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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 2021 Journal should be submitted electronically, not later than September 1, to the Chair:

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Inquiries from readers and potential authors are encouraged. You may contact the Chair by telephone at (916) 651-4171 or by email at Bernadette.McNulty@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.

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From the Editors

The year 2020 will be one for the history books!!!

The editors apologize for the tardiness of the 25th volume of the ASLCS *Professional Journal.*

In this volume, our authors take a look at case law and innovative technologies.

We hope you enjoy the articles in this volume.

Be well and stay safe.

Sincerely,

The Editors

RECENT DEVELOPMENT IN THE LAW OF LAWMAKING

Submitted by the ASLCS Professional Journal Case Law Subcommittee

I. PREFACE

Written By: Heshani D. Wijemanne (CA)

Last year, the Professional Journal's Case Law Subcommittee published its first series of case law summaries, related to the law of lawmaking. We have decided to continue this effort to inform the society of relevant case law, because we find that it is important to examine judicial opinions that provide strong context for the perception of the legislative branch and its sovereign powers. This year, the subcommittee is pleased to present two more case summaries that we believe will be of particular interest and relevance to the members of our society. Specifically, these summaries illustrate recent instances of judicial deference to the legislative branch after the court's examination of the following issues:

- The extent of the court's role in statutory interpretation and determining the constitutionality of a legislative body's calendar during a declared disaster emergency; and

- Under the separation of powers doctrine, the limits on judicial jurisdiction over matters involving the legislative branch's execution of their procedures and constitutional duties.

As the world continues to face an unprecedented time that has created new challenges for our branch of government, we hope that this look inside the recent developments in the law of lawmaking provides you with some guidance and insight as we continue to engage in our new normal.

BAD FACTS MAKE BAD LAW

Alfred W. Speer
Retired Clerk of the Louisiana House of Representatives
Member of the Louisiana State Bar

STATEMENT OF THE CASE

The Colorado General Assembly convened its 2020 regular session on January 8. In the face of the outbreak of COVID-19, the General Assembly adjourned the regular session on March 14 until March 30. On that same day the General Assembly adopted a joint resolution posing an interrogatory to the Colorado Supreme Court:

> "Does the provision of section 7 of article V of the state constitution that limits the length of the regular legislative session to **"one hundred twenty calendar days"** require that **those days be counted consecutively and continuously beginning with the first day on which the regular legislative session convenes** or may the General Assembly for purposes of **operating during a declared disaster emergency interpret the limitation as applying only to calendar days on which the Senate or the House of Representatives, or both, convene in regular legislative session?**" [**emphasis** added]

Under CO const. art V, sec 7 the regular session was scheduled to adjourn *sine die* May 6. On the date the Colorado Supreme Court issued its decision *In Re: Interrogatory on House Joint Resolution 20-1006* (2020 C) 23, April 1, 2020) [www.courts.state.co.us] (and as of the date this piece was written) the General Assembly remained adjourned pending the call of the presiding officers. Art. V, sec. 7 states, in part: "[r]egular sessions of the general assembly shall not exceed one hundred twenty calendar days."

Art. V, sec. 7 was last amended in 1988 to provide for the annual 120 day regular sessions. In 1989 the General Assembly adopted Joint Rule 23(d), which reads:

> "[t]he maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution for regular sessions of the General Assembly shall be **deemed to be one hundred twenty consecutive calendar days**." [**emphasis** added]

In 2009, the General Assembly adopted Joint Rule 44(g), which reads:

> "Notwithstanding the provisions of [Joint Rule 23(d)] regarding counting legislative

> days of a regular session as consecutive days, the maximum of one hundred twenty calendar days prescribed by section 7 of article V of the state constitution shall be **counted as one hundred twenty separate working calendar days** if the Governor has declared a state of disaster emergency due to a public health emergency pursuant to section 24-33.5-704, Colorado Revised Statutes. Once the disaster emergency is over, the House of Representatives and the Senate shall resume following Joint Rule 23(d) during regular sessions." [**emphasis** added]

Clearly, the method used for the counting of session days from January 8 until adjournment, as stated in the Interrogatory, was critical to the decisions to be made by the presiding officers as to when to reconvene the session, in as much as the constitutionality of bills finally adopted after the May 6th projected 120 day deadline would be very much in question.

