and may with the concurrence of two thirds, expel a member; but not a second time for the same cause."

Would the House have the right to refuse to seat him? Fortunately, due to the appointment of another person that question did not have to be answered.

For approximately 162 years, Oregon had never expelled a member of the legislature, but this all changed on June 10, 2021. The first expulsion was a sad and somber day for the Oregon Legislative Assembly.

[5] **https://invintus-client-documents.s3.amazonaws.com/4879615486/ba50c0bfe066eb518d7faa0b8333cc07e0c45829.pdf**


Jeff Hedges

# Impeachment Procedure in the Texas Legislature

*By: Jeff Hedges, Assistant Enrolling Clerk*
*Office of Engrossing and Enrolling, Texas Senate*

The impeachment process is a powerful though rarely invoked tool for holding public officials accountable between elections. In Texas, as in most states, the removal of a public official through impeachment is a two-step process beginning in the House of Representatives and culminating in the Senate, which conducts the trial on impeachment. Adjudicated by the legislature rather than the judiciary, impeachment is an exception to the traditional separation of powers framework. This unique nature of impeachment, as well as the paucity of precedent, renders the process somewhat unpredictable and affords the legislature considerable latitude in conducting impeachment proceedings.

This article considers impeachment and removal under the Texas Constitution, with particular focus on the role of the senate. In Texas, the impeachment process is governed by Article XV of the Texas Constitution and Chapter 665 of the Texas Government Code,[1] so all citations to constitutional and statutory provisions refer to the Texas Constitution or the Texas Government Code, as applicable.

Finally, note that an earlier version of this article was published in Volume 20 (2015) of the *ASLCS Professional Journal*. It has been updated in the aftermath of the 2023 impeachment trial of Attorney General Ken Paxton.

**History of Impeachment under the Texas Constitution of 1876**

Under the Texas Constitution of 1876, there have been five trials on impeachment in the senate. Lessons from past trials are valuable because many procedural aspects of trials on impeachment are not addressed by the constitution or statutes. Past trials, however, are not necessarily binding on the present senate, especially because most were conducted under statutes that have since been amended. Nonetheless, these precedents are instructive and are discussed throughout this article. The five trials are:

[1] Formerly, Art. 5961 et seq., Vernon's Ann.Civ.St. (1925), governed impeachment, but those statutes were codified as Chapter 665, Tex. Government Code, by Senate Bill 248, Ch. 268, 73rd Legislature, Regular Session (1993).

- In 1893, General Land Commissioner W.L. McGaughey was acquitted.
- In 1917, Governor James Ferguson was convicted.
- In 1931, Judge J.B. Price was acquitted.
- In 1976, Judge O.P. Carrillo was convicted.
- In 2023, Attorney General Ken Paxton was acquitted.

**Officers Subject to Impeachment**

Impeachment is one of several methods of removal from office, each applicable only to certain public officials. The Texas Constitution and various statutes provide other, often overlapping methods of removal for legislators, judges and justices, commissioners of agriculture and insurance, and others. Multiple methods may be pursued concurrently. This article, however, is limited to a discussion of removal by impeachment, as set forth in the constitution.

The Texas Constitution provides that the governor, lieutenant governor, attorney general, land commissioner, comptroller, and certain judges are subject to impeachment. In addition, the legislature "shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution." The legislature may not, however, establish alternative methods for removing public officials for whom the Texas Constitution provides a removal process. In other words, the legislature may establish novel methods of removal only for officers on whom the constitution is silent, but constitutionally established methods may only be elaborated upon, not substituted.

As required under Article XV, the legislature enacted Chapter 665, which both expands the list of officers subject to and clarifies the procedure for impeachment. That chapter adds to the list a "state officer," a "head of a state department or state institution," and a "member, regent, trustee, or commissioner having control or management of a state institution or enterprise." These terms are not defined in the constitution or pertinent statutes, but "state officer" is generally interpreted as "including only those officers whose jurisdiction is coextensive with the boundaries of the state or such general officers as immediately belong to one of the three constituent branches of the state government."[2] This is a broad definition, but recall that Chapter 665 does not apply to state officers, such as legislators, for whom the Texas Constitution has established a removal process other than impeachment.

**Grounds for Impeachment**

Neither the Texas Constitution nor the Government Code provides grounds for impeachment. The determination of whether particular misconduct warrants impeachment is left to the House as the investigatory body and the Senate as the court of impeachment. Historically, in both the American and English legal traditions, the wrongs justifying impeachment need not be statutory offenses or common law offenses, or even violations of any law.

Other methods of removal from office have enumerated grounds. For example, judges may be removed by the governor with the concurrence of two-thirds of each house for "wilful neglect of

[2] Tex. Jur. 3d, *State of Texas*, §7, pp. 386-388 (2003).

duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause." But for impeachment purposes, this judgment is left to the legislature.

**Investigation and Impeachment by the House of Representatives**

The role of the House of Representatives is similar to that of a grand jury in a criminal prosecution. The House investigates, hears witnesses, and determines whether there are grounds justifying impeachment (i.e., the presentment of charges to the senate).

To initiate the proceedings, the speaker of the House charges a committee with investigating the matter in question, often at the urging of a member's resolution. The committee, which may be a committee of the whole, conducts the investigation with the power to issue subpoenas and punish for contempt. (For analysis of contempt authority, see the Senate section, *infra*.) With few formal rules for this phase, the committee chair largely controls the process. Often the approach has been to investigate, vote on whether grounds exist for impeachment, and then, if appropriate, draft the articles of impeachment and vote on whether to recommend them to the House as a whole.

The articles of impeachment should provide clear notice to the respondent of the alleged grounds for impeachment. Though similar to an indictment, the articles do not have to be written with the same technical precision. If the committee finds multiple grounds for impeachment, the articles should be itemized so that the senate may vote on each.

Once the committee has recommended articles of impeachment, the matter comes before the House as a whole, which may continue the investigation or proceed directly to a vote on whether to "prefer" the articles to the senate. The constitution and statutes are silent regarding the requisite vote for preferring the articles, but the consensus is that a majority vote of those present is required.

If the House votes to prefer the articles of impeachment, the respondent is impeached and shall be suspended from the exercise of the duties of his or her office "during the pendency of such impeachment." Although this contradicts the common law principle that the accused is innocent until proven guilty, the drafters of the first state constitution conceived of holding public office as a privilege, not a right. The governor may make a provisional appointment to fill the vacancy in the meantime. Note that in the treatment of the respondent after impeachment, Texas departs from the approach of the federal government, which does not suspend upon impeachment by the House.

With its duty as grand jury complete, the House of Representatives traditionally assumes the role of prosecutor in the Senate's trial on impeachment. A House committee called a board of managers is appointed to conduct the prosecution. The committee often employs outside legal counsel from the public or private sector to assist in the prosecution.

**The Senate as a Court of Impeachment**

The Senate is the court of impeachment. It decides both the law and the facts. It judges the sufficiency of the evidence on the matters in the articles of impeachment, assesses the credibility of witnesses, and renders final judgment on whether the grounds provided in the articles justify conviction.

*Convening the Senate*

If the Senate is already in session when the House impeaches the respondent, the House simply presents the articles of impeachment to the Senate, which then sets a day and time to resolve into a court of impeachment. As with the House's impeachment process, the Senate may conduct a trial on impeachment at a regular session or at a called session, regardless of the scope of the governor's call. If a trial on impeachment is ongoing at the conclusion of the legislative session, the Senate may continue in session for impeachment purposes or adjourn until a set day and time.

On the other hand, if the Senate is not in session when the House impeaches the respondent, the house must deliver a certified copy of the articles to the governor, the lieutenant governor, and each senator, with various requirements for delivery and recordation. Once the required deliveries are made, the governor, or another official under one of several contingencies, is responsible for issuing a written proclamation fixing a date for convening the senate. This date must be not later than the 20th day after the issuance of the proclamation, and the proclamation must be published in at least three daily newspapers of general circulation. A copy must be sent to each member of the Senate and to the lieutenant governor.

*Rules of Procedure*

The Senate adopts rules of procedure for the trial on impeachment. In the trial on impeachment of Governor James Ferguson, a special committee to formulate the rules of procedure was appointed by simple resolution, and the committee's recommended rules were presented to and adopted by the Senate in the form of a resolution. The same approach was taken in the trials on impeachment of Commissioner W.L. McGaughey, Judge J.B. Price, and Attorney General Ken Paxton. In the trial on impeachment of Judge O.P. Carrillo, a resolution containing proposed rules was referred to the Committee on Administration. The committee amended and passed the resolution, and the senate as a whole considered further amendments before adopting it.

Past trials on impeachment have operated under fairly similar rules,[3] but these precedents are not binding. Typically, the rules grant floor privileges to the respondent and his or her counsel and to the prosecution and its counsel. They usually specify the form of subpoenas to be issued by the Senate and the timing and form requirements of the respondent's answers and demurrers. They prescribe the oath to be administered to witnesses. The respondent and the prosecution are usually authorized to invoke what is commonly called "The Rule," which concerns the sequestration of expected witnesses when other testimony or evidence is introduced. More broadly, the rules for a trial on impeachment typically incorporate the rules of procedure from the most recent legislative session to the extent they are not inconsistent with trial rules. In most cases, the rules of procedure incorporate the Texas Rules of Evidence to the extent applicable, too.

[3] *See*: For Paxton, Senate Journal, pp. 40-53, 88th Legislature, First Called Session (June 21, 2023); for Carrillo, Record of Proceedings of the High Court of Impeachment, pp. 10-17, 20-25, 64th Legislature (Sept. 3, 1975); for Price, Senate Journal, pp. 18-23, 42nd Legislature, Second Called Session (Sept. 10, 1931); for Ferguson, Senate Journal, pp. 71-73, 35th Legislature, Second Called Session (Aug. 27, 1917); for McGaughey, Senate Journal, pp. 634-636, 23rd Legislature, Regular Session (April 24, 1893).

The respective rules of procedure have not been identical, though. In past trials on impeachment, the rules had been particularly consistent regarding the disposition of motions and objections by the parties, including questions concerning the admissibility of evidence: Upon a motion or incidental question, the presiding officer may either submit the question to a vote of the members of the Senate or, if no senator objects, rule on the matter unilaterally. The court of impeachment in the trial of Attorney General Ken Paxton, however, took a different approach. Unlike in previous trials, the senators could not force an evidentiary question to be decided by the body; the presiding officer had discretion over whether to submit evidentiary questions to the senators for a vote or to rule on them unilaterally.

In a first for impeachment trials in Texas, the Senate in the trial on impeachment of Attorney General Ken Paxton adopted a time limit for each phase of the trial. Each side was allotted 1 hour for an opening statement, 24 total hours for the case in chief, 1 hour for rebuttal evidence, and 1 hour for closing arguments. During each side's case in chief, time spent by the opposing counsel for cross-examination of witnesses counted towards that opposing counsel's time. Also, when opposing counsel made an objection during the other counsel's questioning, the questioning counsel's clock did not stop unless the parties were called to the presiding officer's bench for private discussion.

*Impartiality of Senators*

As jurors in the trial on impeachment, senators are to be impartial. An oath of impartiality is a constitutional requirement, and courts on impeachment have made additional efforts to ensure impartiality. Below is a discussion of these approaches.

The Texas Constitution requires that senators be under oath or affirmation to impartially conduct the trial. In some cases, the Senate has adopted a resolution providing the text of the oath and naming a particular judge or justice to administer the oath, but this does not appear to be necessary. Typically a justice of the Texas Supreme Court or of a civil court of appeals administers the oath to the presiding officer, and then, after a roll call, the presiding officer administers the same or a similar oath to each senator. Any absent senators are sworn in upon arrival. The presiding officer also administers oaths to court reporters, transcribers, and certain other personnel.

There are no formal requirements for the text of the oath itself. The oath administered in the trial on impeachment of Judge O.P. Carrillo is typical: "You, and each of you, do solemnly swear or affirm that you will impartially try [the respondent] upon the impeachment charges submitted to you by the House of Representatives and a true verdict render according to the law, and the evidence, so help you God."

Another approach to ensuring impartiality is through a so-called gag rule. In the trial on impeachment of Judge O.P. Carrillo, the rules of procedure provided that no member "may discuss or comment on any matter relating to the merits of the proceedings before the court, except with other members of the court and the presiding officer of the court." The rules of procedure in the trial on impeachment of Attorney General Ken Paxton went a step further, expanding the list of those subject to the gag order to include senators' staffs, the presiding officer, and the presiding officer's own legal counsel. Further still, about a month after the adoption of those rules of procedure (but still before the

beginning of the trial), the presiding officer found that "publicity of comments made by individuals involved in the trial of impeachment has been so pervasive, prejudicial, and inflammatory that there is a substantial likelihood that members' initial opinions may not be set aside," so he issued a separate gag order. This order applied even more broadly, to all witnesses in the trial and to all members of the House of Representatives and their staffs, and it barred statements that the person "knows or reasonably should know…will have a substantial likelihood of materially prejudicing the trial of impeachment, pose a serious threat to the constitutional guarantees to a fair trial, or impair the court's ability to maintain a fair and impartial court." In the order, the presiding officer emphasized that unlike in a typical trial, the jurors in a trial of impeachment are already determined, so the court did not have the option of recomposing a jury in the event of improper publicity.

Finally, in the trial on impeachment for Attorney General Ken Paxton the Senate faced a unique complication in its effort to ensure impartiality: The respondent's spouse, Angela Paxton, was a member of the senate. The Texas Constitution requires a "member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature" to "disclose the fact to the House, of which he is a member, and shall not vote thereon." The Senate in this trial reinforced that safeguard through Rule 31, which provided that a spouse to a party in the trial on impeachment is considered to have a conflict under the above-quoted provision of the Texas Constitution. That member "shall be seated in the court of impeachment" but "shall not be eligible to vote on any matter, motion, or question" nor "participate in closed sessions or deliberations." The Senate's approach was upheld in court.

Importantly, Rule 31 specified that the respondent's spouse would be considered present "for the purpose of calculating the number of votes required for any and all matters, motions, and questions under these rules." Because conviction requires a vote of two-thirds of all members *present*, this rule meant that the number of votes required to convict was unaffected by Senator Paxton's conflict: all 31 senators were deemed present, so 21 votes remained the requirement for conviction. Still, the senator did not participate in closed meetings or jury deliberations before or during the trial.

*Attendance of Senators*

Under Section 665.026, each senator "*shall* be in attendance when the senate is meeting as a court of impeachment" (emphasis added). Under Texas' Code Construction Act, "shall" imposes a duty whereas "must" creates a condition precedent, or prerequisite. By using "shall," Section 665.026 imposes a duty on each senator to attend all meetings of the court of impeachment, but full attendance is not a prerequisite to proceeding with the trial because "must" is not used. Instead, the standard quorum under the constitution – two-thirds of all senators – applies to trials on impeachment. Provided a quorum is met, the senators have an enforceable duty to attend, but perfect attendance is not an absolute requirement for the trial itself to proceed.

Although full attendance is not necessary, the senators' duty to attend is enforceable through the senate's broad authority to compel the attendance of absent members. The constitution authorizes the Senate to "compel the attendance of absent members, in such manner and under such penalties" as it may provide, regardless of whether the two-thirds quorum is met. The Senate may provide for the manner of compulsion in its rules, including by simply incorporating the relevant legislative rule

of procedure. As in legislative sessions, the jurisdiction to compel attendance ends at the Texas border.

*Respondent's Rights*
In Article XV, the word "trial" is used in its ordinary accepted meaning; the respondent is guaranteed a full and fair trial on the charges against him or her. As a matter of due process, the respondent must be sufficiently informed by the articles of impeachment of the nature of the charges. The respondent must be given an opportunity to appear before the court of impeachment and confront the witnesses and evidence against him or her.

