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Journal of the American Society of Legislative Clerks and Secretaries

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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 2026 Journal should be submitted electronically, not later than September 1, 2026 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.



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From the Editors

Clerks and secretaries occupy a unique and indispensable position within legislative institutions. Our work is rarely visible to the public, yet it is foundational to the legitimacy, continuity, and integrity of the legislative process. This professional journal exists to recognize that responsibility, to share professional knowledge, and to strengthen our community as a whole.

The events of the past several years clearly demonstrate how clerks and secretaries provide continuity, even under unprecedented circumstances. We hope you find the articles in this issue to be helpful in that continuity.

Innovations in technology, evolving procedural norms, and heightened expectations can require us to refine our practices while still remaining grounded in core principles.

On behalf of the editorial team, I extend sincere thanks and appreciation to our contributors. We realize contributing to this publication requires a great deal of time, effort, and commitment - but it is important that we continue to memorialize our shared experiences.

Sincerely,

The Editors



Tashi Nacario

A Historical Review of the Enrolled Bill Rule

By: Tashi Nacario, Assistant Engrossing and Enrolling Clerk

The Enrollment Process Defined

The preparation of bills that have been passed by a legislative body for presentation to the executive branch for affirmation or veto is referred to as the “enrollment process.” Clerks of the legislative houses prepare “enrolled copies” or “final versions” of the bills, sometimes with incorporated amendments that the legislature has offered throughout the legislative cycle. Officers of the legislative houses then certify the bills before the measure is presented to the executive branch to determine whether or not the bill becomes law. The enrollment process itself predates the Court of Chancery, a body that was established around the year 1066,¹ when scribes would present acts, at times with editorial scribbles, to the British King for assent. As the body of Parliament formed as an entity more independent from the Crown, there was confusion whether or not Parliament was going to hold a quasi-judicial/legislative role or if those responsibilities were to be more separated. Charles H. McIlwain, an American historian, recounted the initial moments of Parliament:

“On the very eve of Parliament’s great practical demonstration of its legislative sovereignty, and in fact long after that, men kept on citing the old precedents for judicial supremacy, and it is often clear that they themselves did not notice that the legislative power they were actually advocating was anything from the old powers of the High Court of Parliament.”²

Parliament assumes a role where it interprets acts from common and private law and that role’s influence is reflected in many of its administrative processes. While the historical and political dynamics of passing laws have dramatically changed since the 11th Century, the characteristics embodied in the secretarial act of presenting proposed legislation to the executive still maintain some traditions found in that time.

¹ Marsh, Alfred Henry (1890). *History of the Court of Chancery and of the rise and development of the doctrines of equity*, p. 6.

² C. H. McIlwain, *The High Court of Parliament and Its Supremacy* (Hamden, Conn.: Archon Books, 1962) at 148-49. See also Swinton, Katherine. “Challenging the Validity of an Act of Parliament: The Effect of Enrolment and Parliamentary Privilege.” *Osgoode Hall Law Journal* 14.2 (1976): 345-405.

Despite the enrollment process's consistency in its practice, questions of constitutionality in legislative procedure are brought up time and again by parties concerned with the process with which a law was passed. Often, courts have answered that question by referring to what is called the Enrolled Bill Rule (or Enrolled Bill Doctrine), a jurisprudential determination that the signatures of legislative officers on an enrolled act is evidence enough that the legislature enacted a law constitutionally. The consequence of maintaining the Enrolled Bill Rule is that courts are barred from looking beyond the enrolled version of a measure to determine whether or not a legislative body adhered to constitutional provisions when they passed the law. For example, courts do not treat legislative histories, minutes of a committee, or rollcall counts as evidence to impeach an act.

The rationale that has maintained the Enrolled Bill Rule (EBR) still withstands modern legal challenges. What is going to be set out in this review of the Enrolled Bill Rule is a detailed examination of legal opinions that have both empowered and limited the application of the EBR including the context whereupon the EBR is being applied by the judiciary in relationship to the legislative and executive branches. This review will do its best to provide a comprehensive historical timeline of the Enrolled Bill Rule starting with its application in British Parliamentary bodies, how the origins of the United States government's use of the EBR derived from Great Britain, and how various states within the U.S. adapted the EBR when governing its own affairs.