The question of law directly presented to the Colorado Supreme Court was the constitutionality of Joint Rule 44(g) and its apparent allowance for a regular session to continue beyond 120 consecutive calendar days as provided in Joint Rule 23(d). The Colorado Supreme Court resolved the matter on briefs. The Court received briefs supporting the constitutionality of Joint Rule 44(g) from the Governor and Attorney General, General Assembly majority members, twenty-three allied public and public interest groups, and the Colorado Association of Local Public Health Officials. The briefs received in opposition to the constitutionality of the joint rule were filed by the General Assembly minority members, the Independence Institute, and a former member of the House.

COURT DECISION

Four Justices joined in the majority opinion upholding the constitutionality of JR 44(g). The majority held:

1) The words "calendar days" in art. V, sec. 7 are ambiguous; and
2) The General Assembly "reasonably" resolved the ambiguity in adopting the two joint rules.

Under Colorado's statutory interpretation canons, the Court was tasked with enforcing the language as written in the constitution unless they found the language ambiguous. The reasoning the Court stated to support their finding the words were ambiguous was:

1) The constitutional language omitted the clarifying term "consecutive";
2) The constitutional language did not contain a "date certain" for *sine die* adjournment;

3) The words are subject to two reasonable interpretations; and
4) The General Assembly recognized the ambiguity from the inception of the 120 day limit (1989), shown by the unanimous adoption of the two joint rules.

When a court finds statutory language ambiguous under the plain meaning canon of statutory interpretation, its task is to resolve the ambiguity in a manner least disruptive to the overall scheme of the statute. The Court expressed their resolution in the following manner:

1) The General Assembly is authorized to resolve the ambiguity as long as their resolution is consistent with the "terms and purposes" of the constitution;
2) The General Assembly had expressed a duality of purpose for the original 120 day limit; this expression being contained in two publications of the General Assembly Legislative Council, nos. 269 and 326; and
3) The unanimously adopted joint rules reasonably interpreted the constitutional language and were, therefore, entitled to deference by the Court.

Three Justices dissented from this opinion. They opined Joint Rule 44(g) was unconstitutional because: the words "calendar days" were not ambiguous and even if the words are ambiguous, the joint rule is unconstitutional because it effects an amendment of the constitution.

The dissenters found the words unambiguous because:

1) The term "calendar days" has a "clear . . . well settled, widely accepted, ordinary and popular meaning", that is the words mean consecutive and to find otherwise leads to absurd consequences;
2) When the General Assembly desires to mandate a non-consecutive counting of days it regularly uses different words;
3) Joint Rule 23(d) did not recognize an ambiguity in the text of the constitution but was merely an emphatic restatement of the well settled, general meaning; and
4) Twenty years passed before the General Assembly amended Joint Rule 23(d) and unanimously adopted Joint Rule 44(g) without the confusion of such an ambiguity arising.

Furthermore, the dissenters found fault with the majority opinion because the interpretation of constitutional language is the purview of the courts not the General Assembly and because Joint Rule 44(g) created an exception to the constitutional language, not an interpretation.

ANALYSIS: Bad Facts Make Bad Law

The General Assembly faced a dilemma – return to the session schedule in early April, thereby risking severe health consequences to the Members, staff, and stakeholders OR rely on Joint Rule 44(g). In resolution of the dilemma, the General Assembly punted to the Colorado Supreme Court thus not playing chicken with the efficacy of laws passed in 2020.

The Supreme Court faced its own dilemma – apply the plain language of the constitution's words, thereby rendering Joint Rule 44(g) a nullity and forcing the General Assembly to return to session OR cut the "Gordian Knot." As set out above, the 4-3 majority wielded Alexander's sword, relieving the General Assembly from the burden of having to ignore the state's public health orders thus preventing the possible severe health consequences to the Members, staff, and stakeholders.