Notifying the respondent of the charges and date of commencement of the trial is essential. In the trial on impeachment of Judge O.P. Carrillo, the Senate adopted a resolution instructing the secretary of the senate to transmit to the respondent copies of the articles of impeachment, the governor's proclamation convening the senate, and the resolution itself. In the trial of Commissioner W.L. McGaughey, a writ of summons containing the text of the articles and the date of commencement was served to the respondent by the sergeant-at-arms. When the respondent appears on the day of commencement, he or she files an answer to the articles or may request additional time to prepare an answer. If the respondent fails to appear, the trial proceeds as though the respondent entered a plea of not guilty.

Once the trial begins, the customary rules of procedure should provide ample protection for the respondent, especially because they incorporate the established rules of evidence in Texas to the extent applicable. Proper notification, reasonable rules of procedure and evidence, and the oath of impartiality should alleviate any concerns over due process.

*Powers of Senate*
The Senate has broad authority to conduct a trial on impeachment like an ordinary trial. The Senate may employ third parties to execute the orders, mandates, and writs issued while meeting as a court of impeachment, and it may meet in closed session for purposes of deliberation. More broadly, the Senate is authorized to "exercise any other power necessary to carry out its duties under Article XV of the Texas Constitution." Two specific powers warrant further discussion: the power to issue subpoenas and the power to punish for contempt.

The Senate may issue subpoenas to “compel the giving of testimony” and to “send for persons, papers, books, and other documents.” Oddly, the House of Representatives may only “send for persons or papers,” not “books” or “other documents,” but this seems to be a distinction without a difference. A subpoena may be issued by the presiding officer at the request of either party. The rules of procedure should prescribe the form of the subpoena and the method of service of process, which should be made in person or by certified or registered mail, if practicable, or alternatively by leaving a copy at the appropriate person’s residence or place of business.

The Senate’s contempt authority comes from Article XV, Section 7, which requires the legislature to "provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution." Pursuant to this, Sections 665.005 and 665.027

authorize each respective house to "punish for contempt to the same extent as a district court." This authority is subject to the same limitations as a district court's contempt authority, which in Texas means that punishment for Chapter 665 contempt may not exceed a $500 fine, six months in county jail, or both.

*Final Judgment and Consequences of Conviction*

Once the senate convenes as a court of impeachment, the trial must continue until the matter is disposed of by final judgment on the articles of impeachment. The prosecution bears the burden of proof, and a concurrence of two-thirds of senators present is required to convict.

The standard of proof – whether preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt – is set by the rules, not constitutionally or statutorily. In the trial on impeachment of Judge O.P. Carrillo and Attorney General Ken Paxton, the rules of procedure specified that the standard of proof was beyond a reasonable doubt. The issue was not addressed by the rules of the other three trials on impeachment. For other methods of removal, the standard has been a preponderance of the evidence or clear and convincing evidence. Given the many differences between criminal proceedings and trials on impeachment, there is little reason to infer that the constitution or Government Code requires a standard of proof above a preponderance of the evidence, though as noted above the rules of procedure of the past two trials on impeachment have imposed a higher standard.

The Senate is not required to vote on every article of impeachment, and any article that is not voted on is considered dismissed without a decision on the merits. An article is sustained only if two-thirds of the present senators vote to convict the respondent on that article. If not, the article is not sustained, and if none of the articles are sustained, the respondent is acquitted. On the other hand, if any of the articles are sustained, the respondent is convicted. In the trial on impeachment of Judge O.P. Carrillo, the Senate declined to consider additional articles once it had voted to sustain one article, reasoning that doing so would be superfluous. In contrast, in the trial on impeachment of Governor James Ferguson, the senate voted on each article even after sustaining one of them.

After voting, the Senate has generally appointed a committee to draft a final judgment of either conviction or acquittal. The committee's draft, in the form of a committee report, may be amended on the senate floor. Upon a conviction, the final judgment should note which articles were sustained and by what vote, as well as the punishment for conviction (see *infra*). A copy of the final judgment should be enrolled and certified by the presiding officer and secretary of the senate, printed in the Senate Journal, and deposited in the office of the secretary of state.

Even if the respondent resigns from office before final judgment, the trial on impeachment may proceed and final judgment may still be rendered. While resignation makes the question of removal moot, the possibility of permanent disqualification remains. In the trial on impeachment of Governor James Ferguson, the governor participated in the trial, but when the members voted to sustain the articles against him, he resigned before a final judgment could be drafted and adopted. The Senate proceeded anyway, and a court later held that the final judgment removing and disqualifying the governor was not void because of the resignation.

Under Article XV, Section 4, the punishment for conviction "shall extend only to removal from office, and disqualification from holding any office of honor, trust or profit under this State." Removal and disqualification are the only permissible punishments for a conviction in a trial on impeachment; the Senate may not, for example, impose fines or imprisonment on the respondent, nor may it disqualify the respondent's spouse from holding office.[4]

The issue of whether the Senate may bifurcate the punishment for conviction has been the subject of much debate in past trials on impeachment. A conviction clearly results in removal from present office, but the language of Article XV, Section 4, is unclear as to whether the Senate may vote to remove the respondent but not disqualify him or her from future office. No statute addresses this matter. For the most recent conviction in a trial on impeachment (that of Judge O.P. Carrillo), the Senate first voted to convict and remove and then voted on whether to disqualify, so the punishment was treated as bifurcated. In the trial of Judge J.B. Price, however, a majority of members voted to sustain a point of order that the punishment was indivisible, not subject to bifurcation. Even further back, in the trial of Governor James Ferguson, the Senate voted to sustain the articles of impeachment before deciding whether the punishment was indivisible. In that trial, the committee appointed to draft the final judgment produced two reports, a majority report treating the punishment as indivisible and a minority report treating the punishment as bifurcated. The Senate adopted the majority report. Taken together, these precedents suggest that the Senate has discretion over whether to permanently disqualify a convicted respondent.

In addition to the Senate's punishment, a convicted respondent "shall also be subject to indictment, trial and punishment according to law" in a traditional criminal court. To some, this is an exception to the bar on double jeopardy; to others, the trial on impeachment does not constitute a criminal proceeding, so no double jeopardy issue arises. Either way, this provision makes clear that a respondent's conviction or acquittal on impeachment does not insulate him or her from more conventional punishments for the alleged misconduct, like fines or imprisonment.

The governor may not pardon a conviction on impeachment. Nor may the legislature modify or nullify the final judgment by subsequent act. Once the final judgment is rendered, only the judicial branch may review or alter it.

*Judicial Review*

When acting as a court of impeachment, the senate is a court of original, exclusive, and final jurisdiction. The Senate is responsible for determining facts, assessing the credibility of witnesses, and judging the sufficiency of the charges and evidence. Within the scope of this constitutional authority, no court may question its judgment. The Senate's determination that evidence was or was not sufficient for conviction is not subject to judicial review, nor are its findings of fact.

[4] *Dickson v. Strickland*, 114 Tex. 176, 265 S.W. 1024 (1924). In the decades following the impeachment and removal of Governor James "Pa" Ferguson, his wife – Miriam "Ma" Ferguson – was herself twice elected governor, overcoming a lawsuit arguing that she was disqualified from office by implication of her husband's conviction.

A ruling or result of a trial on impeachment is, however, subject to judicial review for lack of jurisdiction or for action exceeding constitutional power. In other words, while the judiciary may not question the legislature's judgment, it may question the legislature's authority to render that judgment. For instance, a court could entertain a challenge for action in excess of constitutional authority if the Senate pronounced a judgment other than removal or disqualification.

Unfortunately, principles of reviewability are easier to recite than apply, mostly because of the lack of precedent. The procedural rules of Chapter 665 are especially problematic. For instance, Section 665.023(c) requires the Senate to convene not later than the 20th day after the issuance of the proclamation calling for a trial on impeachment. If the Senate does not convene until the 21st day after the proclamation, could a court hear a respondent's complaint that the Senate acted outside its jurisdiction or beyond its constitutional authority? If a court hears the challenge and finds such a procedural violation, what are the consequences?

In sum, the scope of judicial review, like so many other aspects of the impeachment process, is unclear. There is little precedent and only minimal constitutional and statutory instruction. Perhaps this vagueness is intentional, as it gives considerable latitude to the legislators conducting the impeachment proceeding. Regardless, in the face of uncertainty, the only safe course of action is adherence to precedent and compliance with the constitution and statutes.

Erick J. Vázquez González

# ARTICLE III, SECTION 7: MINORITY PARTIES CLAUSE AND ITS APPLICATION IN PUERTO RICO

*By: Erick J. Vázquez González*[*]
*Legislative Advisor to the President of the Senate of Puerto Rico*

> "...so that legislative majorities feel the spur and stimulus of a minority that oversees and collaborates in the democratic process."[1]

## § 1.0 INTRODUCTION

In 1952, when what is now the Constitution of Puerto Rico, our Magna Carta, was being discussed, the delegates of the constitutional convention deliberated the inclusion in our code of laws of provisions that were unique at the time. One of these provisions is the well-known minority parties clause. This matter, which was of great importance at the time, guaranteed seats for minority parties in the legislative branch of our democratic form of Government. The inclusion of this provision, which was the idea of delegate Luis Negrón López, was historic and paved the way for even those who received the least number of votes in an election to be represented in the Legislative Assembly.

As has been stated when tracing the history of this illustrious Puerto Rican, Negrón López "was immortalized through his proposal to ensure the representation of minority parties."[2]

The minority parties clause in Puerto Rico is a provision that, simply put, guarantees at least **nine (9) seats** for minority parties in the Senate and **seventeen (17) seats** for minority parties in the House.

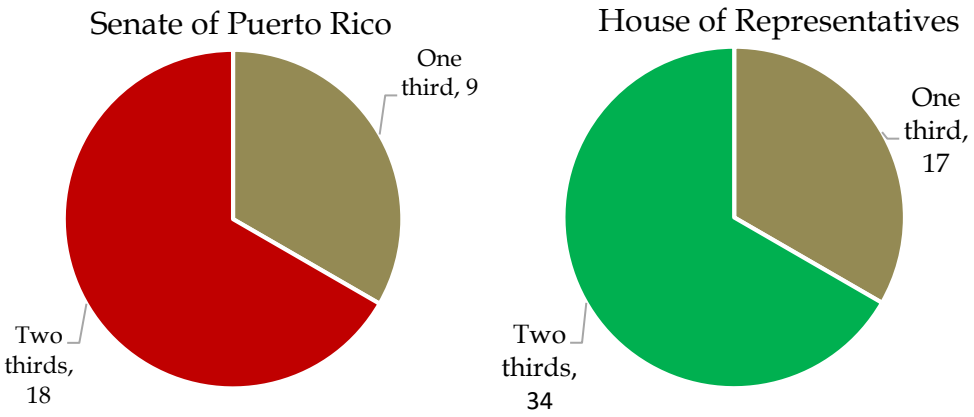
---

[*] Legislative advisor to the President of the Senate of Puerto Rico. Note: I give special thanks to Ricardo Vaquer Castrodad, legislative advisor to the President of the Senate, for providing feedback on this Article. The author wishes to thank the Translation Unit of the Legislative Services Office of Puerto Rico for the translation of this article from Spanish to English. Particular thanks are due to Marinnette Matos Vélez, director of the Unit, and Gabriel Fernández Ortiz, translator.

[1] Statements of Popular Democratic Party delegate and President of the Legislative Branch in the Constitutional Convention, Luis A. Negrón López, 2 JOURNAL OF SESSIONS OF THE CONSTITUTIONAL CONVENTION 1304 (1952).

[2] HÉCTOR LUIS ACEVEDO, LUIS NEGRÓN LÓPEZ: RESCATADO POR LA HISTORIA 37 (2007).

For such reason, even though the Senate comprises twenty-seven (27) senators and the House comprises fifty-one (51) representatives, there are instances in which the number of members has been increased to ensure that minority parties are represented in the Legislative Branch which is at the heart of Puerto Rico's public policy discussions. The number of seats is increased when a party wins more than eighteen (18) seats in the Senate or more than thirty-four (34) seats in the House. See illustration below:




In the case of the Senate chart, the minority parties clause is triggered if a party wins more than eighteen (18) seats in this Legislative Body. The minority parties clause is triggered in the House of Representatives if a party wins more than thirty-four (34) seats.

When discussing this constitutional provision, delegate Gutiérrez Franqui hit the mark when he stated the following:

> …I have no doubt that, in my judgment, this shall be one of the greatest achievements of this Constitution as it establishes a democratic procedure to ensure the minority parties representation in the Legislative Bodies[3]

This constitutional provision, which is set forth in Article III, Section 7, establishes the following:

> Section 7.- If in a general election **more than two-thirds** of the members of either house are elected from one political party or from a single ticket, as both are defined by law, the number of members shall be increased in the following cases:
>
> (a) If the party or ticket which elected **more** than two-thirds of the members of either or both houses shall have obtained **less** than two-thirds of the total number of votes cast for the office of Governor, the number of members of

[3] Statement of Popular Democratic Party delegate Víctor Gutiérrez Franqui, 3 JOURNAL OF SESSIONS OF THE CONSTITUTIONAL CONVENTION 2029 (1952).

the Senate or of the House of Representatives or of both bodies, whichever may be the case, shall be increased by declaring elected a sufficient number of candidates of the minority party or parties to bring the total number of members of the minority party or parties to nine in the Senate and to seventeen in the House of Representatives. When there is more than one minority party, said additional members shall be declared elected from among the candidates of each minority party in the proportion that the number of votes cast for the candidate of each of said parties for the office of Governor bears to the total number of votes cast for the candidates of all the minority parties for the office of Governor.

When one or more minority parties shall have obtained representation in a proportion equal to or greater than the proportion of votes received by their respective candidates for Governor, such party or parties shall not be entitled to additional members until the representation established for each of the other minority parties under these provisions shall have been completed.

(b) If the party or ticket which elected more than two-thirds of the members of either or both houses shall have obtained more than two-thirds of the total number of votes cast for the office of Governor, and one or more minority parties shall not have elected the number of members in the Senate or in the House of Representatives or in both houses, whichever may be the case, which corresponds to the proportion of votes cast by each of them for the office of Governor, such additional number of their candidates shall be declared elected as is necessary in order to complete said proportion as nearly as possible, but the number of Senators of all the minority parties shall never, under this provision, be more than nine or that of Representatives more than seventeen.

**In order to select additional members** of the Legislative Assembly from a minority party in accordance with these provisions, its **candidates at large** who have not been elected **shall be the first to be declared elected in the order of the votes that they have obtained**, and **thereafter** its **district candidates** who, not having been elected, have obtained in their respective districts **the highest proportion of the total number of votes cast** as compared to the proportion of votes cast in favor of other candidates of the same party not elected to an equal office in the other districts.

The additional Senators and Representatives whose election is declared under this section shall be considered for all purposes as Senators at Large or Representatives at Large.

The measures necessary to implement these guarantees, the method of adjudicating fractions that may result from the application of the rules

> contained in this section, and the minimum number of votes that a minority party must cast in favor of its candidate for Governor in order to have the right to the representation provided herein shall be determined by the Legislative Assembly.[4] (Emphasis added)

It is worth stressing the distinction made when distributing additional seats. The candidates at-large who were not elected are the first to be considered in descending order based on the **number** of votes received. The district candidates that were not elected are then considered in descending order based on the **percentage** of votes received.

When analyzing this constitutional provision, José Trías Monge, who was a member of the Constitutional Convention, stated:

> [I]f one examines the composition of the Legislative Assembly at the time, one can better understand the real impact of this reform, which is one of the Constitution's greatest achievements. In the 1948 general election, the Popular Democratic Party won 94.8% of all legislative seats (fifty-five out of the fifty-eight existing seats) but received just 61.2% of all votes cast for the office of Governor. On the other hand, the minority parties received 38.8% of all votes cast for such office, but only won three seats which is 5.2% of all seats. The minority parties would have been entitled to nine (9) seats in the Senate and seventeen (17) seats in the House if the Constitution had been in effect in said general election.[5]

## § 2.0 MINORITY PARTIES CLAUSE THROUGHOUT HISTORY

> "...that minority parties have as many seats in the Legislative Assembly as justified by the votes received."[6]

This constitutional provision has been triggered in eleven (11) out of the eighteen (18) elections that have been held since 1952. Out of those eleven (11) elections, the provision has been triggered in both Legislative Bodies eight (8) times. The provision has been triggered in only one Legislative Body in the remaining three (3) elections: twice (2) in the Senate and once (1) in the House.