The Historical Impact of British Parliamentary Practice

An analysis of the Enrolled Bill Rule would be incomplete without an overview of British Parliamentary history, especially given Britain's powerful influence in the framing of the United States' government. While the united American colonies fought for its independence from what they viewed to be a tyrannical British monarchy, the Founding Fathers took legal principles from the country they were at war with to create a legislative branch eerily similar to Parliament. Ultimately, it served the newly founded nation well in that, should the country have had to truly "reinvent the wheel" in its formation of government, it would have probably suffered much more turmoil than it already had in the post-Revolutionary war era.

Great Britain had spent years prior wrestling over the Enrolled Bill Rule. Cases like *Pylkington's Case*, *The Prince's Case*, and *the King v. Arundel* all preceded the ratification of the U.S. Constitution by a couple hundred years.³ One of the oldest applications of the Enrolled Bill Rule references the 1606 decision made in *The Prince's Case* by the Common Pleas bench in Great Britain when Sir Edward Coke oversaw a challenge to Parliament's internal ability to govern itself.⁴ The case brought before him was a property dispute between Queen Elizabeth and Henry, the Duke of Cornwall and the son of King James I. The Queen had granted away several manors within the duchy to the frustration of the Prince. The ruling given by Coke was that if a manor had been added to the

³ *Pylkington's Case* was a case brought by the House of Commons in 1450 when it charged John Pylkington, a British noble, with statutory rape. Pylkington challenged the validity of the statute because the House of Commons had not concurred in a technical amendment by the House of Lords to fix the date for his hearing within the act. While the case is seen as one that makes the assertion that a Parliamentary roll is not a conclusive document, an official judgment was not rendered in this particular case. Swinton, at 351-352.

⁴ Micheli, Chris M. *Challenging the Enrolled Bill Rule: A Proposed Middle Ground for California*. The National Law Review. 12 January, 2022. <https://www.natlawreview.com/article/challenging-enrolled-bill-rule-proposed-middle-ground-california> (Accessed February 2, 2022).

Duchy of Cornwall by statute, it could not be granted away unless it is also done so through statute.⁵ The consequence of the ruling as applicable to EBR stemmed from the following:

“An Act of Parliament penned by assent of the King and of the Lords Spiritual and Temporal and of the Commons, is a good Act. But an Act penned that the King with the assent of the Lords, or that the King with the assent of the Commons, is no Act of Parliament... and there it is said, that there are many statutes which are indited quod dominus Rex statuit⁶: yet if they be entered in the Parliament roll, and always allowed for Acts of Parliament, it shall be intended that it was by authority of Parliament...”⁷

Coke’s opinion established this idea that an enrolled act is the document that physically represents the intent of the legislature. An enrollment’s validity is only provided when it is endorsed by three agencies – the House of Commons, the House of Lords, and the King in his granting of Royal Assent.⁸ The act being endorsed was prepared by scribes in the English Chancery on “parchment rolls” that recorded iterations of a proposed act before it was delivered to the King. A heavy responsibility was bestowed upon the individual presenting the parchment roll before the royal sovereign, and an even larger amount of trust provided in the assurance that the act was enacted as intended. The argument can be made that Coke’s ruling rested on an interest shared by scribes to be scrupulous in their work. The consequences of his ruling bear an amazingly long reach in its impact to legislative practice today. Great Britain, its Commonwealth nations, the United States, and the various states within the U.S. maintain the act of endorsing enrolled acts with the corollary of three certifications reflected by parliamentary practice in the 1600s.

While those who have utilized precedents like the ones found in *The Prince’s Case* as a sound endorsement of the Enrolled Bill Rule, more modern efforts in some of the other Commonwealth countries have disputed how much strength should be lent to legislative sovereignty.

Commonwealth Interpretations

The 1951 South African case of *Harris v. Minister of the Interior* is an example of when the legislature passed an amendment to the constitution that would resegregate Black and White voters by removing people of color from the electoral roll. The vote requirement in the constitution was that such a vote was to pass by two-thirds of the bicameral body sitting in a committee of the whole, yet the votes were taken in separate sessions of the houses. The South African Supreme Court overturned the act, stating that while courts may be precluded from inquiring beyond an enrolled act, they may look past the act if there is evidence that indicates procedural errors in its passage.⁹ The *Harris* ruling

⁵ Boyer, Allen D. *Sir Edward Coke: Royal Servant, Royal Favorite*. http://www.law.harvard.edu/programs/ames_foundation/BLHC07/Boyer%20Sir%20Edward%20Coke%20-%20Royal%20Servant%20and%20Royal%20Favorite.pdf (accessed February 9, 2022).

⁶ Rough translation from Latin is “the King has decreed” – a reference to the King giving Royal Assent to an act of Parliament.