Many questions remain unanswered by the majority opinion and by the dissent. Are the words "calendar days" truly ambiguous? Even in Colorado, prior to the adoption of Joint Rule 44(g), no person connected with the legislative process would have assigned those words any meaning other than the "clear, well settled, widely accepted, ordinary and popular meaning" of consecutively following days on a calendar. Is the majority's reliance on the adoption of Joint Rule 44(g) as disclosing the true ambiguous nature of the words dispositive or merely a pretext to allow the interpretation of those words as ambiguous thereby resolving the dilemma faced by the General Assembly? If the answer is pretext, the underlying reasoning of the majority opinion falls apart. Further, why does the Supreme Court allow the General Assembly to interpret the constitution? Perhaps there are other states in which this is true but they will be the smallest of minorities, for the states' supreme courts jealously guard their prerogative to be the arbiter of the true meaning of law. Further, why did the majority rely upon two documents drafted by staff of the General Assembly to establish the true purpose of the constitutional language? Again, this reliance runs contrary to the prerogatives of the courts to arbitrate the true meaning of law.

The dissent does no better job supporting their conclusions. They declare the words unambiguous merely by using an overly lengthy list of adjectives. The dissenters ignore the fact that the effects of the possible ambiguity did not arise in 2009, twenty years after the first adoption of the 120-day session limit, but only eleven years later when the first events to trigger the application of Joint Rule 44(g) arose. There was no ambiguity in the application of Joint Rule 23(d) and only in the face of the COVID-19 pandemic did the possibility of ambiguity arise.

CONCLUSION:

The Court should have opined from their own authority the purpose of the 1988 amendment to the constitution establishing the 120 day annual session limit. The Court should have read the two joint rules for what they truly are – not interpretations of the constitution but self-imposed constraints on the incontinence of the General Assembly. The dissent should not merely have said NO, you're wrong.

The Court could have fashioned a more sound solution, one grounded in the proper roles of the courts and the Legislature. The Court very well could have found the words ambiguous without upholding the General Assembly's attempt to interpret the constitution and without relying upon staff drafted documents to determine the purpose of the constitution's language.

As a suggestion made in the clarity of hindsight: the Court could have recognized the unusual health and safety concerns which the General Assembly faced due to the pandemic, found the words ambiguous thus requiring interpretation, declared the purpose of the constitutional language in their own words, and then held that the days between the adjournment on March 30 and the eventual reconvening in late May as a suspension of the calendar, mandating the rebooting of the consecutive counting of calendar days of the session from that day forward.

League of Women Voters v. Evers (2019 WI 75)

By: Kirstynn Gonzales (CA) and Sanam Hooshidary (CA)

The Wisconsin Constitution, much like the U.S. Constitution, creates three branches of government, each with their own distinct powers and abilities. League of Women Voters v. Evers, 2019 WI 75, 30 (2019).The separation of powers doctrine, set forth in the Wisconsin Constitution, provides for the legislative branch, the executive branch, and the judicial branch. Each of these branches have specifically vested powers and functions that are not to be influenced by another branch. The purpose of this doctrine is to regulate the concentration of power and provide for checks and balances.

In December 2018, the Wisconsin Legislature convened an extraordinary session. During that extraordinary session, the Legislature passed three acts that were signed into law, and the Wisconsin Senate confirmed 82 appointees to various state entities, boards, and commissions—all nominated by then-Governor Scott Walker. On January 10, 2019, a nonpartisan political organization, the League of Women Voters of Wisconsin (the League), filed a summons and complaint in the Dane County Circuit Court. The League contended that it was "unconstitutional and unenforceable" to pass those three Acts and confirm 82 nominees during the extraordinary session. They argued that the Legislature's power to call an extraordinary session was not within the power provided to them by the Wisconsin Constitution and the Wisconsin Statutes, and therefore, all actions taken during that extraordinary session should be void ab initio and nullified. Newly-elected Governor Tony Evers concurred with the League's position. The League looked to two constitutional and statutory provisions as evidence to support their case.

First, they look to the provisions under Wisconsin Constitution Article. IV, § 11, "The legislature shall meet at the seat of government at such time as shall be provided by law, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened." As a natural result of Article IV, § 11, the League then directs the court to Wisconsin Statute §13.02, which states the requirements and restrictions for the Legislature to meet annually during regular

sessions. It also permits the Joint Committee on Legislative Organization to create a "work schedule" for the biennial session. This statute includes two statutory limitations on the joint committee—the first being that the work schedule "shall include at least one meeting in January of each year" and secondly, it must "be submitted to the legislature as a joint resolution." League of Women Voters, 20

The League argued that the Legislature's "extraordinary session" failed to comply with Wisconsin's relevant constitutional and statutory provisions. They stated that because neither Wisconsin Constitution Article. IV, § 11 nor Wisconsin Statute § 13.02 explicitly used the term "extraordinary session," it was not permissible for the Legislature to call one. They argued that the relevant provisions only provided for a "regular session" and "special session." Based on this reasoning, the League asserted that the three Acts signed into law and the 82 confirmed nominees during the extraordinary session were unconstitutional and needed to be nullified.