Of those eleven (11) elections in which the minority parties provision has been triggered, seven (7) were due to a landslide victory by the Popular Democratic Party and the other four (4) were due to New Progressive Party victories.

Let us see the application of this constitutional clause in the eighteen (18) elections that have been

[4] CONST. PR art. III, § 7.
[5] III, JOSÉ TRÍAS MONGE, HISTORIA CONSTITUCIONAL DE PUERTO RICO 143-144 (1982).
[6] Statement of Socialist Party delegate Antonio Reyes Delgado, 2 JOURNAL OF SESSIONS OF THE CONSTITUTIONAL CONVENTION 1297 (1952).

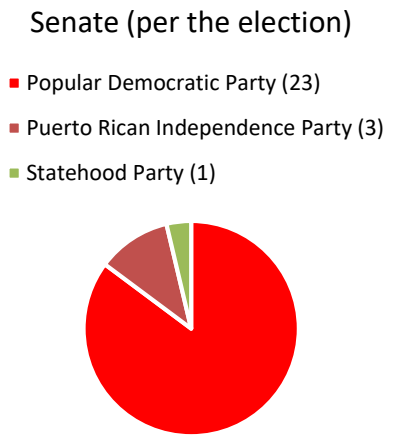
held in Puerto Rico since 1952.

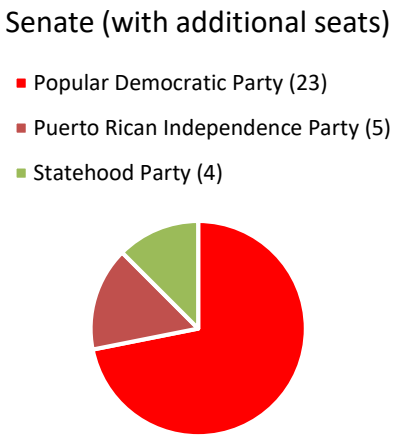
### § 2.1 1952 General Election

Puerto Rico's current political system, the Commonwealth, was established on July 25, 1952, and this brought upon the ratification of a Constitution that recognizes the representation of minority parties in the parliamentary process. The Popular Democratic Party was the strongest party at the time, followed by the Puerto Rican Independence Party, the Statehood Party, and the Socialist Party.[7]

The Popular Democratic Party's dominance was such that it won all eight (8) senate districts and all forty (40) representative districts as well as fourteen (14) out of twenty-two (22) at-large seats between both Legislative Bodies.

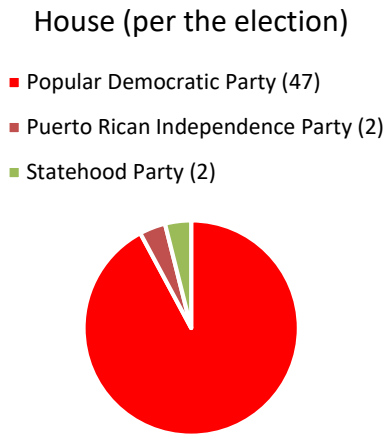
In the case of the Senate, as shown below, the Popular Democratic Party won twenty-three (23) seats which is five (5) seats over two thirds. Thus, the constitutional clause was triggered and the number of Senate seats increased to thirty-two (32).

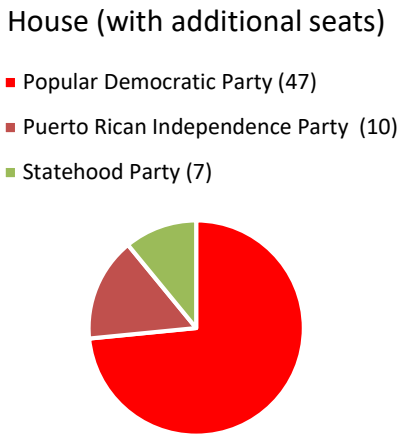



In the case of the House of Representatives, the Popular Democratic Party won forty-seven (47) seats, which is thirteen (13) seats over two thirds. Thus, the constitutional clause was triggered and the number of House seats increased to sixty-four (64).

[7] FERNANDO BAYRÓN TORO, HISTORIA DE LAS ELECCIONES Y LOS PARTIDOS POLÍTICOS DE PUERTO RICO 288 (2016).



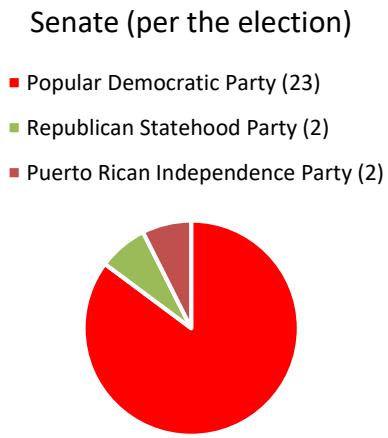



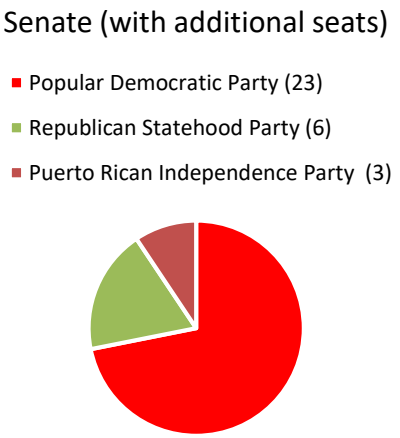

### § 2.2 1956 General Election

The political landscape remained relatively unchanged during the 1956 general election; the Popular Democratic Party won all Senate districts and all forty (40) representative districts. Likewise, the Popular Democratic Party won fourteen (14) out of twenty-two (22) at-large seats. As a result, the minority parties clause was triggered a second time.

However, unlike the 1952 election, the second party that polled the most votes in 1956 was the Statehood Party, which was known as the Republican Statehood Party during this election, while the Puerto Rican Independence Party came in third place.[8]

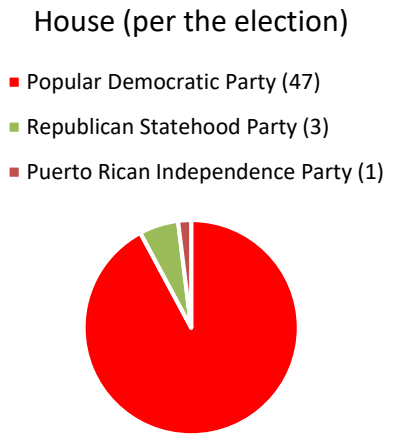
The composition of the Legislative Bodies according to the election as well as with the additional seats is shown below.

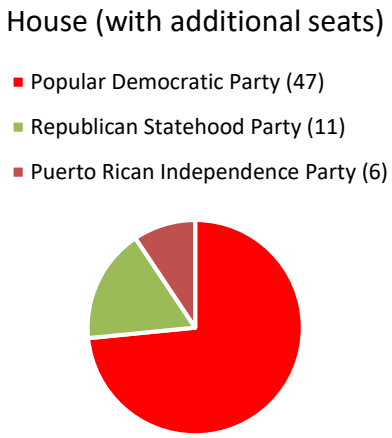



[8] BAYRÓN, *supra* note 4, p. 295.

The composition of the House of Representatives is shown below:

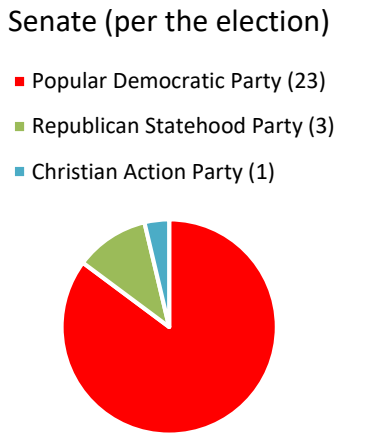


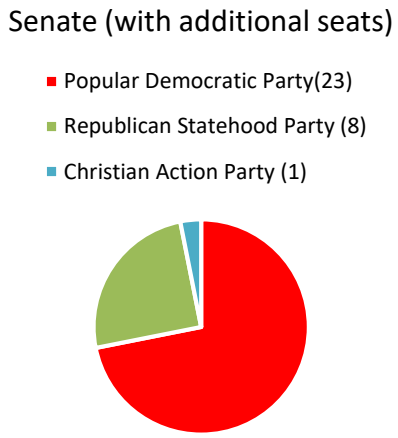




### § 2.3 1960 General Election

The 1960 general election was the third election held under the Commonwealth system of government and the Popular Democratic Party once again won all senate and representative districts while the Republican Statehood Party came in second. Two additional political movements were present during this election: the Christian Action Party and the Pro-Independence Movement. The Puerto Rican Independence Party failed to choose candidates for the Senate and the House of Representatives.[9]

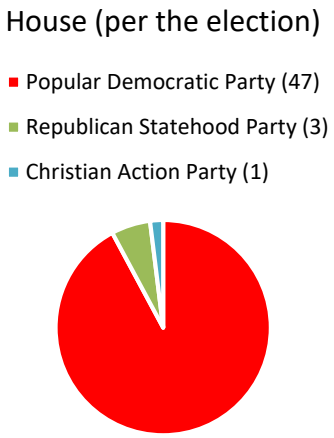
After the election, the Senate composition was the following:

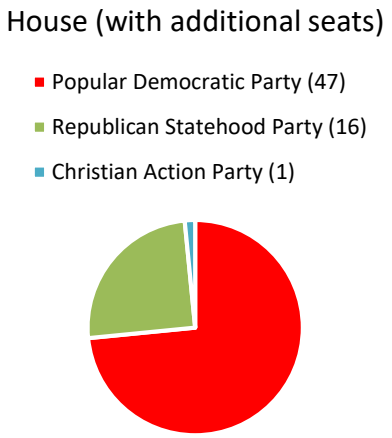



[9] BAYRÓN, *supra* note 4, pp. 302 and 303.

The composition of the House of Representatives is shown below:

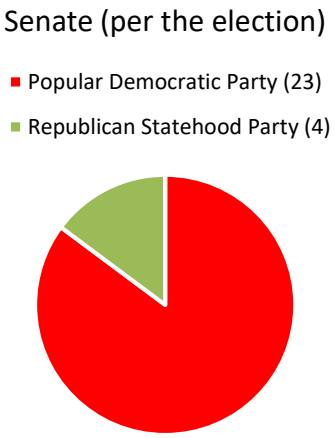


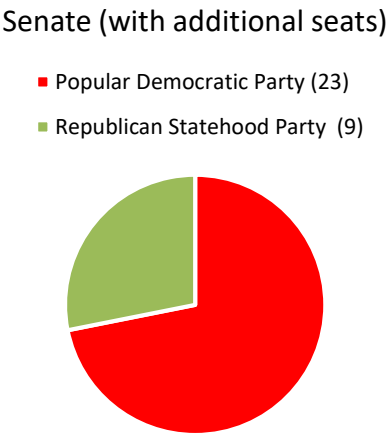




### § 2.4 1964 General Election

The Popular Democratic Party's dominance continued during the 1964 general election; however, this time it was under the leadership of Roberto Sánchez Vilella as governor of Puerto Rico. Luis Muñoz Marín, who was the governor and party leader up to that time, was elected Senator At-large. The Popular Democratic Party once again dominated all representative and senate districts with the Republican Statehood Party coming in second place. The Puerto Rican Independence Party and the Christian Action Party failed to win any legislative seats.[10]

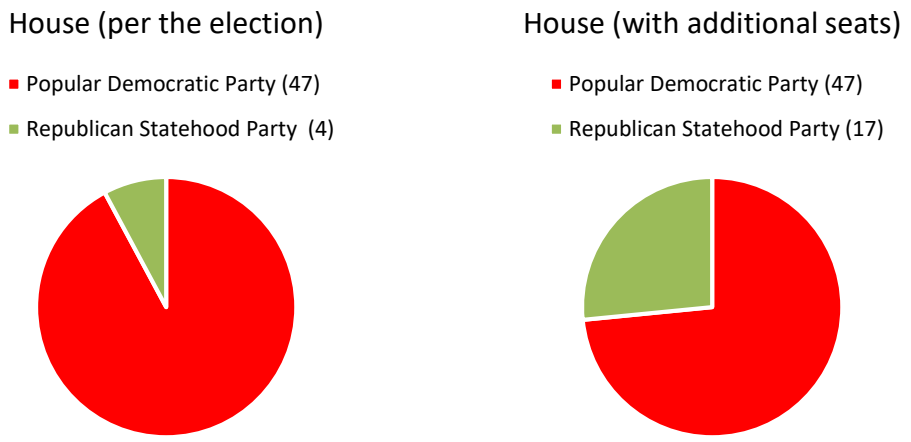
The Senate composition is shown below:




[10] BAYRÓN, *supra* note 4, p. 312.

The composition of the House of Representatives is shown below:




### § 2.5 1968 General Election (the constitutional clause was not triggered)

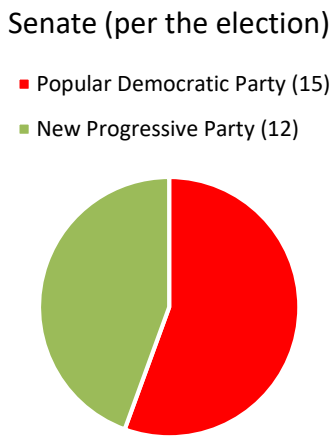
The minority parties clause was not triggered in this general election. However, it is worth noting that a referendum was held prior to this election to ask about the Island's political status. This process caused a schism in the Republican Statehood Party that led to the creation of the New Progressive Party which currently is one of the main political parties.[11]

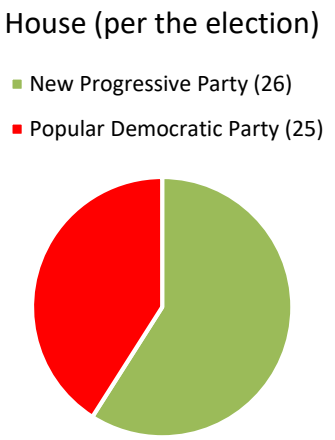
The Popular Democratic Party faced its own challenges. Governor Sánchez Vilella was dealing with some personal issues that had public repercussions. Furthermore, his party denied him the opportunity to run as their candidate for governor at a General Meeting and nominated Luis Negrón López instead, the author of the minority parties clause. This caused a schism which resulted in the creation of the People's Party by Sánchez Vilella.[12]

This was the first election in which the Popular Democratic Party lost the race for Governor as well as the control of the House of Representatives; however, it maintained control of the Senate of Puerto Rico. Nevertheless, neither the Popular Democratic Party nor the New Progressive Party won enough seats in the Senate or House of Representatives to trigger the minority parties clause.

[11] BAYRÓN, *supra*, note 4, p. 318.
[12] BAYRÓN, *supra* note 4, p. 318.