⁷ Coke, Edward. *Prince’s Case* 8 Coke 13b, 77 ER 496. 11 January 1606.

⁸ The Parliament Acts of 1911 and 1949 established that an act passed by the House of Commons, but not affirmed by the House of Lords in two successive sessions can still receive Royal Assent – an exception to the otherwise long-standing enrollment procedure.

⁹ Swinton, at 354.

was proceeded by political upheaval amongst the branches of government – at one point, the country was governed by the legislative and executive branches with the judiciary operating as an ineffective body.

The 1964 Sri Lankan (formerly Ceylon) case of *The Bribery Commissioner v. Ranasinghe* directly addressed the Enrolled Bill Rule when an unendorsed act sought to amend the Ceylon Orders-in-Council (constitution) with less than a two-thirds majority of the House of Representatives. Lord Edward Pearce sitting on the Judicial Committee of the Privy Council (JCPC) noted in his opinion:

“The Bribery Amendment Act, 1958, contained no section similar to s. 2 of the Act of 1954 nor did the bill bear a certificate of the Speaker. There is nothing to show that it was passed by the necessary two-thirds majority. If the presence of the certificate is conclusive in favour of such a majority, there is force in the argument that its absence is conclusive against such a majority. Moreover, where an Act involves a conflict with the Constitution, the certificate is a necessary part of the Act-making process and its existence must be made apparent. The fact that the 1958 bill did not have a certificate and was not passed by the necessary majority was not really disputed in the Supreme Court or before their lordships’ Board, but it has been argued that the court, when faced with an official copy of an Act of Parliament, cannot enquire into any procedural matter and cannot now properly consider whether a certificate was endorsed on the bill. That argument seems to their lordships insubstantial, and it was rightly rejected by the Supreme Court. Once it is shown that an Act conflicts with a provision in the Constitution the certificate is an essential part of the legislative process. The court has a duty to see that the Constitution is not infringed and to preserve it inviolate. Unless therefore there is some very cogent reason for doing so, the court must not decline to open its eyes to the truth.”¹⁰

Lord Pearce’s opinion represents a two-sided view of the Enrolled Bill Rule – on one side, the JCPC enforces the EBR that, since the act in question did not bear the certification of the Speaker of the house, that not even the enrollment itself met the necessary requisite to stand as an official act of the body. On the other side, that with there being no official act for the court to examine, the court is then invited to review evidence beyond the enrollment.

A Case Challenging Parliamentary Sovereignty

The precedents that established the Enrolled Bill Rule come from opinions and rulings made historically. However, challenges to these well-established principles have been brought before courts with a turn of the page to the modern era. A brief nod is made later in this review to the efforts by the United States courts to use extrinsic aids in interpreting legislative intent. The 1993 U.K. ruling

¹⁰ *Bribery Commissioner v. Ranasinghe* [1965] AC 172; [1964] 2 All 785, [1964] 2 WLR 1301.

in *Pepper v. Hart* provided that same inroad for courts to divine legislative intent.¹¹ The often-referenced argument made by Anthony Lester, who was a constitutional specialist brought on as counsel for the case and would later become Lord Lester of Herne Hill, recounted a question that was raised by his Harvard Law School professors:

“What would you do as Counsel in a case before the House of Lords if you knew of illuminating material which you were forbidden to quote in an argument? Might you not at least find a way to let their Lordships know where the material could be found?” I remember... feeling uncomfortable with what even then was clearly an unsatisfactory situation. Little did I think that, more than thirty years later, it would be my task to seek to persuade their Lordships to abandon the ancient exclusionary rule.”¹²

The opposing counsel reiterated similar arguments mirrored in conclusions made by *Field v. Clark* (which will be outlined later in this review) – in that:

- “(i) The text of the statute as enacted is the law; those affected by the statute should be able to rely on the text passed by the House, assented to by the Crown and appearing in the statute book.*
- (ii) Use of the material may involve an improper, even an unconstitutional, examination of the proceedings of Parliament.*
- (iii) The Parliamentary material may be unreliable and indeed may be created to support a particular interpretation.*
- (iv) The Parliamentary material is not likely to help since the issue in dispute may not have been anticipated.*
- (v) The process may cause delay and increase the cost of litigation.”¹³*

Arguments made in *Pepper v. Hart* did not outright address issues relating to enrolled acts. The judiciary’s ability to interpret legislative intent and the Enrolled Bill Rule’s prohibition on looking beyond an enrolled act to address an act’s legal validity are both defined by the depth of a legislature’s sovereign power. In its appellate ruling, the House of Lords outlined their rationale for limiting legislative sovereignty by providing a list of reasons behind its impeachment. For the sake of providing some relative brevity to the points relevant to this review, they are as follows:

“(1) The purpose of using the Parliamentary record is to help give better and informed effect to the legislative outcome of Parliamentary proceedings... It is irrational for the courts to maintain an absolute rule depriving themselves of access to potential relevant evidence or information for this purpose.