After filing their original summons and complaint seeking a declaratory judgment and injunctive relief against defendants Wisconsin Elections Commission and (newly-elected) Governor Tony Evers, the League went on to amend their complaint, make a motion for a temporary injunction, and request a substitution for the current presiding judge. During that time, having not been named as a party in the pending action, the Wisconsin Legislature filed a motion to intervene, which was granted by the new judge on the case. After becoming a party to the action, the Legislature and the Elections Commission filed motions to dismiss, and the Legislature also filed a motion requesting a stay of any injunction the circuit court might issue. League of Women Voters, 11. Ultimately, the Dane County Circuit Court denied the Legislature's motion to dismiss and motion to stay the injunction, instead granting the temporary injunction requested by the League. Eventually, the Legislature appealed to the court of appeals. The League filed a petition requesting to bypass the court of appeals and asked for "expedited Supreme Court review." The League's bypass petition was granted and oral arguments commenced on May 15, 2019.

Governor Tony Evers aligned his position on this matter with that of the League of Women Voters. In response to the League's arguments, however, the Legislature argued that extraordinary sessions were in fact within the powers vested in the legislative branch by the Wisconsin

Constitution and Wisconsin Statute § 13.02, thus claiming that "the passage of the three Acts as well as the appointments [was] entirely lawful."

To support their assertion, the Legislature argued that the language in the relevant constitutional and statutory provisions permit the Legislature to meet at times "provided by law." Specifically, the Legislature pointed out that Wis. Stat. § 13.02 actually gives the Legislature the option to create its own work schedule—which includes, among other things, setting times for extraordinary sessions.

The court agreed. The Supreme Court of Wisconsin came to their decision after looking at several factors. The court first reviewed and interpreted the relevant constitutional and statutory provisions. Based on their interpretation of the relevant constitutional provision (Wisconsin Constitution, Article IV, §11), the court found that the constitution does in fact authorize the Legislature to lawfully meet, as provided by statute. League of Women Voters, 17. The court then moves on to review the sole statute that discusses when the legislature shall meet—Wisconsin Statute §13.02. The court determines that the main controversy of the case surrounds this statute, which states that the "joint committee on legislative organization shall meet and develop a work schedule for the legislative session." League of Women Voters, 17. The court stated that the issue to be resolved with regard to this provision was whether it allows the Legislature to constitutionally convene an extraordinary session. League of Women Voters, 18.

In order to determine whether the Legislature complied with Wisconsin Statute §13.02, the court looks to the Legislature's Enrolled Joint Resolution 1 (JR 1), which defines the Legislature's agreed-upon biennial session schedule and dates. Joint Resolution 1 sets forth the following provisions: the start and end dates of the 2017-18 biennial session, which are January 3, 2017, and January 7, 2019, respectively; the scheduled floor periods for the two-year session; the guidelines for how a majority of the members of the committee on organization in each house can motion to reconvene for an extraordinary session as needed; and the guidelines for bills passed during an extraordinary session. After reviewing JR 1, the court moves on to analyze the "dispositive issue presented" by the League.

The League argues that "work schedule" refers to regular sessions or floor periods, and not extraordinary sessions. In order to respond to this argument, the court delves deeper into the specific terms that the League puts into the center of their argument: work schedule, floor period, regular session, and extraordinary session. However, the court finds that "floor periods," like "extraordinary sessions," are simply terms that the Legislature uses to set their work schedule, and that "specific terminology [the legislature] chooses is not prescribed or limited by [the Wisconsin] Constitution or by statute." League of Women Voters, 24.

The League also argues the Legislature had already adjourned sine die on March 22, 2018, and therefore, could not meet again in this specific two-year session. The court, however, concludes that "neither the record nor JR 1 supports a sine die adjournment on March 22, 2018." In fact, the court determined that there is "nothing [that] supports the League's position that the Legislature adjourned sine die on March 22, 2018." League of Women Voters, 27. When the Legislature adjourned on March 22, 2018, "it did so pursuant to JR 1, which provided that the 2017-18 session ends on January 7, 2019." League of Women Voters, 27. The legislative actions in question were completed prior to this date, in December of 2018.