The composition of the Legislative Bodies is shown below:

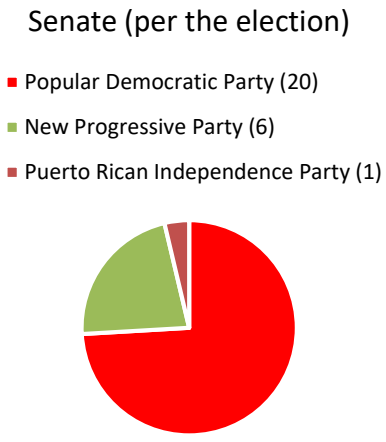


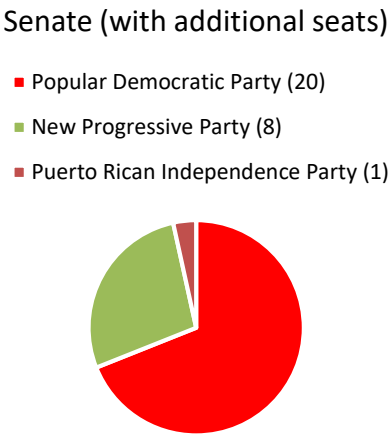




### § 2.6 1972 General Election

In the 1972 general election, the Popular Democratic Party nominated Rafael Hernández Colón as its candidate for governor. Rafael Hernández Colón had been elected president of the only Legislative Body that the Popular Democratic Party had won during the previous election. As a result of this nomination, the Popular Democratic Party won the race for governor, prevailed in seven (7) of the eight (8) senate districts[13] and in thirty-one (31) out of forty (40) representative districts and, upon adding the at-large seats of each legislative body, the minority parties clause was triggered. The Puerto Rican Independence Party, which had not won any seats in the Legislative Assembly during the four previous elections, was granted one (1) seat in the Senate and two (2) seats in the House of Representatives by virtue of the minority parties clause.

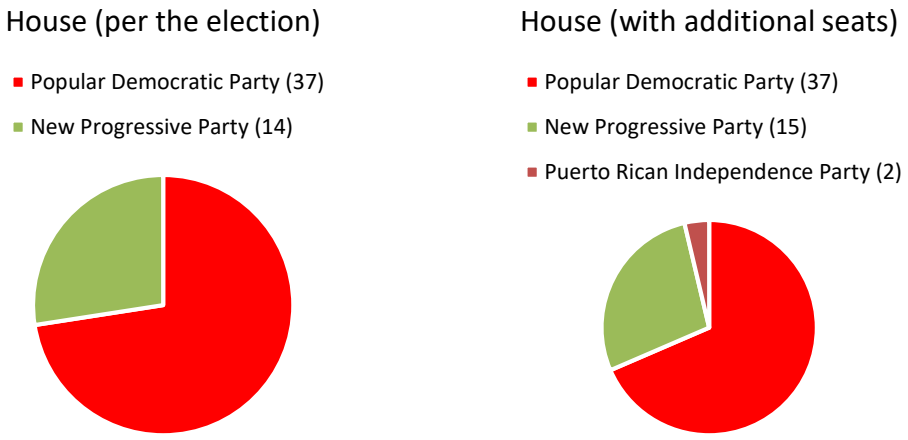
The composition of the Legislative Bodies is shown below:



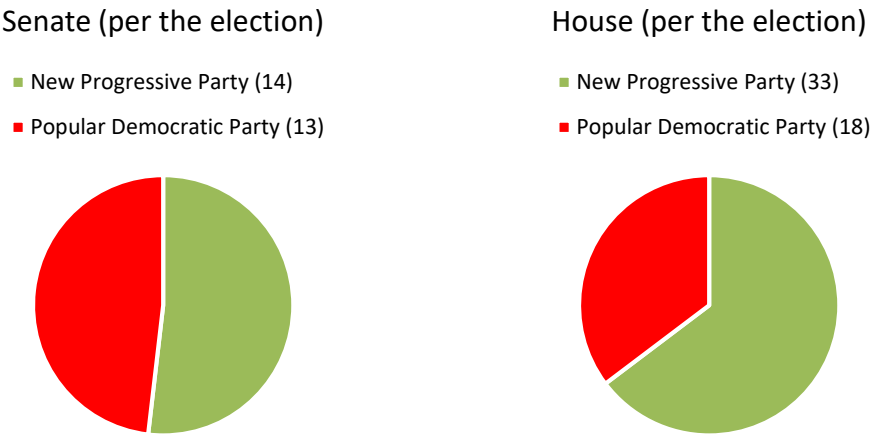

[13] The Popular Democratic Party failed to win the Senate District of San Juan.

The composition of the House of Representatives is shown below:




### § 2.7 1976 General Election (the constitutional clause was not triggered)

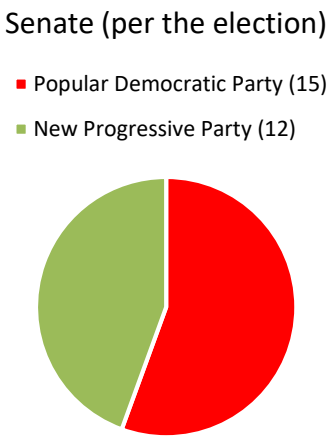
The minority parties clause was not triggered in this general election. The New Progressive Party won the race for governor with Carlos Romero Barceló who had been the Mayor of San Juan up to that point. The New Progressive Party was also the majority party in both Legislative Bodies but did not win enough seats to trigger the constitutional provision. The composition of the Legislative Bodies is shown below:

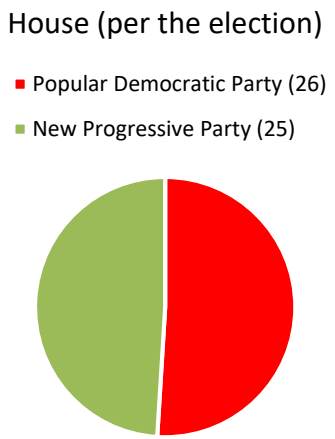



This Senate controlled by a New Progressive Party majority was presided by Luis A. Ferré who had been elected governor in 1968.

### § 2.8 1980 General Election (the constitutional clause was not triggered)

Several individuals who have studied the subject of Puerto Rico's elections, notably Fernando Byrón Toro, describe the 1980 general election as the most "important and hard-fought" race.[14] The minority parties clause was not triggered during this election. The composition of the Legislative Bodies is shown below:



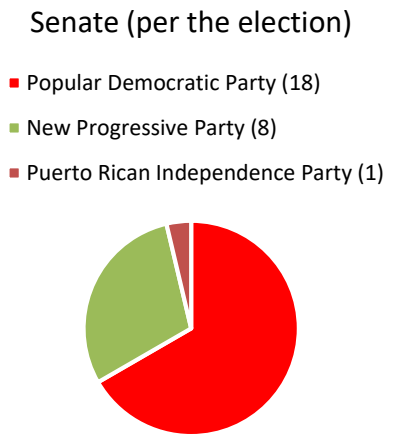

The election has been described as "important and hard-fought" because the race for governor between Carlos Romero Barceló and Rafael Hernández Colón was very close. This election is popularly known as the "Valencia election" because voters waited anxiously for the announcement of who would lead Puerto Rico the next four (4) years as the votes were counted in a building in Hato Rey called the Valencia Building. This same scenario was repeated in the House of Representatives where the Popular Democratic Party won the majority and beat the New Progressive Party by one seat, but a series of events led to the creation of the Viera-Colberg Agreement. According to the agreement, Representative Ángel Viera Martínez would serve as the Speaker of the House of Representatives until the resolution of several controversies surrounding the District 16 and District 35 seats, one (1) at-large seat, and a vacancy that arose due to a death fourteen (14) days after the members of the House of Representatives were sworn in.

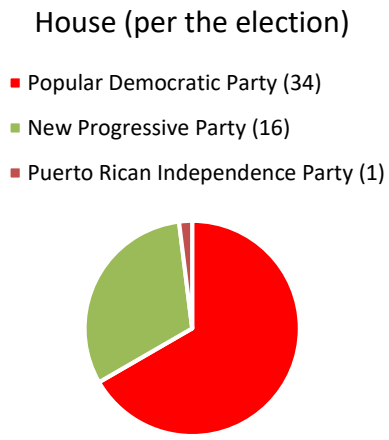
### § 2.9 1984 General Election (the constitutional clause was not triggered)

The minority parties clause was also not triggered during the 1984 general election. The Puerto Rican Independence Party won a seat in each Legislative Body after having no representation for two consecutive terms. Its members were elected by a direct vote of the People and received an unprecedented number of votes for candidates at-large. Ruben Berríos was elected to the Senate with 216,306 votes and David Noriega was elected to the House of Representatives with 169,595 votes. These numbers gain more significance because the party they represent, the Puerto Rican

[14] BAYRÓN, *supra* note 4, p. 346.

Independence Party, only received 65,876 votes.[15] The composition of both Legislative Bodies is shown below:

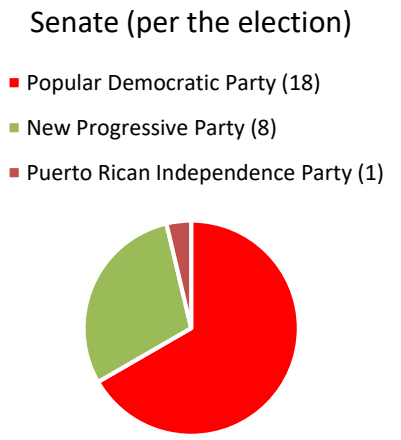


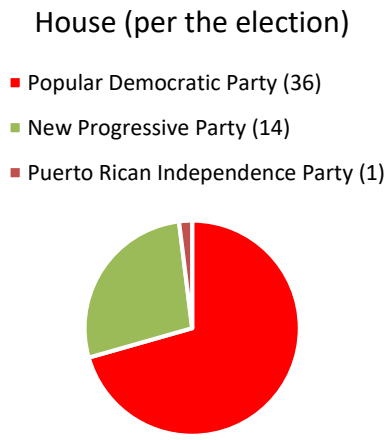




### § 2.10 1988 General Election (the constitutional clause was only triggered in the House of Representatives)

The 1988 general election was the first time that the clause was triggered solely in the House of Representatives where the Popular Democratic Party won thirty-six (36) seats which is two (2) seats over two thirds.

The composition of the Legislative Bodies is shown below:

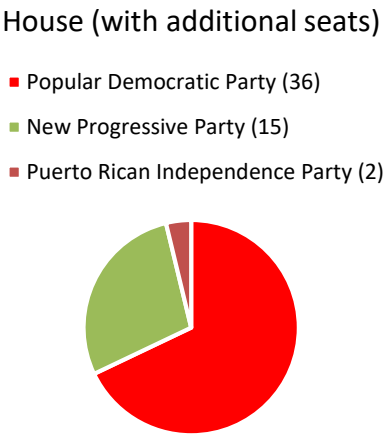



The composition of the House of Representatives after two (2) seats were added, one (1) for the New

[15] BAYRÓN, *supra* note 4, p. 399.

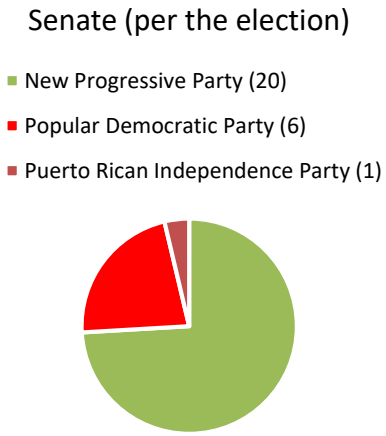
Progressive Party and one (1) for the Puerto Rican Independence Party, is shown below:

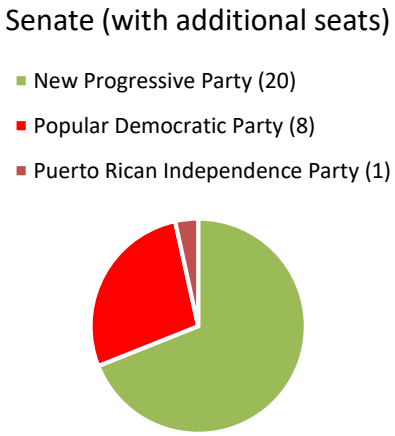



### § 2.11 1992 General Election

The 1992 general election was an important one, particularly for the Popular Democratic Party. Up to this moment, the minority parties clause had been triggered seven (7) times since 1952 to add legislators from the New Progressive Party and the Puerto Rican Independence Party. However, the 1992 election was the first time that the Popular Democratic Party benefitted from this constitutional provision.[16]

As shown below, the New Progressive Party won twenty (20) seats in the Senate which is two (2) seats over two thirds. Thus, the constitutional clause was triggered, and the number of Senate seats increased to twenty-nine (29).

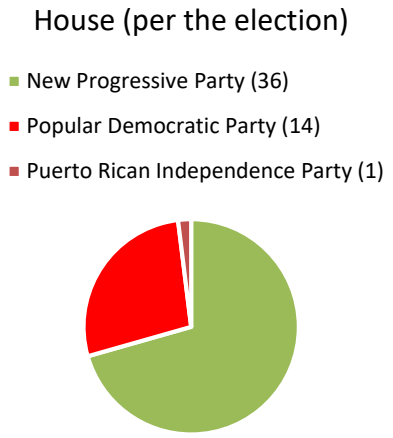


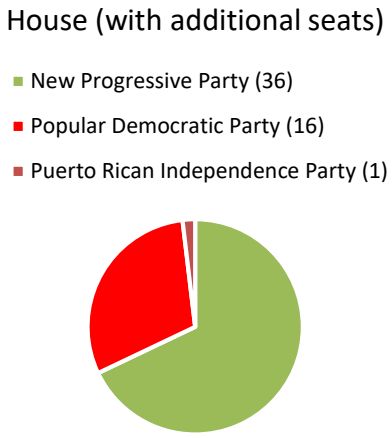




The New Progressive Party won thirty-six (36) seats in the House of Representatives which is two (2) seats over two thirds. Thus, the constitutional clause was triggered, and the number of seats in the

[16] BAYRÓN, *supra* note 4, p. 450.

House of Representatives increased to fifty-three (53).



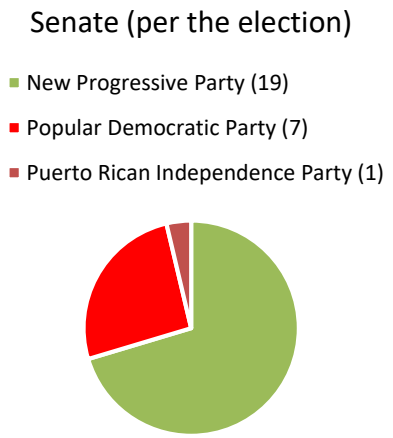



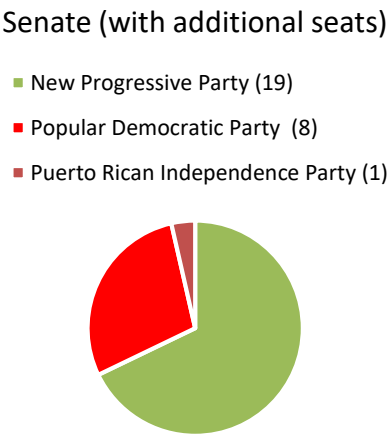

### § 2.14 1996 General Election

The 1996 general election was also important for the Legislative Bodies because it was the first election in which district and at-large legislators had their own ballot separate from that of the governor and the resident commissioner.

The New Progressive Party once again controls both Legislative Bodies.

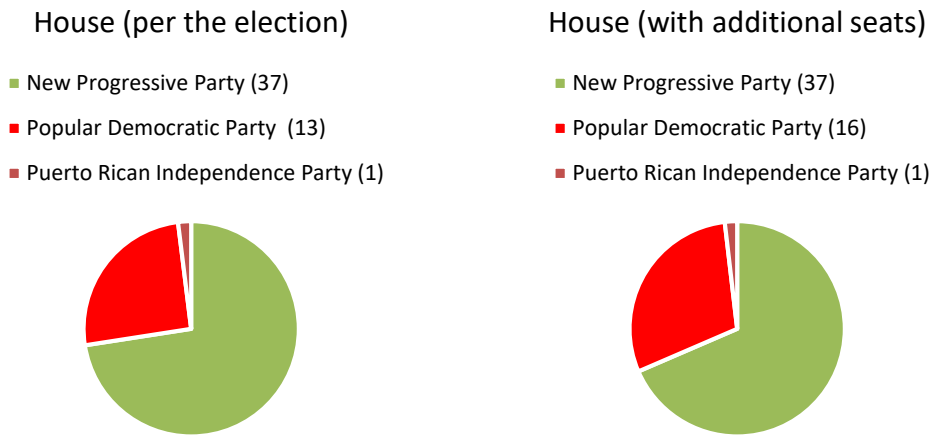
The New Progressive Party won nineteen (19) seats in the Senate which is one (1) seat over two thirds. Thus, the constitutional clause was triggered and the number of seats in the Senate was increased to twenty-eight (28).