¹¹ Lord Lester, “*Pepper v. Hart Revisited*,” *Statute Law Review* 15, no. 1 (1994):10-22.

After the *Pepper v. Hart* decision shook the foundation of Parliamentary discretion followed the aftershock of 100 legal articles and various opinions equally supportive and critical of legislative supremacy.

¹² Lester at 11. See also Henry M. Hart, Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* 1233-35 (William N. Eskridge, Jr. & Phillip P. Frickey eds., 1994).

¹³ *Pepper v. Hart*, [1993] A.C. 593; 601.

(2) *The history of a statute, including the Parliamentary debates may be relevant (i) to confirm the meaning of a provision as conveyed by the text, its context and purpose; (ii) to determine the meaning where the provision is ambiguous or obscure; or (iii) to determine the meaning where the ordinary meaning is manifestly absurd or unreasonable.*

(3) *The Parliamentary record may be of real assistance to the court (a) by showing that Parliament has considered and suggested an answer to the issue of interpretation before the court, (b) by showing the object and purpose of the legislation and the mischief which the Act was designed to remedy, (c) by explaining the reason for some obscurity or ambiguity in the wording of the legislation and (d) by providing direct evidence of the origins, background and historical context of the legislation.*

(4) *Where a statutory provision has been enacted following an authoritative ministerial statement as to the understanding by the Executive of its meaning and effect, such a statement may provide important evidence about the object and purpose of the provision and the intention of Parliament in agreeing to its enactment, and may create reasonable expectations among Members of Parliament and those affected by the legislation...*

(6) *The courts do not consider themselves confined exclusively by the text for the purpose of interpreting a statute. There is no basis in principle or logic for the courts to be willing to have regard to extrinsic aids... while rigidly excluding any recourse to Parliamentary debates, except for "special" categories of legislation. The reports of Parliamentary debates... are as much matters of public knowledge and as much to be taken as shared by those whose conduct the statute regulates and as influencing their understanding of the meaning of ambiguously enacting words...*

(7) *It is artificial for the courts to continue to draw a distinction between mischief and remedy in defining circumstances in which reference may be made to extrinsic aids to interpretation... ”¹⁴*

There is an important distinction to be made that the House of Lords historically acted as a quasi-legislative body in Great Britain and, therefore, their ruling on this matter may have an incongruent applicability to the U.S. framework of government, which holds more distinct and separate branches of power. The argument can also be made that a quasi-legislative branch of government is, of its own volition, ceding its authority through a transfer to the judiciary. With all of that being said, this ruling flung the door wide open for the reinterpretation of the Enrolled Bill Rule.¹⁵

¹⁴ *Pepper v. Hart*, [1993] A.C. 593; 600.

¹⁵ One notable case is *Jackson v. Attorney General* (2005) that challenged the procedures established by the 1911 and 1949 Parliament Acts that establishes that, if the House of Lords rejects a Public Bill twice in two consecutive sessions that the House of Commons has passed, the bill itself can still be presented to the Crown for Royal Assent. It's an interesting case because any measure passed using the 1911 and 1949 Parliament Acts' criteria requires an examination of Parliament's Hansard (legislative history) to affirm whether or not the measure was passed with that method. The House of Lords affirmed in its ruling that the Hunting Act of 2004, which was passed by such method, should not be invalidated because the 1911 and 1949 Parliament Acts, despite the acts requiring extrinsic evidence in their application, are still acts of "primary legislation."

The wide variety of case law from British parliamentary jurisdictions has provided different approaches on the application of the Enrolled Bill Rule. These differences highlight the evolution of oversight in the drafting of official acts. Both the historical and modern interpretations have provided a necessity for records to continue to give reverence to the consequences that may arise from the presentation of an act and to foster trust in the body drafting the act itself. The extent to which courts will utilize legislative records is what shapes the application of the Enrolled Bill Rule in the body of law.