In one final push to win the case, the League requests that the court "invalidate laws enacted [during the December 2018 extraordinary session] by the Legislature *based solely on the procedures employed to pass them*" (emphasis added). In response to the League's request, the court looks again to the constitution to support their opinion. The court determines that "the Wisconsin Constitution preserves the independence of each branch vis-a-vis the others and precludes each branch from obstructing the performance of another branch's constitutional duties." League of Women Voters of Wisconsin. 32. Based on this understanding of the constitutional separation of powers, the court denies the League's request, stating that the legislature has the right to govern themselves and their procedures as they see fit, so long as they follow the Wisconsin Constitution and Statutes. "…the Legislature met its constitutional obligation to provide by law the time of its meetings, any recourse against errors in the execution of the Legislature's own procedures is properly pursued within the political realm not in courts of law." League of Women Voters of Wisconsin. 28.

Additionally, the court declares that they cannot interfere with or interpret the legislative branch's internal procedures or rules due to separation of powers laws in the Wisconsin Constitution. They hold that because the state's constitution mimics the United States separation of powers doctrine, the "judiciary [in Wisconsin] may not interfere with the Legislature's execution of its constitutional duties." While the court believes that the "proper judicial role" would be to consider the constitutionality of the laws passed by the Legislature, they do not believe it is their prerogative to review the process by which laws are enacted, claiming that it would "fall beyond the powers of judicial review." Specifically, they contend that the "judiciary lacks any jurisdiction to enjoin the legislative process," because no one branch can interfere with or obstruct the constitutional duties of another branch. "How the Legislature meets, when it meets, and what descriptive titles the Legislature assigns to those meetings or their operating procedures constitute parts of the legislative process with which the judicial branch 'has no jurisdiction or right' to interfere." League of Women Voters of Wisconsin. 37. The judicial branch's role is to "serve as a check on the Legislature's actions only to the extent necessary to ensure the people's elected lawmakers comply with [the] constitution in every respect." League of Women Voters, 41. Based on this reasoning, the court concludes that the only jurisdiction the court has in this case is to determine whether or not the December 2018 extraordinary session violated any Wisconsin constitutional or statutory requirements.

Ultimately, the court held that the December 2018 extraordinary session in question was, in fact, constitutional. It "fully complied with all constitutional mandates" required of the legislature and it occurred within the dates of the planned work schedule of the biennial session.

Consequently, the Supreme Court of Wisconsin ordered the original circuit court's order vacated and the cause remanded for dismissal.

An in-depth look at assistive technologies provided by the Washington Legislature for Lt. Governor Cyrus Habib

Brittany Yunker Carlson
Washington State Senate

On the year of the 30th anniversary of the Americans with Disabilities Act, Washington's Lt. Governor Cyrus Habib bids farewell to eight years of service in the Washington State Legislature. Habib is blind, having lost his eyesight at the age of eight from cancer. Throughout his tenure with the Legislature as Representative, Senator, and Lt. Governor, the Washington Legislature provided an array of assistive technologies to ensure his equal access to legislative information and communication systems.

The search for assistive technology for Representative Habib

Cyrus Habib was sworn in as a Washington State Representative on January 14, 2013, the first day of the 2013 Legislative Session. With roughly two months between the general election and the beginning of session, there wasn't much time to assess what accommodations were needed for Habib. Leg-Tech, the Washington Legislature's IT support agency, quickly began researching what could be provided. With such a paper- and email-based communications culture, it was clear that unique systems and processes were needed for Habib to have equal access to information.