The New Progressive Party won thirty-seven (37) seats in the House of Representatives which is three (3) seats over two thirds. Thus, the constitutional clause was triggered, and the number of seats

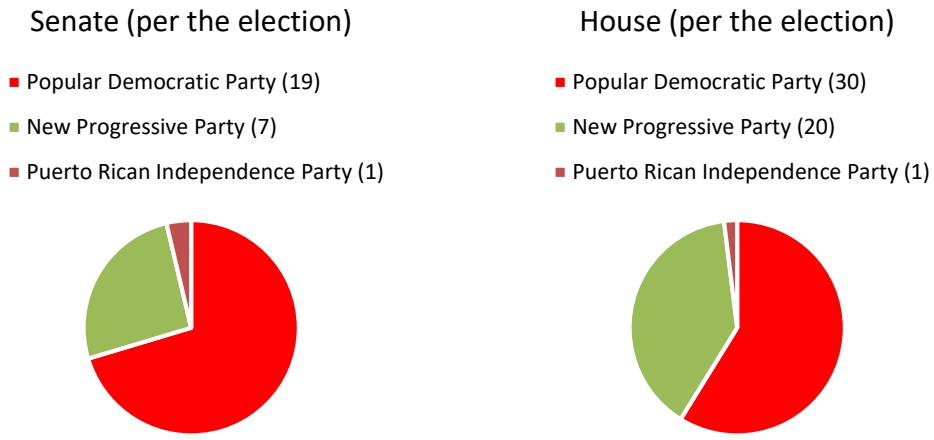
in the House of Representatives increased to fifty-four (54).



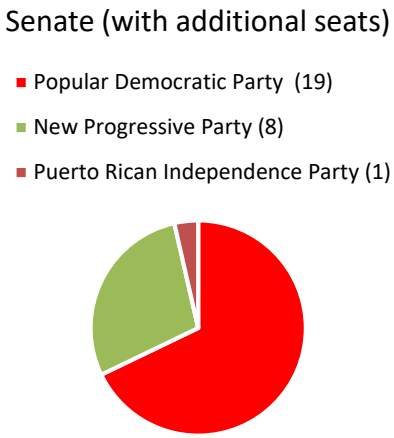

### § 2.15 2000 General Election (the constitutional clause was only triggered in the Senate)

The 2000 general election is the second time the minority parties clause is triggered in only one of the Legislative Bodies. In the 1988 general election it was triggered in the House of Representatives; however, in the 2000 general election it was triggered in the Senate of Puerto Rico.

The composition of the Legislative Bodies is shown below:



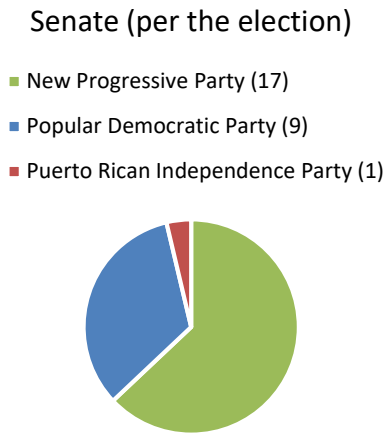

One (1) seat was added for the New Progressive Party in the Senate and the composition of the Body is shown below:

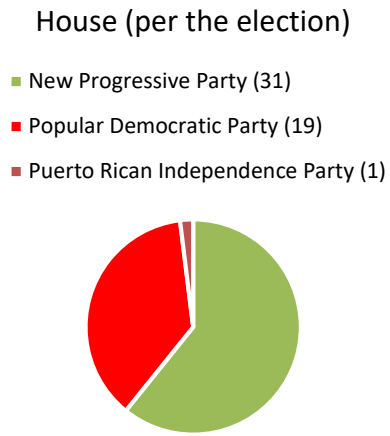



In 2000, the added New Progressive Party seat was held by Sergio Peña Clos who, as a matter of fact, joined the Party in 1996. Peña Clos eventually left the New Progressive Party in July 2003, but was not forced to vacate. Thus, a new seat was added for the new Progressive Party to be held by Norma Carranza which increased the number of Senate seats to twenty-nine (29).

### § 2.16 2004 General Election (the constitutional clause is not triggered)

The minority parties clause was not triggered in the 2004 general election. The composition of the Legislative Bodies is shown below:




The election resulted in a divided government in which both Legislative Bodies were controlled by the New Progressive Party, but the Popular Democratic Party controlled the Executive Branch. This is different from 1980 when a New Progressive Party Governor was elected, but both Legislative Bodies were controlled by the Popular Democratic Party.[17]

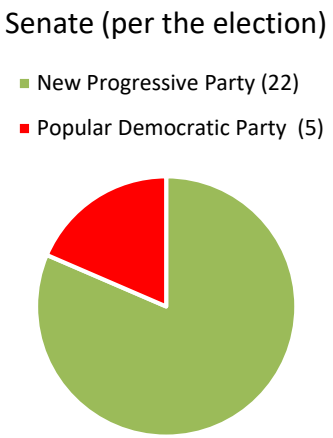
[17] In 2004, the President elect of the Senate, Senator Kenneth McClintock, his allies, and the Popular Democratic Party delegation entered into an agreement due to the New Progressive Party delegation infighting in the Senate. The infighting

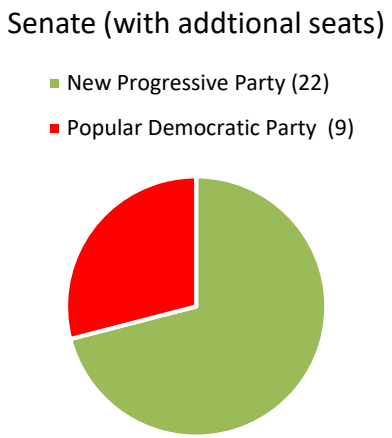
### § 2.17 2008 General Election

The hegemony that the Popular Democratic Party had over the Legislative Bodies during the 1952, 1956, 1960, and 1964 general elections was such that it triggered the minority parties clause. There was a similar type of predominance in the 2008 general election as in those previous elections; however, this time it was the New Progressive Party rather than the Popular Democratic Party.

Furthermore, the Puerto Rican Independence Party was unable to win any seats for the first time in seven (7) consecutive elections and had no legislative representation.

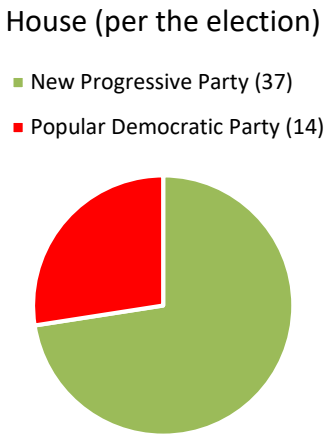
As shown below, the New Progressive Party won twenty-two (22) seats in the Senate which is four (4) seats over two thirds. As a result, the constitutional clause was triggered and the number of Senate seats increased to thirty-one (31).

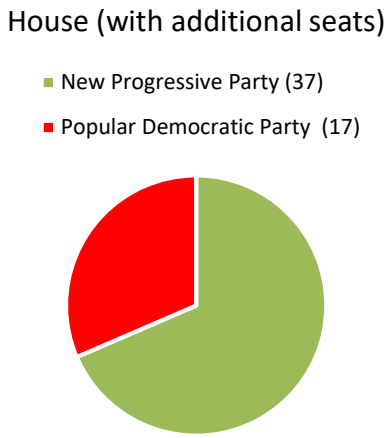



The New Progressive Party won thirty-seven (37) seats in the House of Representatives which is three (3) seats over two thirds. Thus, the constitutional clause was triggered and the number of seats in the House of Representatives increased to fifty-four (54).

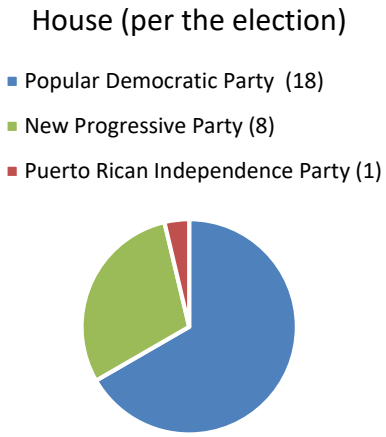
began when former governor Pedro Rosselló González was granted a seat in the Senate due to internal Party procedures and attempted to become the President of the Senate. Senate procedures were conducted pursuant to this agreement and those who were a party to the agreement were named the "Pava-Clintocks."

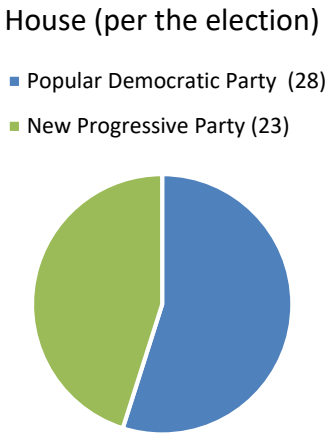



### § 2.18 2012 General Election (the constitutional clause was not triggered)

The minority parties clause was not triggered in the 2012 general election. The composition of the Legislative Bodies is shown below:



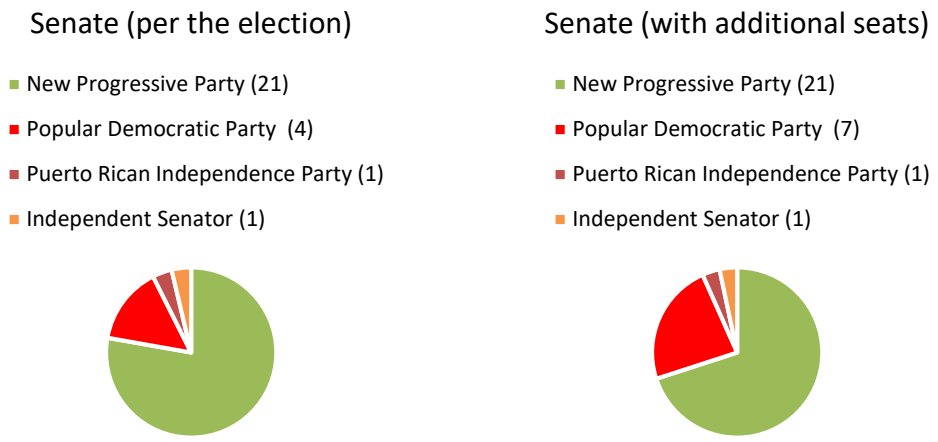

As shown above, the Puerto Rican Independence Party won a seat in the Senate through a direct vote but failed to win any seats in the House of Representatives.

### § 2.19 2016 General Election (the constitutional clause was only triggered in the Senate)

The 2016 general election was the third election in which the minority parties clause was triggered in only one of the Legislative Bodies, in this case the Senate. The New Progressive Party prevailed in seven (7) of the eight (8) senate districts and won two (2) seats in the senate district in which it did not prevail. José Luis Dalmau Santiago (who was elected Senate President in 2021) was the only Popular Democratic Party district senator to be elected. In addition, six (6) senators at-large from the

New Progressive Party were directly elected for a total of twenty-one (21) senators thus triggering the minority parties clause.

The composition of the Senate is shown below:



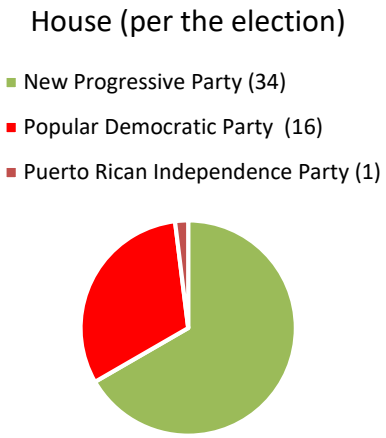

José Vargas Vidot was elected as an independent senator in this election; he was the senator at-large who poled the highest number of votes. This was not the first time that an independent candidate ran for a legislative seat as there were two independent candidates in the 1996 election, Neftalí García in the Senate and Marta Font in the House of Representatives. Both independent candidates polled enough votes to be elected as legislators at-large.[18]

The New Progressive Party's majority was such that more minority seats had to be added to comply with the constitutional provision that requires at least one third of the Legislative Body be composed of minority parties. For such reason, three (3) seats were added for the Popular Democratic Party.

The election of both Independent Senator Vargas Vidot and Puerto Rican Independence Party Senator Juan Dalmau Ramírez, who was the third Senator at-large who polled the most votes, generated controversies that reached the Supreme Court of Puerto Rico and shall be discussed later.

It was a different scenario in the House of Representatives in 2016. The New Progressive Party prevailed; however, it did not win enough seats to trigger the constitutional clause after winning just thirty-four (34) seats which is exactly two thirds of all seats. The minority parties clause would have been triggered if the New Progressive Party had won one additional seat.

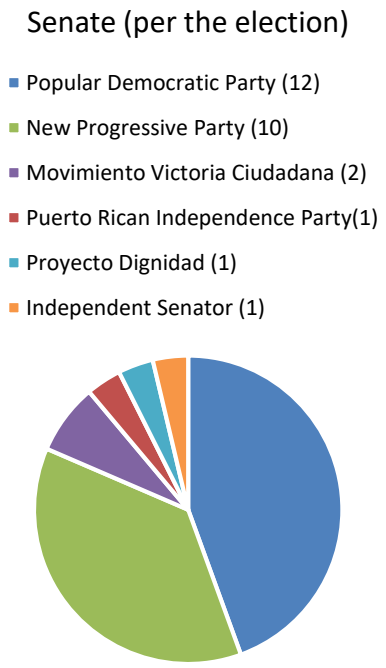
[18] BAYRÓN, *supra* note 4, p. 476.

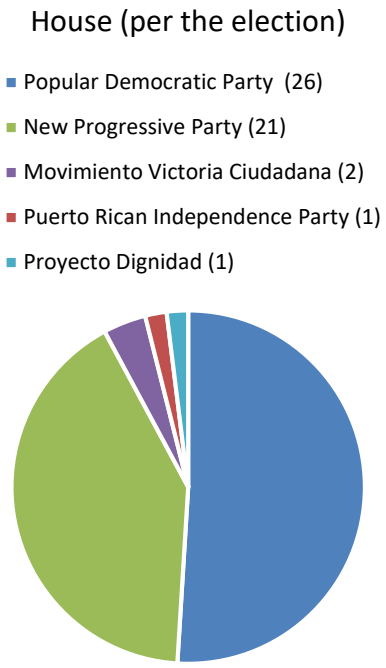



### § 2.20 2020 General Elections (the constitutional clause was not triggered)

The 2020 general election can be considered a historic event even though the minority parties clause was not triggered. The election was held during the COVID pandemic, and it marked the arrival of Movimiento Victoria Ciudadana and Proyecto Dignidad, two (2) new political parties. These parties won seats in both Legislative Bodies. Likewise, independent senator Vargas Vidot was reelected.

The composition of the Legislative Bodies is shown below:






As can be seen above, the Popular Democratic Party won the majority of seats in the Senate, however, it only won twelve (12) out of the fourteen (14) seats necessary to elect a President or pass legislation. In view of this situation, Popular Democratic Party senator José Luis Dalmau Santiago took action and secured votes thirteen (13) and fourteen (14) from independent senator Vargas Vidot and Proyecto Dignidad senator Rodríguez Veve and was elected President. Dalmau Santiago is an interesting figure and his victory was unsurprising. He was the longest serving Senator (he was sworn in in 2001) at the time he was elected President and has extensive legislative experience. Dalmau Santiago has served as minority leader, majority leader, vice president of the Senate; and assistant minority leader before being elected as President. Therefore, he has the necessary experience to join efforts and reach a consensus.

The Popular Democratic Party was more successful in the House of Representatives and won twenty-six (26) seats, which is enough to elect a speaker and pass legislation.