The Role of Legislative Journal

Every legislative body provides a record of proceedings that are brought before it. The actions that the body takes are transcribed into what is referred to as a “legislative journal.” The prescription that Congress maintains a journal stems from the U.S. Constitution in that:

“Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.”¹⁶

The power vested in the Enrolled Bill Doctrine finds a foundation in the determination of what role the journal plays in the legislature. U.S. Supreme Court justice John Marshall Harlan provided for a definition of what a legislative journal constitutes and the breadth and scope of its impact as the official record of the elected body. His opinion leaned into rulings made by various other states that have had matters of legislative procedure brought before them.

In *Field v. Clark*, Marshall cited Justice Joseph Story:

“the object of the whole clause [Article I, Sec. 5(c)] is to insure publicity to the proceedings of the legislature and a correspondent responsibility of the members to their respective constituents... so long as known and open responsibility is valuable as a check or an incentive among the representatives of a free people, so long a journal of their proceedings and their votes, published in the face of the world, will continue to enjoy public favor and be demanded by public opinion.”¹⁷

The understanding was established that legislative journals were to act as a vehicle for disseminating public information – that if a member of the public or their elected representative were to review what the clerks of the house recorded as having had happened on a legislative day, that the response having been informed of the proceedings would be satisfactory enough to constitute a check on the legislative branch, so long as the response is conducted within the confines of the legislative process and not in a courtroom. There is a reasonable expectation that an individual, a group of individuals, or their elected representatives therefor vested in the outcome of a proposed law can take whatever actions necessary while a bill is live in the process and even petition the executive beyond the affirmative vote of the legislature if they believe a procedural misstep was taken that would jeopardize or bring an unintended consequence into the statutory record. This expectation assumes

¹⁶ U.S. Constitution, Article I, Sec. 5(c).

¹⁷ *Field v. Clark* (143 U.S. 650; 670, 671)

that the public or their representatives are able to adequately understand the intricacies and nuance involved in the legislative process overall and that they can provide a concerted response to legislative actions in a timely fashion.

While legislative journals serve as a way to inform the public of what their legislative body is doing, like any other publication, they are not immune from clerical error – that “[l]egislative journals are made amid the confusion of a dispatch of business, and therefore much more likely to contain errors than the certificates of the presiding officers to be untrue.”¹⁸ Justice Harlan noted that state courts brought up concerns with how arduous and inaccurate the act of recordkeeping can be. In *Pangborn v. Young*, the Chief Justice of the New Jersey Supreme Court observed:

“Can anyone deny that if the laws of the state are to be tested by a comparison with these journals, so imperfect, so unauthenticated, that the stability of all written law will be shaken to its very foundation? Certainly no person can venture to say that many of our statutes, perhaps some of the oldest and most important, those which affect large classes of persons or on which great interests depend, will not be found defective, even in constitutional particulars, if judged by this criterion... It is scarcely too much to say that the legal existence of almost every legislative act would be at the mercy of all persons having access to these journals, for it is obvious that any law can be invalidated by the interpolation of a few lines or the obliteration of one name and the substitution of another in its stead... The doctrine contended for on the part of the evidence has no foundation, in my estimation, on any considerations of public policy.”¹⁹

Judicial courts have been apprehensive to allow an act to be invalidated due to the uncertified record of an unelected legislative clerk when an attested signature by duly elected officers of the legislative branch would serve as a constitutionally sound delegation of legislative authority. Despite legislatures’ abilities to produce day-by-day accounts of their proceedings, it can still take years to produce a “final journal,” or an official record of the house, because of the workload necessary to verify the proper actions of the house and incorporate those as changes and corrections.

Advances in modern-day technology, such as audiovisual recordings of committee hearings and floor votes, have provided convenience in assisting journal clerks in producing a much more accurate record than the courts in the 1800’s could have possibly imagined. There have even been arguments before the courts that the methods that have conclusively improved recordkeeping accuracy should serve as a legal impetus for reexamining the journal’s authority over legislative proceedings. Those arguments will be examined at some point later in this review.

¹⁸ *Id.* at 677. See also *Weeks v. Smith* (81 Me. 538; 547).