The Washington State School for the Blind provided a huge amount of input, recommendations, and resources for Leg-Tech as they researched options. All legislators are issued laptop computers, so the first step was to install a screen-reading software called JAWS (Job Access With Speech) on Habib's computer. JAWS is one of the most used screen-reading software for the blind and visually impaired. JAWS "reads" the text on the computer screen – such as a web page or legislative application. It can perform text-to-speech dictation or send text data to an external refreshable braille display that is connected to the computer. Well-built web pages even have text imbedded into the metadata of photographs or icons on the screen to allow the blind to navigate its content, with the help of such a program. JAWS is controlled by the user from the computer by keystrokes – for example, to jump to and read the next paragraph, the user enters CAPS LOCK+CTRL+O, or to read the web address bar the user keys in INSERT+A. Once JAWS is installed, the mousepad and visual cursor on the screen no longer function as they do by factory default. All computer navigation must be done by JAWS keystrokes. Leg-Tech staff had to memorize the basic keystrokes to perform maintenance and updates on Habib's computer. With JAWS, Habib could read emails, legislative programs, and web pages from his laptop (by listening), as well as plug in the refreshable braille display to read braille with his fingers. Habib noted that while braille is taught in schools for the blind, as a legislator he had to brush up on his braille skills. He hadn't regularly read braille since middle school. After all, braille is a language; if not regularly practiced one can lose fluency. In addition to JAWS and braille, Habib often uses his iPhone to read (listen) and respond to emails and uses other apps with the aid of the iOS accessibility tool called VoiceOver.

With JAWS installed on Habib's legislative laptop, the next step was educating staff on how to format emails so that they could be clearly read by JAWS or VoiceOver dictation. A wide array of documents, including bills, amendments, PowerPoints, and other reports are sent via email to legislators every day. Most documents are transmitted in PDF format. PDFs *can* be read by JAWS, but the standard formatting of many legislative documents proved difficult to be dictated comprehensibly. Things found in ubiquitous paper documents like headers, logos, line numbers, and tables all posed challenges for dictation. Imagine having a bill or amendment read aloud with a line number such as "TWELVE"…"THIRTEEN"…"FOURTEEN" interrupting at the beginning of every line. After some research, staff were instructed to either attach a Word version of the bill or amendment with the page numbers manually removed or copy and paste unformatted bill text into the body of the email. Staff could also pull text from scanned documents such as written testimony submitted during committee meetings by using Adobe Acrobat's Optical Character Recognition (OCR) feature.

No major changes were needed on the House Floor to facilitate debate and voting. During House floor sessions, members stand to be recognized by the Speaker to give remarks and voting amongst the 98-member body is done electronically by using a small Crestron touchscreen on each member's desk. At Habib's desk, a small technological change was made. The touchscreen was disabled, and the physical buttons on the left and right side of the device were used instead. These buttons were programmed to produce audio tones which confirmed his vote: one tone for "aye" and another for "no". If he pressed a button mistakenly, the aye/no vote could be toggled back and forth prior to the closure of the vote. Additionally, a "no paper" policy was implemented on his desk – no staff or legislative page was permitted to leave paper documents for him.

Transition to the Senate

After serving for two years as State Representative, Cyrus Habib ran for State Senate and won, to be sworn in as Senator in January of 2015. Leg-Tech transferred his laptop to the Senate and educated Senate staff on best practices learned in the House for communications and emails. Voting on the Senate floor is done by voice vote, so Habib simply voted orally when called on by the Reader. No major processes were changed with Habib's move to the Senate as Senator.

A New Lt. Governor: Unique challenges for the Senate floor

In 2016, Habib ran for Lt. Governor, a seat vacated by the then-retiring Lt. Governor Brad Owen, who held the position for the previous 20 years. In Washington, the Lt. Governor is also the President of the Senate - the presiding officer - as well as Acting Governor when the Governor is out of state. Once the elections results came back declaring Habib as Washington's next Lt. Governor, Leg-Tech, the Legislative Support Services (LSS) department (which provided AV equipment and support), and the Secretary of the Senate set about gathering requirements for providing assistive technology

specific to Habib's new position as Lt. Governor and President of the Senate. There were many areas that needed to be re-evaluated, specifically floor processes and Senate Rules.

Recognition by the President

The first big task was to redefine a process by which members could request to speak during Senate floor sessions. Senate Rules stipulate that a "senator shall rise, and standing in place, respectfully request recognition by the President". How would Habib know who wanted to speak? Ideas were circulated: Would someone act as a "spotter" at his side to tell him who was standing? If so, who would it be: Secretary of Senate's office or rostrum staff? Lt. Governor's staff? Or, could an electronic system be built through which members could send a request to speak and it would be read in braille by Habib? If this was possible, could such a system be built in two months and be complete prior to session in January? Leg-Tech and LSS teamed up and accepted the challenge, agreeing to build a "Request to Speak" system with less than 60 days to implement it. This was deemed the best option to minimize the need for staff to act as an intermediary between the senators and the President and would eliminate any potential perceptions of staff bias. It allowed President Habib to preside over the Senate with independence and dignity, giving him a direct and immediate line of communication with the senators before him in the chamber.