## § 3.0 FORMULAS TO DETERMINE THE SEATS TO BE AWARDED UNDER THE MINORITY PROVISION.

Below is a model to be followed to determine the number of additional seats to which parties are entitled. The easiest and simplest formula to remember in order to determine the results is: first add, then divide, then multiply, and then subtract. Strictly in that order.

**FORMULAS TO DETERMINE THE SEATS TO BE AWARDED UNDER THE MINORITY PROVISION**

1996 GENERAL ELECTION | **HOUSE OF REPRESENTATIVES**

The total number of votes obtained by the two candidates for governor **who did not prevail** in the election is added together.

875,852 (**PDP**) **+** 75,305 (**PRIP**) = **951,157**

Seats to which they are entitled by addition

**Seats for the PDP**

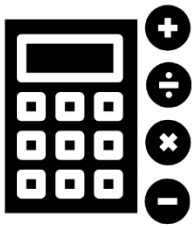
875,852 ÷ 951,157 = 0.92 **x** 17 = 15.65 **-** 13 = 2.65 (round to 3)

Guaranteed seats for the minority in the House

Seats won by direct vote.

**Seats for the PRIP**

75,305 ÷ 951,157 = 0.079 **x** 17 = 1.35 **-** 1 = 0.34 (they have no right)



**FORMULAS TO DETERMINE THE SEATS TO BE AWARDED UNDER THE MINORITY PROVISION**

1996 GENERAL ELECTION | **SENATE**

The total number of votes obtained by the two candidates for governor **who did not prevail** in the election is added together.

875,852 (**PDP**) + 75,305 (**PRIP**) = **951,157**

Seats to which they are entitled by addition

**Seats for the PDP**

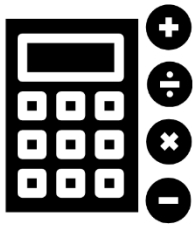
875,852 ÷ 951,157 = 0.92 **x** 9 = 8.29 **-** 7 = 1.28 (round to 1)

Guaranteed seats for the minority in the Senate

Seats won by direct vote

**Seats for the PRIP**

73,305 ÷ 951,157 = 0.077 **x** 9 = 0.69 **-** 1 = 0.31 (they have no right)



## § 4.0 CONTROVERSIES AND INTERPRETATIONS ARISING OUT OF SAID CLAUSE.

This constitutional provision has been subject to controversies that have led to legislative and judicial interpretations, which will be discussed below.

**§ 4.1 Socialist Party member Antonio Reyes Delgado, Esq.'s challenge to Senator Antonia Cabassa, widow of Fajardo, (Statehood Party member) and representatives Jesús Rodríguez Benítez (Independence Party member) and Ángel A. Loyola (Statehood Party member).**

The first election following the adoption of the Constitution of Puerto Rico gave rise to the first controversy on the minority parties clause. Socialist Party member Antonio Reyes Delgado, Esq. challenged the swearing-in and the seat granted to Senator Antonia Cabassa widow of Fajardo, of the Statehood Party. Mr. Reyes Delgado claimed that the seat belonged to him. Similar claims were made by Lino Padrón Rivera and Pedro Borges López who contended that their seats in the House of Representatives had been granted to Jesús Rodríguez Benítez and Ángel A. Loyola.

Mrs. Reyes Delgado challenged the calculation used to allocate Senate seats to minority parties in order to comply with the constitutional clause. In that election, the votes for the office of Governor per party are shown below:

| | | |
|---|---|---|
| Popular Democratic Party | 431,409 | 64.87% |
| Independence Party | 126,228 | 18.98% |
| Statehood Party | 85,591 | 11.36% |
| Socialist Party | 21,719 | 4.77% |
| Total: | 664,947 | 100% |

Candidate Reyes Delgado alleged that, based on the calculation used to determine the minority parties representation, five (5) independence party senators; three (3) statehood party senators; and one (1) socialist party senator should be declared elected. However, four (4) senators had been declared elected for the Statehood Party and none for the Socialist Party.

Mr. Reyes Delgado, who obtained 21,782 votes, initially submitted his request to the Board of Elections, which received a vote in favor from the Popular Democratic Party and the Socialist Party. However, the Statehood Party and the Puerto Rican Independence Party voted against it. As a result, the Chair of the Board made the final determination. Prior to making his determination, the Chair of the Board requested the opinion of the Department of Justice to resolve the controversy. The Secretary of Justice determined that the vote cast for the Socialist Party's candidate for Governor did not meet the 5% requirement established by the Electoral Act in effect at the time, therefore, it could not claim an additional seat.

Since he did not obtain a remedy through the Board of Elections, Mr. Reyes Delgado filed a petition (complaint) with the Senate, notice of which was taken on Wednesday, January 14, 1953, two days after the new Senate's swearing-in ceremony. In his petition, Mr. Reyes Delgado demanded a seat in said Legislative Body as representative for the Puerto Rican Independence Party. He argued that the provision requiring the candidates for governor of each party to poll five percent (5%) of all votes cast in order to have a seat in the Legislative Assembly was unconstitutional and void. Thus, he requested: the Senate to assume jurisdiction over the case; to schedule a hearing; and to declare that he, and not Senator Antonia Cabassa, was entitled to a seat in the Upper House.

At the request of Senator Gutierrez Franqui, the complaint was referred to a Special Committee.

The Statehood Party, through its Senator, Miguel García Méndez, contended that the argument that the statute was unconstitutional and void, lacked merits. García Méndez pointed out that the Constitution authorized the Legislative Assembly to regulate the implementation of guarantees and the method of adjudicating fractions. Consistent with the forgoing, a law had been approved to reduce from 10 to 5 percent, the minimum number of votes that a party's candidate for governor needed to poll in order for the party's candidates to the Legislative Houses to be able to compete for a seat in the event that the constitutional clause regarding minority parties is triggered.

In addition, García Méndez argued that since the Board of Elections had dismissed the Socialist Party's request, the only option available to such Party was to file an appeal with the Court to halt the swearing in of Senator Antonia Cabassa, rather than filing a challenge with the Senate. However, the Socialist Party, represented by Mr. Reyes Delgado, Esq., did not file an appeal with the Court.

At the request of Senator and Majority Leader Gutierrez Franqui, García Méndez's argument would also be referred for consideration by the Special Committee.

This argument, which was also introduced in the Senate, was presented in the House, wherein the election of Jesús Rodríguez, for the Puerto Rican Independence Party, and Ángel A. Oyola, for the Statehood Party, had been challenged. Representatives Leopoldo Figueroa Carreras and Baltasar Quiñones Elías stated in similar terms that the challenge had been filed at the wrong time.

The Senate Special Committee was composed of senators Víctor Gutiérrez Franqui, Lionel Fernández Méndez, Cruz Ortiz Stella, Eugenio Font Suárez, Ernesto Juan Fonfrías, Ydelfonso Solá Morales, Ramón E. Bauzá, and Miguel Ángel García Méndez. The members of the House Special Committee included representatives Santiago Polanco Abreu, José Mimoso Raspaldo, Lorenzo Lagarde Garcés, Rodolfo Aponte, Álvaro Rivera Reyes, Leopoldo Figueroa, and Luis Archilla Laugier.[19]

The Senate Special Committee submitted its Special Report on March 16, 1953. After outlining the facts that led to the creation of the Special Committee on the Challenge, they arrived at the following conclusions:

1. The fact that the election of senator Cabassa had been challenged after she was sworn in, did not turn the challenge into a request for expulsion;

2. That when the Senate examines the certificate of election, it does so in accordance with its constitutional mandate to pass judgment on the validity of the election of its members;

[19] José M. Ufret, *Los Socialistas Alegan Fue Ilegal la Elección de Tres Legisladores,* EL MUNDO, January 16, 1953, page 1.

3. That to be entitled to the representation reserved for minority parties, the candidate for governor of the minority party should poll a minimum number of votes fixed by the Legislative Assembly by law (in this case, it required a 5 percent);

4. Since the Socialist Party did not receive the minimum number of votes required by law, it was not entitled to additional seats under the constitutional provision.[20]

Senators Juan Dávila and Idelfonso Solá Morales filed a report dissenting with the opinion of a majority of members of the Special Committee. In short, they argued that the provision of the Election Act requiring the candidate for governor of a minority party to poll five (5%) percent of all votes cast for such office violates the Constitution of Puerto Rico. According to these senators, the Constitution requires that the candidates who polled the highest number of votes from among the candidates running for the same office be declared elected whenever the constitutional clause is triggered. Notwithstanding the foregoing, these senators overlooked the fact that the constitutional provision empowers the Legislative Assembly to regulate that matter through election laws.

**§ 4.2 Fuster v. Busó, 102 DPR 327 (1974) Per Curiam** (Controversy over a seat in the House of Representatives for Roberto Sánchez Vilella of the People's Party)

As previously stated, during the 1968 general election, Governor Sánchez Vilella did not run for the Popular Democratic Party due to a dispute with the party's leadership. Thus, Sánchez Vilella ran for Governor under the emblem of the People's Party, but was not elected. He eventually ran for Representative under the People's Party emblem in the 1972 general election. In that 1972 election, the Popular Democratic Party won 37 seats in the House, which is three (3) seats over two thirds, while the New Progressive Party won 14 seats. This scenario triggers the minority parties protection clause and three additional members are declared elected to reach the required one third, to wit, David Urbina for the New Progressive Party and Carlos Gallisá and Luis Ángel Torres for the Puerto Rican Independence Party.

With these facts, a very particular case reaches the courts of Puerto Rico. Although a seat in the House of Representatives for Roberto Sánchez Vilella was claimed, Sánchez Vilella himself was not a party to the legal action before the Court.

The case was decided Per Curiam and analyzes the origin of the minority parties clause in Puerto Rico and the Popular Democratic Party's genuine concern with ensuring the minority parties representation in the Legislative Houses. The Court's opinion recognizes that, in Section 7, Article III of the Constitution, the members of the constitutional convention assigned to the Legislative Assembly a share of responsibility in determining the minimum number of votes that a minority party should poll in order to be entitled to the additional representation provided by this constitutional clause.[21]

[20] JOURNAL OF SESSIONS OF THE SENATE OF PUERTO RICO, January 14, 1953, 1st Reg. Sess., 2nd Leg. Assem. (1953), 575-576.
[21] Fuster v. Busó, 102 DPR 327, 333 (1974).

In keeping with the foregoing, Act No. 18 of August 22, 1952, was approved, providing that:

> No minority party shall be entitled to additional candidates [in the Legislative Assembly]…**unless** it shall obtain for its candidate for Governor in the general election a number of votes equivalent to **five (5) per cent or more** of the total number of votes cast in the said general election for all the candidates for Governor voted for in said election.[22] (Emphasis added)

In the 1972 general election, the Popular Democratic Party came in first, followed by the New Progressive Party. The Puerto Rican Independence Party and the People's Party came in third and fourth place, respectively.

In the 1972 general election, Sánchez Vilella received less than one third of one percent (1%) of the votes cast (59,855), which is not enough to be elected for the office of House Representative. The Supreme Court held that Sánchez Vilella would have been entitled to a seat in the House of Representatives if the candidate for governor of the People's Party had received five percent (5%) or more of the votes, however, that was not the case because the People's Party received 0.24 of one percent of the votes cast.[23] Upon determining the seats that would be added, the Supreme Court held that the New Progressive Party and the Puerto Rican Independence Party received over five percent (5%) of the votes, therefore, such parties were the ones entitled to participate in the distribution of additional seats.

What is interesting about this case is that Sánchez Vilella himself did not file a claim for a seat in the House of Representatives and that one of the additional candidates who had been certified for the PRIP, Luis Ángel Torres only received 127 votes.

### § 4.3 Challenge to the election of Gilberto Reyes Lugo (Puerto Rican Independence Party member) by New Progressive Party Election Commissioner Francisco González Jr.

In 1988, the constitutional minority parties clause is triggered for the first time in just one Legislative House, specifically the House of Representatives. In that election, the Popular Democratic Party won 36 seats, that is, two seats over the two thirds.

As a result, on December 30, 1988, the Chair of the State Elections Commission, Marcos A. Rodríguez Estrada, issued a Resolution stating that two additional members would be added to the House of Representatives to represent the minority parties. He stated that one seat would be assigned to the New Progressive Party (NPP) and another seat to the Puerto Rican Independence Party (PRIP). In the case of the NPP, the seat would belong to the candidate for representative at-large who polled the highest number of votes from among the candidates that were not elected. In the case of the PRIP,

[22] *Id.* p. 334.
[23] *Id*. p. 340.

the seat would belong to the district representative candidate who polled the highest number of votes. Thus, Reinaldo Pirela of the NPP and Gilberto Reyes Lugo of the PRIP were declared elected.

Dissatisfied with the determination of the State Elections Commission, NPP Election Commissioner Francisco González, Jr. filed a petition for review with the Court of First Instance, and another petition with minor modifications with the Clerk of the House of Representatives. The House considered said petition as a challenge to the right of PRIP representative Reyes Lugo to hold a seat.[24]

In his petition, the NPP Election Commissioner stated that, since the NPP candidate for Governor obtained more than eight times the number of votes obtained by the PRIP candidate for Governor, both seats belonged to the NPP, contrary to what the chair of the State Elections Commissioner had determined.

On January 2, 1989, the certified representatives were sworn in, including Gilberto Reyes Lugo who held a certification from the Elections Commission, absent a Court order to the contrary. On January 9 of that same year, the House was legally constituted. After the House leadership and officers were elected, a Special Committee was designated to address the challenge to the certificate of election of representative Gilberto Reyes Lugo. The Committee was composed of five (5) members from all delegations, namely: José Varela Fernández as chair; Preby Santiago García; Andrés Rolón Marrero; Néstor S. Aponte Hernández; and David Noriega Rodríguez. The committee initially had a period of ten (10) days to consider the case, but such period was eventually extended to fifteen (15) days.

The Committee held public hearings in which it heard the testimonies of the Secretary of the State Election Commission, Néstor J. Colón Berlingeri; the director of the Legal Division of the State Election Commission, Julia M. Santiago de la Cruz, Esq.; Virgilio Ramos, Esq., attorney for Mr. Luis Ayala del Valle from the NPP; Miguel Pagán, Esq., attorney for the NPP as a group; and Carlos I. Gorrín Peralta, Esq., attorney for the PRIP.[25]

After conducting a mathematical exercise and applying the provisions of the Constitution, the Special Committee recommended to the House of Representatives to confirm that two seats corresponded to the PRIP, and only one seat corresponded to the NPP, in order to reach the seventeen (17) minority seat requirement of the House of Representatives.

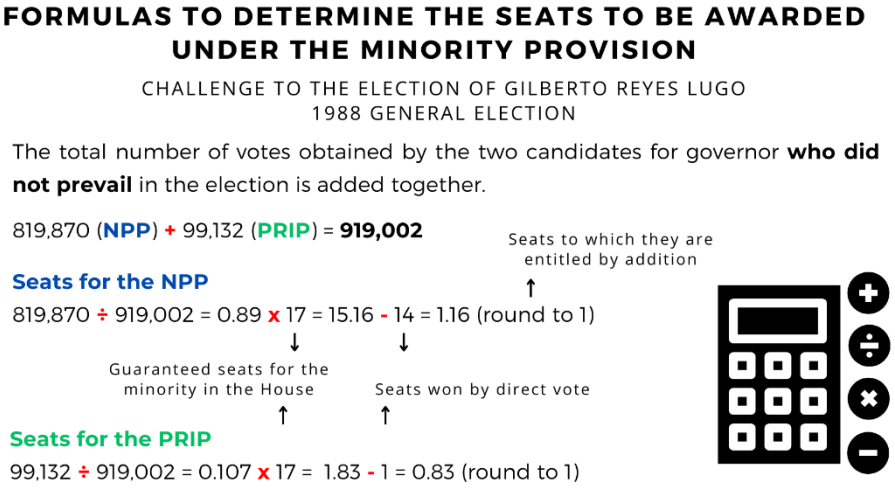
The following calculation was made to distribute the additional seats:

The total number of votes received by the two candidates for governor who did not prevail in the election is added: 819,870 for the NPP, plus 99,132 for PRIP equals: 919,002.