¹⁹ *Field v. Clark* (143 U.S. 650; 674); *Pangborn v. Young* (32 N.J.Law 29, 37)

Conclusions Made in *Field v. Clark*

The overall conclusions that the U.S. Supreme Court reached in *Field v. Clark* are applied in federal jurisdictions in the United States.²⁰ If those conclusions were broken down into bullet points, they would appear, or in some similar form appear, as follows:

- An enrolled act certified by officers of the houses is sufficient evidence enough to conclude that all legal procedural requirements were upheld in its passage.
- The legislative journal exists as a fallible public record of the proceedings of the houses and, because of the difficulties inherent in legislative recordkeeping, cannot to be used as extrinsic evidence to impeach a duly passed law except in a few circumstances.
- To allow the journals of the houses, or any other evidence related to legislative proceedings, to impeach an act that a legislature enacts would pass legislative authority to the clerk of record.
- To allow courts to make determinations and rulings beyond an enrolled act would create an imbalance in the separation of powers amongst the three branches of government.²¹
- Forcing the courts to look beyond the enacted statute into the procedure with which a law was passed would create an unmanageable increase in litigation and expense for every branch of government.²²

This simplified summary of conclusions is what is going to provide the framework for this review as it examines case law from various state jurisdictions.

The Conflict Between Two Cases in California

Fowler v. Pierce and *Sherman v. Story* are two cases that were brought before the Supreme Court of California that reached vastly different conclusions on the power and effect of the Enrolled Bill Rule. Justice Hugh Murray's opinion in *Fowler v. Pierce* was readily overturned in *Sherman v. Story*, but the dichotomies between the two cases provide a respectable view of the arguments in advocacy against and for the Enrolled Bill Rule. Justice Murray's remarks regarding the intermingling between the legislative and judicial branches noted that:

“It is said that acts of parliament, or of the legislature, are records of the highest rank, and can be tried only by themselves; that parol evidence is inadmissible to alter or contradict them. On the other hand, it is contended that, while the best evidence, they are not conclusive; that Courts of law may go behind the record itself, to ascertain if the law was passed in conformity with the requirements of the Constitution. It is a matter of no little doubt and delicacy to determine how far Courts have power to go beyond the record evidence of legislative acts; to inquire into the mode of passing a law, or the motives that induced its passage. The

²⁰ The Enrolled Bill Rule was recently upheld in *U.S. v. Farmer*, 583 F.3d 131 (2d Cir. 2009).

²¹ In *United States v. Munoz-Flores* (495 U.S. 385, 391 n.4 (1990)), the Supreme Court narrowly defined the scope of the EBR in that the doctrine governs what evidence can be considered by courts to authenticate a bill's passage. Justice Antonin Scalia, in his concurring opinion, noted that the Court “should no more gainsay Congress' official assertion of the origin of a bill than [it] would gainsay its official assertion that the bill was passed by the requisite quorum.” See also *NLRB v. Noel Canning*, 573 U.S. 513 (2014).

²² *Id.* (143 U.S. 650; 676). See also *Ex Parte Wren* (63 Miss. 512, 527, 532).

necessity of confining every branch of government to its own proper sphere, and the danger of encroachment upon the rights and prerogatives of each other, render it difficult to determine the exact length to which these inquiries may safely proceed. It seems to be settled that the motives or inducements of legislators cannot be inquired into by a Court of law. They are amenable to their respective bodies; and to arraign their private motives before the tribunals of the country would destroy that independence and discretion with which they are vested, and open the door to confusion and fraud. The question presented for our determination is different; and we are called upon to decide whether the Courts of the land, to whom belong the guardianship and exposition of the laws and Constitution, have the power to go behind the act itself to inquire whether the legislature, or the executive as a component part of the legislative power, have, in passing or approving such act, violated or disregarded the mode pointed out by the organic law of the land.”²³

Justice Murray and Justice Sawyer (in his written opinion for *Sherman v. Story*) both highlighted the magnitude that the court’s decisions would have on the delineation of power amongst the three branches of government. Both opinions provide a deference to the separation of powers doctrine and an innate understanding that there should be a tempered approach on where the line should be drawn in providing an allowance for the legislature to govern itself as it makes laws versus the judiciary making judgments should the legislature make a perceived violation of legal mandates during the course of its business.

Where the line was drawn was different in *Fowler v. Pierce* then it was in *Sherman v. Story*. Justice Murray asserted:

“... If the Courts are to be stopped by the record from this inquiry, they might, as in the present instance, be compelled to administer as law that which never was law, merely because it purported to be a legislative record... and why should not the citizen whose life, property, or liberty is made forfeit by the operation of a particular law, be allowed to show to the Court, if it is not advised of the fact, that the same was passed in violation of his constitutional rights, or that it has been placed among the archives of government by fraud or mistake, and never had a legal existence? ... our constitution has so wisely distributed the powers of government as to make one a check upon the other, thereby preventing one branch from strengthening itself both at the expense of the co-ordinate branches and of the public.”²⁴