On the first day of session with Habib as President, members found new Crestron touchscreens devices on their desks which displayed a simple "Request to Speak" button. At the President's podium, an external braille display was installed, connected to a laptop. When a senator presses the Request to Speak button at their desk, the senator's name is sent via a custom program which is open on the Lt. Governor's laptop, translated to braille and sent to the braille display – all in less than a second. Initially, the Lt. Governor's rostrum laptop used JAWS to translate the names to braille. Later, Leg-Tech decided to write their own simple braille translation program which had the sole function of translating the 49 member names to braille. This was more cost effective: Instead of purchasing an annual JAWS license at a significant expense, this minimal amount of repetitive translation was relatively easy to program in a custom application.

Here's how the Request to Speak process works: If seven members request to speak, Habib reads in braille those seven members' names in the order their buttons were pressed. The Lt. Governor then calls on a senator to speak. When rostrum staff turns on a senator's microphone (all floor microphones are off by default), the names on the braille display are cleared. This occasionally caused confusion amongst senators as to why they must keep pressing their button over and over until called on to speak. However, this electronic process most closely mimics the tradition of standing to be recognized. If seven members stood to speak and one was recognized, the remaining members would need to stand *again* to be recognized to speak after the current speaker finished. A link to video of how it works in the words of Cyrus Habib can be found here: https://www.youtube.com/watch?v=oGF6duhA5hYandfeature=youtu.beandt=610. Additionally, a local news station highlights Cyrus Habib's fast yet measured approach to presiding over the Senate floor, and the use of the Request to Speak system here: https://king5.com/embeds/video/281-2529429/iframe?jwsource=cl

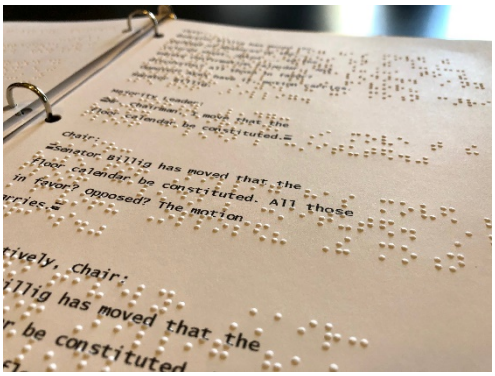
Senate Rules still require that senators stand to be recognized, in addition to pressing the Request to Speak button. Retaining the stand-to-be-recognized rule helped senators see who else wanted to debate, as well as rostrum staff. This was also a backup for rostrum staff: in case the system failed, staff could tell Habib who was standing to be recognized.

Calling on absent members after roll call

The Washington Senate takes every vote on final passage by oral roll call. The Reader calls the roll and once the roll has been called, absent members have the opportunity to include their missing vote. In previous years, members who missed their vote during roll call would wait at the sides of the chamber with their hands raised and holler "Mr. President" to be called on by the President to change their vote from absent to aye or nay. With Habib as President, this process proved awkward at first, since rostrum staff had to tell the President who was absent so he could call on them to add their vote. Sometimes he recognized their voices and would simply call on who he heard. But Leg-Tech had an idea: why not send the names of absent members to the braille display at the end of each roll call? During the next interim, Leg-Tech implemented this new, helpful feature. Once a vote was entered for the 49th and final member, absent members' names appeared in braille for the President to read. He could then call on absent members to voice their vote. This helped speed up the voting process and reduced confusion about who had not yet voted.

Braille documents: Daily scripts, orders of consideration, rulings, and speeches

There are a variety of documents that the Lt. Governor needed to be able to read and review while presiding over the Senate. These included our daily internal agendas called "scripts", Orders of Consideration which show the bills to be considered next as well as information such as whether bills have amendments, substitutes, and which committees they went through, etc. Other documents useful for the Lt. Governor to review in braille were President's rulings and speeches. As a representative and senator, Habib mainly reviewed documents via email dictation on his iPhone. If an occasional document needed to be printed in braille, staff sent a request to the Washington School for the Blind and they printed it in braille and shipped the document back overnight. However, on the Senate floor, things change by the minute and overnight shipping wasn't fast enough. Habib didn't want to have to split his attention between dictation and the proceedings on the Senate floor. Furthermore, the braille display connected to his rostrum laptop was solely devoted to showing requests to speak and absent members.