[24] JOURNAL OF SESSIONS OF THE HOUSE OF REPRESENTATIVES OF PUERTO RICO, January 23, 1989, 1st Reg. Sess., 11th Leg. Assem. (1989), 8-9.
[25] JOURNAL OF SESSIONS OF THE HOUSE OF REPRESENTATIVES OF PUERTO RICO, January 23, 1989, 1st Reg. Sess., 11th Leg. Assem. (1989), 9.

Seats for the NPP: With this result (919,002), to determine the number of seats corresponding to the NPP, the number of votes received by its candidate for governor, 819,870, is divided by the total number of votes 919,002 which equals: 0.89. This number is multiplied by 17, which is the number of seats reserved for minority parties, which equals: 15.16. Then, the number of NPP representatives who were elected by a direct vote, that is 14, is subtracted and the result is: 1.166 which is rounded to 1 by provision of law.

Seats for the PRIP: With this result (919,002), to determine the number of seats corresponding to the PRIP, the number of votes obtained by its candidate for governor, 99,132, is divided by the total result 919,002, which equals: 0.107. This number is then multiplied by 17, which is the number of seats reserved for minority parties, which equals: 1.83. Then the number of PRIP representatives who were elected by a direct vote, that is 1, is subtracted and the result is: 0.83 which is rounded to 1 by provision of law.




**§ 4.4 Popular Democratic Party v. Peña Clos I, 140 DPR 779 (1996) Judgment** (even though the case was decided in 1996, it addresses the composition of the Senate in the 1992 general election. The controversy was filed near the end of the four-year term, resulting in a senator seat being added for the PDP for a few months).

As stated above, after the 1992 general election the minority parties clause is triggered for the first time for the benefit of the Popular Democratic Party. The minority parties clause had been triggered six (6) times before, but for the benefit of the New Progressive Party.

In this four-year term, according to the election, the Senate was composed as follows: twenty (20) senators for the New Progressive Party, six (6) for the Popular Democratic Party, and one (1) for the Puerto Rican Independence Party. In order to guarantee nine (9) senator seats for the minority parties, two (2) seats were added for the Popular Democratic Party to be held by Eudaldo Báez Galib and Sergio Peña Clos.

On October 12, 1993, senator Sergio Peña Clos notified president of the Senate, Roberto Rexach Benítez of his decision to leave the Popular Democratic Party and become an independent senator from then on to the and the Popular Democratic Party minority leader, Miguel Hérnandez Agosto.[26] With such action, the delegation of the Popular Democratic Party was reduced to seven (7) senators. Eventually, on April 3, 1995, senator Peña Clos joined the New Progressive Party.[27]

As a result, the delegation of the New Progressive Party increased to twenty-one (21) seats and the minority parties were represented for all intents and purposes, by the seven (7) seats held by the Popular Democratic Party and one (1) seat held by the Puerto Rican Independence Party.

The Popular Democratic Party and the senators affiliated thereto filed an action with the court which concluded with this 1996 judgment. In the action, the plaintiffs requested, among other things, that senator Peña Clos be ordered to cease to hold office as legislator and be recognized as such, and to refrain from engaging in activities in such capacity. More importantly, they requested the court to certify an additional senator from the Popular Democratic Party in accordance with Section 7 in order to increase the number of said Party's seats in the Senate to eight (8).[28]

The action was dismissed by the Court of First Instance. When it reached the Supreme Court, said Forum decided in a split decision, the following through a *Judgment*:

(1) that the Popular Democratic Party minority was entitled to have an additional certified candidate as Senate member in order to complete the number of members to which it was entitled;
(2) concerning Peña Clos' seat in the Senate, a majority agrees that he may continue hold his seat. Some justices considered that changing his political affiliation does not prevent him from remaining in office, and others believe that the Court lacks the authority to direct the Senate to remove him from office.

After the Supreme Court's decision, Juan Rivera Ortiz was sworn-in as senator for the Popular Democratic Party on June 10, 1996. Shortly after swearing-in, senator Rivera Ortiz expressed:

> …[w]hat supports this event [his swearing-in], is based on the action filed by my Party in view of senator Peña Clos' transfer and the Supreme Court decision. We are here today by virtue of said order, Mr. President. I am here today to occupy a seat that I did not seek for myself. I am here today to fulfill my responsibility to represent, although briefly, those who voted for me in the past election and naturally, to comply with the Supreme Court's order.[29](Emphasis added) [Our translation]

[26] PDP v. Peña Clos, 140 DPR 779, 784 (784) (Naveira de Rodón, concurring opinion).
[27] *Id*.
[28] *Id.* at page 785.
[29] JOURNAL OF SESSIONS OF THE SENATE OF PUERTO RICO, 53, 7th. Ord. Sess., 12th. Leg. Asem. (1996), 28191. It is important to stress that Juan Rivera Ortiz had been a senator for twenty (20) years. Senator Rivera Ortiz served in the

**§ 4.5 Suárez Cáceres v. Com. Estatal de Elecciones, 176 DPR 31 (2009) Opinion of JA Kolthoff Caraballo** (Supreme Court orders the certification of Jorge Suárez Cáceres as an additional member of the Senate)

The New Progressive Party won twenty-two (22) Senate seats in the 2008 general election thereby triggering Section 7 which guarantees the minority parties' representation. The Popular Democratic Party only won five (5) seats in the Senate through a direct vote and were thus entitled to four (4) additional seats to ensure the minority parties' representation. The additional seats were held by: Juan Eugenio Hernández Mayoral, José Luis Dalmau Santiago, and Eder Ortiz.

A controversy arose regarding the certification of the candidate who would be entitled to the fourth additional seat because Jorge Suárez Cáceres, the candidate for the district of Humacao, received 22.72% of all votes (110,777 votes) and Ángel Rodríguez Otero, the candidate for the district of Guayama, received 22.73% of all votes (118,950 votes). After several formalities, the State Election Commission ordered that the candidates be selected by drawing lots through a raffle because they were essentially tied.

The case reached the Supreme Court after several procedures in the State Election Commission, the Court of First Instance, and the Court of Appeals. Associate Justice Kolthoff Caraballo analyzed whether the phrase "votes cast" in subsection (b) of Section 7 includes ballots that are blank, void, or write-in votes for fictional persons. Regarding this question, the Supreme Court held the following:

> [C]onsidering that, in the instant case, as certified by the C.E.E [Spanish acronym] itself, the percent proportion of the two (2) candidates, **excluding ballots cast blank, void, or write-in votes for fictional persons,** are 22.8481% for respondent Rodríguez Otero and 22.8526% for petitioner Suárez Cáceres, there is no doubt that the drawing of lots directed by the C.E.E. is not appropriate and **the Senate seat belongs to Suárez Cáceres**.[30] (Emphasis added) [Our translation]

Chief Justice Hernández Denton and Associate Justices Fiol Matta and Rodríguez Rodríguez wrote dissenting opinions.

Chief Justice Hernández Denton believed that the exclusion of ballots that were cast blank, void, or write-in vote for fictional persons"silences the voices of thousands of Puerto Rican voters who cast their ballots [in such a manner] as a form of protest or simply because they favored a person other than that featured in the ballot".[31] According to the Chief Justice:

---

Senate for approximately six (6) months because the general election was to be held that same year and he did not run for an additional term.

[30] Suárez Cáceres v. Com. Estatal de Elecciones, 176 DPR 31, 83-84 (2009)

[31] Suárez Cáceres v. Com. Estatal de Elecciones, 176 DPR 31, 93 (2009) (Hernández Denton, dissenting opinion).

> [t]he phrase "votes cast" must include all ballots cast by voters whether they were marked with a cross, cast blank, cast in a manner of protest, or cast with a name in the "write-in" column.[32]

In his dissenting opinion, Hernández Denton stated that he would have remanded the case to the State Election Commission in order for it to certify Mr. Ángel Rodríguez Otero for two reasons: (1) because arithmetically speaking, Ángel Rodríguez received 8,173 more votes than Mr. Jorge Suárez Cáceres, and (2) because, in accordance with the formula established by the Constitution, Rodríguez Otero's proportion of votes was 0.009% higher than that of his closest party member, Suárez Cáceres.

**§ 4.6 Rodríguez Otero v. CEE et. al., 197 DPR 42 (2017)** (Independent candidates are recognized as part of the minority parties representation for the purpose of calculating the 9 senators)

The most recent case that reached the Supreme Court was *Rodríguez Otero v. CEE et. al.* 197 DPR 42 (2017). In the 2016 general election, the New Progressive Party (NPP) won twenty-one (21) out of twenty-seven (27) seats in the Senate which is more than two-thirds of all Senate seats. This was the first time in Puerto Rico's history in which an Independent Senator, Dr. José A. Vargas Vidot, had won a seat. Furthermore, Juan Dalmau Ramírez also won a seat as Senator for the Puerto Rican Independence Party (PRIP) even though the party had failed to achieve the required electoral support to remain registered. The Popular Democratic Party (PDP) only won four (4) senate seats through a direct vote. As a result of the NPP winning more than two thirds of all seats (it won 21 seats), the minority parties clause was triggered and the number of seats had to be increased to accommodate a total of nine (9) seats, or one third of the Senate, for the minority parties.

As the body responsible for certifying the elected candidates, the State Election Commission (SEC) certified the election of three (3) additional PDP candidates upon applying the minority parties clause.[33] As a result, the Senate, which had the number of seats increased to thirty (30), would be composed of twenty-one (21) NPP senators, seven (7) PDP senators, one (1) PRIP senator, and one (1) independent senator. Thus, three additional PDP candidates requested to be certified under the minority parties clause. In summary, such candidates stated: **firstly**, that the Independent Senator should not be considered as part of a "minority" because the addition of seats only applied to minority parties and Dr. Vargas Vidot did not represent any party; **secondly**, that the PRIP senator would represent a party that failed to achieve registration because it did not receive the required electoral support.

The Supreme Court was tasked with determining whether the independent candidate and the candidate from a party that had failed to achieve registration should be considered for the limit of nine (9) minority party senators. The Supreme Court held that both senators would be considered for the limit of nine (9) senators. The case was resolved through a Judgment with plurality, concurring, and dissenting opinions from the Supreme Court justices.

[32] *Id.* p. 105.
[33] José Nadal Power, Miguel Pereira Castillo, and Cirilo Tirado Rivera.

## § 5.0 PUERTO RICO ELECTION CODE

In accordance with the last paragraph of Section 7 of Article III of the Constitution of Puerto Rico, it is duty of the Legislative Assembly to pass legislation as necessary to implement these guarantees for minority parties representation. This is addressed in Act No. 58-2020, as amended, known as the "Puerto Rico Election Code of 2020." Regarding the minority parties representation, **Section 10.14** of Act No. 58, *supra*, provides the following:

> After the Commission has conducted the general canvass, it shall determine the eleven (11) candidates elected as senators-at-large, the eleven (11) candidates elected as representatives-at-large, the two (2) senators for each senate district, and one (1) representative for each representative district.
>
> In addition, the Commission shall determine the number and the names of the additional candidates of the minority parties who shall be declared elected, if any, in accordance with Section 7 of Article III of the Constitution of Puerto Rico. The Commission shall declare as elected and issue the appropriate certificate of election to each of said candidates of the minority parties.
>
> (1) In order to implement the provisions of Section 7 of Article III of the Constitution of Puerto Rico, when a party that failed to poll two-thirds (2/3) of the total number of votes cast for the office of Governor did poll more than two-thirds (2/3) of the total number of votes cast for the candidates for one or both legislative houses, the additional senators or representatives corresponding to each of said minority parties shall be determined as follows:
>
> (a) the number of votes cast for the candidate for the office of Governor of each minority party is divided by the total number of votes cast for the office of Governor of all minority parties;
>
> (b) said quotient is multiplied by nine (9) in the case of senators, and by seventeen (17) in the case of representatives; and
>
> (c) The total number of senators or representatives elected from each minority party by direct vote is then subtracted from the product of the previous multiplication.
>
> (d) The result of the last mathematical operation shall be the number of additional senators or representatives to be adjudicated to each minority party, until completing the appropriate number, so that the total number of minority party members in such cases where subsection [sic] of Section 7 of Article III of the Constitution of Puerto Rico applies is nine (9) in the Senate

or seventeen (17) in the House of Representatives of Puerto Rico.

(2) For the purposes of the provisions of subsection (b) of Section 7 of Article III of the Constitution of Puerto Rico, when a party that has indeed polled more than two-thirds (2/3) of the total number of votes cast for the office of Governor polls more than two-thirds (2/3) of the total number of votes cast for the candidates for one or both legislative houses, if there should be two (2) or more minority parties, the number of senators or representatives for each of said minority parties shall be determined by dividing the number of votes cast for the office of Governor of each minority political party by the total number of votes cast for the office of Governor of all political parties, and multiplying the quotient by twenty-seven (27) in the case of the Senate of Puerto Rico, and by fifty-one (51) in the case of the House of Representatives of Puerto Rico. In this case, any fraction of less than one-half of one resulting from the operation expressed herein shall be discarded and not considered. The result of the operation indicated herein shall be the number of senators or representatives corresponding to each minority party, and, to the extent feasible, this shall be the total number of senators or representatives of said minority party. The senators of all minority parties shall never be more than nine (9) and representatives shall never be more than seventeen (17). In case any fractions result from the aforementioned operation, the largest fraction shall be considered as one in order to complete said number of nine (9) senators and seventeen (17) representatives from all the minority parties, and, if in the process, said number of nine (9) or seventeen (17) were not completed, then the next largest remaining fraction shall be considered, and so on, until the maximum number of nine (9) in the case of the Senate of Puerto Rico and seventeen (17) in the case of the House of Representatives of Puerto Rico has been completed for all the minority parties.

(3) In applying the third from last paragraph of Section 7 of Article III of the Constitution of Puerto Rico, every fraction of less than one-half of one shall be discarded and not considered. In the event there are two (2) equal fractions, a special election shall be held pursuant to the provisions of this Act. None of the minority parties shall be entitled to additional candidates or to the benefits provided under Section 7 of Article III of the Constitution of Puerto Rico, unless in the General Election, the candidate for Governor thereof polled a number of votes equal to three percent (3%) or more of the total number of votes cast in said General Election for all the candidates for Governor.[34]

Even though this language was taken from the most recent Election Code, it is the same language

[34] 16 LPRA 4764

that has been used -although with minor changes- in Puerto Rico's election laws since 1952.

## § 6.0 CONCLUSION

This clause, which guarantees the minority parties representation, is undoubtedly one of the most important clauses in the Constitution of Puerto Rico. Through this provision, the delegates of the Constitutional Convention who drafted our Magna Carta over seventy (70) years ago reserved seats in our Legislative Bodies so that all voices could be heard. It is worth noting that, out of eighteen (18) elections, this protective provision which ensures minority parties representation has been triggered eight (8) times for both Legislative Bodies and three (3) times for only one of the Legislative Bodies for a total of eleven (11) times.

Since its inception, Section 7 of Article III of the Constitution of Puerto Rico has, without a doubt, embodied what delegate Gutiérrez Franqui immortalized in the debate of the Constitutional Convention: that this Section would be one of the greatest achievements of this Constitution.