Justice Murray did not believe that precedent set by the British parliamentary practice of legislative supremacy should bar courts from looking beyond an enrolled act. While he did acknowledge the difficulty that courts faced in search of legitimate evidence beyond an enrolled act, which is an assertion that *Sherman v. Story* acknowledged as an obstacle too insurmountable and

²³ *Fowler v. Pierce* (2 Cal. 165; 167-168)

²⁴ *Fowler v. Pierce* (2 Cal. 165; 170, 171)

unwieldy for the judiciary to perform, he felt that courts still had to carry out the responsibility to inform itself in an even-handed check on the legislative branch. That the examinations taken outside the authentication of the legislature's officers, despite their evidentiary risks, were necessary to ensure that mandates related to legislative proceedings were adhered to by the body as elected by its constituency.

Murray's opinion vastly differed from the one that Associate Justice Lorenzo Sawyer (he had not yet been appointed as Chief Justice) made when a ruling was handed down in *Sherman v. Story*. His opinion, instead of deviating from established British precedent, embraced what cases like *The King v. Arundel* and *The Prince's Case* concluded was the judiciary's role adjacent to the legislature. Fourteen years was a length of time enough for other state jurisdictions to mold and refine interpretations of their constitutions and Justice Sawyer referenced many of those cases to move its legal precedent in the opposite direction of *Fowler v. Pierce*. Justice Murray felt the necessity to use evidence such as legislative journals to examine the manner with which the legislature enacted a law, while Justice Sawyer believed that courts should have a much more circumspect approach when dealing with forms of evidence that were consistently unreliable and prone to mistakes.

"There is nothing in the Constitution, then, that requires or authorizes us to avoid, correct, or in any way modify, by aid of the Journals, the acts of the Legislature properly enrolled, authenticated, and deposited with the Secretary of State as records of the act, and we know of no provision of the statute imparting to the Journals any greater dignity than that which pertains to the Journals of Parliament... The question, then, whether an important public law, upon which the rights of all our citizens depend or may depend was ever passed, is to rest, through all time, upon equivocal memoranda upon amendment tags, and the frail recollection and veracity of man..."

*If any inconvenience is likely to result from the common law rule, the Legislature is the proper body to provide a remedy. It can guard by proper restrictive provisions against other and greater inconveniences by designating the cases in which, and the circumstances and limitations under which an enrolled statute may be impeached. It may limit the time within which the impeachment must be made, and the character of the evidence which may be introduced."*²⁵

It was better to place confidence in the branch of government that represents the majority of the country to make its own rulings regarding procedure and to trust in the designees the legislature appoints to certify enrolled acts rather than force a responsibility on a branch of government that is meant to only interpret the body of law as it is handed and to not impose its own form of legislative authority on a branch that is to have sole possession of such.

Ever since *Sherman v. Story* was handed down, many cases have made attempts to judicially review and even overturn a legislative body's ability to procedurally pass laws. Courts have continued to uphold this historically established mandate of separate discretion to the benefit of maintaining the legislature's unobstructed self-governance. A more recent court ruling in California

²⁵ *Sherman v. Story* (30 Cal. 253; 278, 279)

upheld that mandate in the 2009 case of *California Taxpayers' Association v. Franchise Tax Board* that “Legislatures are presumed to have acted constitutionally. Consequently, statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.”²⁶

Despite the solid ground that the Enrolled Bill Rule has held in California for hundreds of years, there have been narrowed exceptions where courts have stepped in a direction towards the *Fowler* case. *People ex rel. Levin v. County of Santa Clara* stands as one of the exceptions to the otherwise entrenched standard. In the *Levin* case, the legislature approved amendments to a county charter. However, because of a material error that was found in the dissemination of the charter amendments to the local governing body prior to the legislature’s approval of the charter, the appellate court felt that a necessity existed to wade into an examination of whether or not an action by the legislature should be invalidated. Since the local entity’s printing issue led to a technical violation of the California Constitution, the court held an obligation to invalidate the legislature’s approval of the charter itself on those grounds:

“Thus the holding is that if irregularity in the proceedings by the local authorities appears on the face of the legislative resolution, the approval by the Legislature is not conclusive, as it would be, if it was not revealed by the [legislative] resolution...”