So, the Senate purchased its own braille embosser so that staff could print these documents in braille on demand. Some embossers print only in braille while others also print the text in ink. There was concern that if the braille documents got out of order there was no way staff could know which was the first, second, third pages, etc. Therefore, the Senate chose an embosser that prints English text in ink - including page numbers - and also embosses in braille by shooting the special cotton braille paper with tiny jets of compressed air. It took some trial and error to learn the interface of the embosser, since it was designed to be used and (Delete "&") serviced by a visually impaired person. Instead of having a readable display and option buttons, it "talked" (in a British accent!) to the user, and by using braille-labeled buttons one moves through the menu of options from voice cues and button presses. One surprise for Senate staff was how loud the braille embosser was. Since the braille embosser uses pneumatics to raise bumps on the paper, it created quite a ruckus every time a document printed – like an old dot matrix printer multiplied several times over! One page of printed text usually equated to roughly eight pages of braille, and each page took about one minute to print. Because of its noisiness, the printer was located in a separate copy room with a door, but even then it could be heard through the wall in the adjoining office of the Secretary of the Senate. Staff worked with the Legislative Support Services department, which was able to build a custom noise-reducing box made of plywood and

acoustic foam, which was placed over the printer. A paper feed slot was cut out of the bottom and paper dropped into a tray below.

Three Senate staff were issued a specialized braille translation program called Duxbury Braille Translator which they used to translate floor documents to braille and print. It was important for staff to learn the basics of braille and understand that it is a different language, unique from English. Some special characters and formatting do not translate well to braille and staff occasionally had to reformat documents prior to translating to braille. An added benefit of having the braille printer in-house was that documents could be printed for the Visitor Services office to provide to visually impaired visitors, as well as field requests from members to braille occasional letters to respond to a blind constituent.

Signatures and signing of bills

A small signature plate was used to assist the Lt. Governor with signing bills after passage by the Legislature. These are commonly used by the visually impaired. It is a small flat hard plastic or metal plate, about the size of a credit card, with a rectangular hole cut in it to provide space for a signature. It also has an elastic band across the bottom half of the cutout area to indicate where the signature line is, but allowing the pen to move below that for letters that drop below it such as "y" or "g". Staff would place this plate on the official bill over where his signature was needed, and he would sign his name.

Cyrus Habib's words of advice

Lt. Governor Cyrus Habib recently announced he would not seek re-election in 2020. In writing this article, I had the opportunity to interview Habib both to hear his feedback on the assistive technology that was provided to him, but also as a sort of exit interview to learn how the Legislature might better accommodate staff or members with disabilities in the future. Here are a few key points Habib wanted to share:

- **Every person with a disability is unique.** Everyone has their own needs and preferences about how they can best succeed at performing their job. There are so many disabilities, circumstances, and ages at which people become disabled. Everyone will have unique needs and talents in the workplace or legislature. No one accommodation will work for everyone, so avoid assuming what would be best. Employers and legislatures should have frank conversations, such as "How do you like to work?", and "What do you need to be successful in your job if money were no object?" as a starting point for a conversation about disability accommodations.
- **The key accommodations the Washington Legislature provided were extra staffing, technology, and transportation.** Extra staff were hired for Habib which was most helpful coupled with a thoughtful approach as to how the staff would work and where their office

would be. People with disabilities should feel comfortable asking for more staff support. All the technology outlined above was invaluable to his success as a legislator and Lt. Governor. Unique technology solutions can greatly aid those with disabilities. Lastly, Habib's blindness rendered him unable to provide his own transportation to and from Olympia, so accommodations were made for staff to provide transportation. Transportation remains a huge hindrance both in personal and work life for those with disabilities, and any efforts to reduce transportation barriers is invaluable.

- **Provide exceptional accommodations both to staff as well as legislators.** Staff may not be as visible to the public, but staff with disabilities should be supported equally as well as legislators with disabilities.

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