**PROFESSIONAL JOURNAL INDEX**
**1995 – 2024**

## Administration

| | | | |
|---|---|---|---|
| Fall | 1997 | Boulter, David E. | *Strategic Planning and Performance Budgeting: A New Approach to Managing Maine State Government* |
| Spring | 2001 | Carey, Patti B. | *Understanding the Four Generations in Today's Workplace* |
| Spring | 2006 | Hedrick, JoAnn | *Passage of Bills and Budgets in the United States System – A Small State's Perspective* |
| Spring | 2001 | Henderson, Dave | *Personnel Policies in the Legislative Environment* |
| Summer | 2000 | Jones, Janet E. | *RFP: A Mission Not Impossible* |
| Spring | 1998 | Larson, David | *Legislative Oversight of Information Systems* |
| Fall | 2008 | Leete and Maser | *Helping Legislators Legislate* |
| Fall | 2015 | Perry, Jarad | *Strategic Planning with Term Limits* |
| Fall | 1995 | Rudnicki, Barbara | *Criticism* |

## ASLCS

| | | | |
|---|---|---|---|
| Summer | 2000 | Burdick, Edward A. | *A History of ASLCS* |

## Case Studies

| | | | |
|---|---|---|---|
| Fall | 2009 | Arp, Don, Jr. | *An institutional ability to evaluate our own programs: The Concept of Legislative Oversight and the History of Performance Auditing in Nebraska, 1974-2009* |
| Fall | 2003 | Bailey, Mathew S. | *The Will of the People: Arizona's Legislative Process* |
| Summer | 2000 | Clemens and Schuler | *The Ohio Joint Select Committee Process* |
| Fall | 2006 | Clemens, Laura | *Ohio Case Regarding Open Meetings and Legislative Committees* |
| Spring | 2010 | Colvin, Ashley | *Public-Private Partnerships: Legislative Oversight of Information and Technology* |
| Fall | 2003 | Cosgrove, Thomas J. | *First-Term Speakers in a Divided Government* |
| Fall | 2005 | Garrett, John | *The Balance Between Video Conferencing by the Virginia General Assembly and Requirements of Virginia's Freedom of Information Act* |

| | | | |
|---|---|---|---|
| Fall | 2020 | Gonzales and Hooshidary | *League of Women Voters v. Evers (2019 WI 75)* |
| Spring | 1996 | Dwyer, John F. | *Iowa Senate's Management of Its Telephone Records Is Upheld by State Supreme Court* |
| Fall | 2003 | Gray, LaToya | *Virginia's Judicial Selection Process* |
| Fall | 2015 | Hedges, Jeff | *Impeachment Procedure in the Texas Legislature* |
| Spring | 2003 | Howe, Jerry | *Judicial Selection: An Important Process* |
| Fall | 2002 | Jamerson, Bruce F. | *Interpreting the Rules: Speaker's Resignation Challenges* |
| Fall | 2007 | James, Steven T. | *Government by Consensus – Restrictions on Formal Business in the Massachusetts Legislature Inspire Innovative Ways to Govern* |
| Fall | 2003 | Morales, Michelle | *I Will Survive: One Bill's Journey Through the Arizona Legislature* |
| Fall | 1995 | Phelps, John B. | *Publishing Procedural Rulings in the Florida House of Representatives* |
| Fall | 2006 | Phelps, John B. | *Florida Association of Professional Lobbyists, Inc. et. al. v. Division of Legislative Information Services of the Florida Office of Legislative Services et al.* |
| Spring | 2008 | Regan, Patrick | *The True Force of Guidance Documents in Virginia's Administrative Agencies* |
| Spring | 2009 | Rosenberg, David A. | *Irony, Insanity, and Chaos* |
| Fall | 2022 | Rutledge and Sekerak | *Authority of Oregon's Governor to Veto Single Items* |
| Fall | 2019 | Sekerak, Tim et al. | *Recent Developments in the Law of Lawmaking* |
| Fall | 2016 | Smith, Paul C. | *Hütchenspiel: Decorum in the Legislature* |
| Fall | 2006 | Speer, Alfred W. | *The Establishment Clause & Legislative Session Prayer* |
| Fall | 2020 | Speer, Alfred W. | *BAD FACTS MAKE BAD LAW* |
| Fall | 2001 | Tedcastle, Tom | *High Noon at the Tallahassee Corral* |
| Spring | 1998 | Todd, Tom | *Nebraska's Unicameral Legislature: A Description and Some Comparisons with Minnesota's Bicameral Legislature* |
| Fall | 2006 | Wattson, Peter S. | *Judging Qualifications of a Legislator* |

**Historic Preservation**

| | | | |
|---|---|---|---|
| Fall | 1995 | Mauzy, David B. | *Restoration of the Texas Capitol* |
| Fall | 2016 | Trout, Stran et al. | *The Lost Parliamentary Writings of Thomas Jefferson from the Special Collections Library of the University of Virginia* |
| Fall | 2001 | Wootton, James E. | *Preservation and Progress at the Virginia State Capitol* |
| Spring | 2008 | Wootton, James E. | *Restoring Jefferson's Temple to Democracy* |

**International**

| | | | |
|---|---|---|---|
| Fall | 2018 | Isles, Beverley | *The Career Management Structure for Procedural Clerks at the House of Commons of Canada* |
| Fall | 2018 | Gonye, Leslie | *Dealing with Members' Expectations* |
| Fall | 2000 | Grove, Russell D. | *The Role of the Clerk in an Australian State Legislature* |
| Fall | 2010 | Grove, Russell D. | *How Do They Do It? Comparative International Legislative Practices* |
| Fall | 2000 | Law, K.S. | *The Role of the Clerk to the Legislative Council of the Hong Kong Special Administrative Region of the People's Republic of China* |
| Spring | 2004 | MacMinn, E. George | *The Westminster System – Does It Work in Canada?* |
| Winter | 2021 | Morgun, Anton. | *The Verkhovna Rada of Ukraine and the Response to COVID-19* |
| Spring | 2006 | Phelps, John B | *A Consultancy in Iraq* |
| Fall | 2000 | Pretorius, Pieter | *The Role of the Secretary of a South African Provincial Legislature* |
| Spring | 2002 | Schneider, Donald J. | *Emerging Democracies* |
| Winter | 2024 | Vazquez Gonzalez, Erick J. | *Article III, Section 7: Minority Parties Clause and Its Application in Puerto Rico* |
| Winter | 2021 | Wolf-Schneider | *Adapting the functioning of the parliament of Berlin to the coronavirus pandemic* |

**Miscellaneous**

| | | | |
|---|---|---|---|
| Summer | 1999 | Arinder, Max K. | *Planning and Designing Legislatures of the Future* |
| Fall | 2000 | Arinder, Max K. | *Back to the Future: Final Report on Planning and Designing Legislatures of the Future* |
| Fall | 2013 | Crumbliss, D. Adam | *The Gergen Proposition: Initiating a Review of State Legislatures to Determine Their Readiness to Lead America in the 21st Century* |
| Winter | 2000 | Drage, Jennifer | *Initiative, Referendum, and Recall: The Process* |
| Fall | 2005 | Hodson, Tim | *Judging Legislatures* |
| Fall | 2010 | Maddrea, Scott | *Tragedy in Richmond* |
| Fall | 2006 | Miller, Steve | *Where is the Avant-Garde in Parliamentary Procedure?* |
| Spring | 1996 | O'Donnell, Patrick J. | *A Unicameral Legislature* |
| Spring | 1998 | Pound, William T. | *The Evolution of Legislative Institutions: An Examination of Recent Developments in State Legislatures and NCSL* |
| Fall | 2009 | Robert, Charles | *Book Review of Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions* |
| Fall | 2000 | Rosenthal, Alan | *A New Perspective on Representative Democracy: What Legislatures Have to Do* |
| Fall | 1995 | Snow, Willis P. | *Democracy as a Decision-Making Process: A Historical Perspective* |
| Fall | 2014 | Ward, Bob | *Lessons from Abroad* |

**Process**

| | | | |
|---|---|---|---|
| Spring | 2010 | Austin, Robert J. | *Too Much Work, Not Enough Time: A Virginia Case Study in Improving the Legislative Process* |
| Fall | 1996 | Burdick, Edward A. | *Committee of the Whole: What Role Does It Play in Today's State Legislatures?* |
| Fall | 2017 | Champagne, Richard | *Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding* |
| Spring | 2003 | Clapper, Thomas | *How State Legislatures Communicate with the Federal Government* |

| | | | |
|---|---|---|---|
| Spring | 2008 | Clemens, Laura | *Ohio's Constitutional Showdown* |
| Fall | 2006 | Clift, Claire J. | *Reflections on the Impeachment of a State Officer* |
| Fall | 2008 | Clift, Claire J. | *Three Minutes* |
| Spring | 2004 | Dunlap, Matthew | *My Roommate Has a Mohawk and a Spike Collar: Legislative Procedure in the Age of Term Limits* |
| Winter | 2000 | Edwards, Virginia A. | *A History of Prefiling in Virginia* |
| Spring | 2002 | Erickson and Barilla | *Legislative Powers to Amend a State Constitution* |
| Spring | 2001 | Erickson and Brown | *Sources of Parliamentary Procedure: A New Precedence for Legislatures* |
| Summer | 1999 | Erickson, Brenda | *Remote Voting in Legislatures* |
| Fall | 2013 | Gehring, Matt | *Amending the State Constitution in Minnesota: An Overview of the Constitutional Process* |
| Fall | 2010 | Gieser, Tisha | *Conducting Special Session Outside of the State Capital* |
| Winter | 2021 | Gruss and Curry | *How the Oregon Legislature Adapted to the COVID-19 Pandemic* |
| Spring | 2004 | James, Steven T. | *The Power of the Executive vs. Legislature – Court Cases and Parliamentary Procedure* |
| Winter | 2024 | Hedges, Jeff | *Impeachment Procedure in the Texas Legislature* |
| Winter | 2024 | Isvoranu, Krystle<br>Babel, Joshua | *A Move to Expel or Censure: Arizona's Changing Landscape* |
| Spring | 1997 | Jones, Jerry G. | *Legislative Powers and Rules of Procedure: Brinkhaus v. Senate of the State of Louisiana* |
| Spring | 1998 | King, Betty | *Making Tradition Relevant: A History of the Mason's Manual of Legislative Procedure Revision Commission* |
| Spring | 2010 | Kintsel, Joel G. | *Adoption of Procedural Rules by the Oklahoma House of Representatives: An Examination of the Historical Origins and Practical Methodology Associated with the Constitutional Right of American Legislative Bodies to Adopt Rules of Legislative Procedure* |
| Fall | 2002 | Maddrea, B. Scott | *Committee Restructuring Brings Positive Changes to the Virginia House* |

| | | | |
|---|---|---|---|
| Spring | 2009 | Marchant, Robert J. | *Legislative Rules and Operations: In Support of a Principled Legislative Process* |
| Fall | 2016 | Mason, Paul | *Parliamentary Procedure* |
| Fall | 1997 | Mayo, Joseph W. | *Rules Reform* |
| Spring | 2011 | McComlossy, Megan | *Ethics Commissions: Representing the Public Interest* |
| Winter | 2021 | Miller, Dana | *Working within a Pandemic: Missouri House of Representatives* |
| Fall | 2014 | Miller, Ryan | *Voice Voting in the Wisconsin Legislature* |
| Spring | 2002 | Mina, Eli | *Rules of Order versus Principles* |
| Spring | 2011 | Morgan, Jon C. | *Cloture: Its Inception and Usage in the Alabama Senate* |
| Fall | 2022 | Nacario, Tashi | *The Engrossing and Enrolling Process* |
| Fall | 2008 | Pidgeon, Norman | *Removal by Address in Massachusetts and the Action of the Legislature on the Petition for the Removal of Mr. Justice Pierce* |
| Fall | 2007 | Robert and Armitage | *Perjury, Contempt and Privilege–Oh My! Coercive Powers of Parliamentary Committees* |
| Winter | 2024 | Rutledge, Obie<br>Sekerak, Timothy | *Oregon's First Legislative Expulsion* |
| Fall | 2017 | Silvia, Eric S. | *Legislative Immunity* |
| Fall | 2015 | Smith, Paul C. | *Wielding the Gavel: The 2014 NH House Speaker's Race* |
| Spring | 2003 | Tucker, Harvey J. | *Legislative Logjams Reconsidered* |
| Fall | 2005 | Tucker, Harvey J. | *The Use of Consent Calendars In American State Legislatures* |
| Summer | 2000 | Vaive, Robert | *Comparing the Parliamentary System and the Congressional System* |
| Fall | 2001 | Whelan, John T. | *A New Majority Takes Its Turn At Improving the Process* |

**Staff**

| | | | |
|---|---|---|---|
| Spring | 2001 | Barish, Larry | *LSMI: A Unique Resource for State Legislatures* |

| | | | |
|---|---|---|---|
| Fall | 2001 | Best, Judi | *Legislative Internships: A Partnership with Higher Education* |
| Spring | 1996 | Brown, Douglas G. | *The Attorney-Client Relationship and Legislative Lawyers: The State Legislature as Organizational Client* |
| Fall | 2002 | Gallagher and Aro | *Avoiding Employment-Related Liabilities: Ten Tips from the Front Lines* |
| Spring | 2011 | Galvin, Nicholas | *Life Through the Eyes of a Senate Intern* |
| Spring | 2003 | Geiger, Andrew | *Performance Evaluations for Legislative Staff* |
| Spring | 1997 | Gumm, Jay Paul | *Tap Dancing in a Minefield: Legislative Staff and the Press* |
| Fall | 1997 | Miller, Stephen R. | *Lexicon of Reporting Objectives for Legislative Oversight* |
| Fall | 2014 | Norelli, Terie | *Building Relationships through NCSL* |
| Winter | 2000 | Phelps, John B. | *Legislative Staff: Toward a New Professional Role* |
| Spring | 2004 | Phelps, John B. | *Notes on the Early History of the Office of Legislative Clerk* |
| Winter | 2000 | Swords, Susan | *NCSL's Newest Staff Section: "LINCS" Communications Professionals* |
| Fall | 1996 | Turcotte, John | *Effective Legislative Presentations* |
| Fall | 2005 | VanLandingham, Gary R. | *When the Equilibrium Breaks, the Staffing Will Fall – Effects of Changes in Party Control of State Legislatures and Imposition of Term Limits on Legislative Staffing* |

**Technology**

| | | | |
|---|---|---|---|
| Spring | 1996 | Behnk, William E. | *California Assembly Installs Laptops for Floor Sessions* |
| Spring | 1997 | Brown and Ziems | *Chamber Automation in the Nebraska Legislature* |
| Fall | 2020 | Carlson, Brittany Y. | *An in-depth look at assistive technologies provided by the Washington Legislature for Lt. Governor Cyrus Habib* |
| Fall | 2008 | Coggins, Timothy L. | *Virginia Law: It's Online, But Should You Use It?* |
| Spring | 2002 | Crouch, Sharon | *NCSL Technology Projects Working to Help States Share Resources* |

| | | | |
|---|---|---|---|
| Spring | 1997 | Finch, Jeff | *Planning for Chamber Automation* |
| Summer | 1999 | Galligan, Mary | *Computer Technology in the Redistricting Process* |
| Summer | 1999 | Hanson, Linda | *Automating the Wisconsin State Assembly* |
| Fall | 1995 | Larson, David | *Emerging Technology* |
| Fall | 2022 | Martin, Megan | *Time for a Change* |
| Fall | 1996 | Pearson, Herman et al. | *Reengineering for Legislative Document Management* |
| Fall | 1995 | Schneider, Donald J. | *Full Automation of the Legislative Process: The Printing Issue* |
| Spring | 2006 | Steidel, Sharon Crouch | *E-Democracy – How Are Legislatures Doing?* |
| Fall | 2007 | Sullenger, D. Wes | *Silencing the Blogosphere: A First Amendment Caution to Legislators Considering Using Blogs to Communicate Directly with Constituents* |
| Spring | 2009 | Taylor, Paul W. | *Real Life. Live. When Government Acts More Like the People It Serves.* |
| Fall | 2009 | Taylor and Miri | *The Sweet Path – Your Journey, Your Way: Choices, connections and a guide to the sweet path in government portal modernization.* |
| Fall | 1997 | Tinkle, Carolyn J. | *Chamber Automation Update in the Indiana Senate* |
| Fall | 2009 | Weeks, Eddie | *Data Rot and Rotten Data: The Twin Demons of Electronic Information Storage* |
| Fall | 2013 | Weeks, Eddie | *The Recording of the Tennessee General Assembly by the Tennessee State Library and Archives* |