*“Since the defect in the proceedings for the adoption of the charter prior to its submission to the Legislature appears on the face of the resolution adopted by the Legislature approving the charter here involved, the court will examine the regularity of such proceedings and determine whether or not the constitutional requirements have been met and the document submitted is or is not a valid county charter...”*²⁷

Essentially, Justice Jesse Carter’s opinion was a rare foray into the legislature’s independent power to police itself. The court’s presence and ruling, however, was appropriate because the legislature by resolution was the agency that pointed out the charter discrepancy. The argument can be made that, since the legislature questioned the constitutionality of its own process, that it still preserved its authority to interpret parliamentary practices – the court only being invited as a unique arbitrator.

Debates over the efficacy of the Enrolled Bill Rule have occurred and will continue to occur in the discourse of legal interpretation. The evolution of the three branches of government will demand such questions be revisited. One conclusion that can be reached is that the arguments that were made in *Sherman v. Story* have bound itself tightly to the doctrines held in various federal and state courts that still maintain the Enrolled Bill Rule.

²⁶ *California Taxpayers' Association v. California Franchise Tax Board* (190 Cal.App.4th 1139; 1146)

²⁷ *People v. County of Santa Clara* (37 Cal. 2d 335; 339, 340, 341).

Begrudging Acceptance of the EBR in Illinois

In what is one of the most recent opinions made related to the Enrolled Bill Rule is the ruling that the Fourth Circuit of Appeal in Illinois made in *First Midwest Bank v. Rossi* on July 2023.²⁸

The estate for the deceased Cynthia Overstreet, maintained by the First Midwest Bank, sued the Peoria Surgical Group, Ltd., and the gastric bypass surgeon, Thomas Rossi, M.D., that performed surgery on the deceased. The plaintiffs in the case sued the defendants, as a part of the lawsuit, for prejudgment interest under 735 ILCS 5/2-1303(c). The defense argued that, when the legislature passed the statute, they violated the state constitution's three-readings rule (Ill. Const. 1970, art. IV, Sec. 8(d)).

In his written opinion, Justice Robert J. Steigmann maintained that the Illinois Supreme Court has sole jurisdiction over its interpretation of legislative constitutional procedure and that the appellate court was bound to uphold the Enrolled Bill Rule. Despite the court's ruling Justice Steigmann made clear that the court believes that the legislature violated the state constitution in the manner with which it passed the prejudgment interest statute and that the statute itself should be overturned by the Supreme Court:

“Mindful of the limits of this court’s authority, we agree with the Estate and ITLA [Illinois Trial Lawyers Association] that we must follow the supreme court’s decisions declaring the enrolled bill doctrine to be the law of Illinois. Accordingly, this court cannot declare the prejudgment interest statute unconstitutional, even though it was passed in violation of the three-readings rule.

Despite this conclusion, we wish to express our concern over the legislature’s continued blatant flouting of constitutional provisions ratified by the people of the State of Illinois in 1970 when they voted to adopt the new constitution...

Our lawmakers take an oath of office to ‘support the constitution of the United States, and the constitution of Illinois.’ ... The same is required for the circuit court judiciary... as well as the appellate and supreme courts and certain members of the executive branch... Allowing lawmakers to continue to ignore constitutional mandates under the enrolled-bill doctrine, knowing full well the constitutional requirements were not met, belittles the language of the oaths, ignores the need for transparency in government, and undermines the language of this state’s constitution...

²⁸ An update – On May 2, 2025, the Fifth District Appellate Court of Illinois heard *Accuracy Firearms, LLC v. Pritzker* (2025 IL App (5th)) wherein the court upheld the Enrolled Bill Rule in its dismissal of Count I of the lawsuit. Justice Mark Boie issued a dissent in the ruling on Count I in providing a recounting of the manner with which HB 5471 passed in the Legislature and criticism of the efficacy of the Enrolled Bill Rule.

This court is placed in a strange position when it is constitutionally required to turn a blind eye to a grave constitutional violation by a co-equal branch of government.”²⁹

In the state of Illinois, there seems to be a frustration expressed by the judiciary against the legislative branch. With this most recent challenge, the efficacy of the Enrolled Bill Rule is being brought up again. Unlike jurisdictions that have maintained the Enrolled Bill Rule as an original part of their body of law, the application of the rule in Illinois is younger in that it was adopted during the state’s 1970 Constitutional Convention. Prior to the adoption of their new constitution, Illinois observed the Journal Entry Rule, a principle contradictory to EBR that allowed courts to reference legislative journals to impeach a legislative act. The convention’s Committee on the Legislature recommended that the Enrolled Bill Rule be adopted to save the legislature from having to deal with litigation over strict adherences to parliamentary procedure.³⁰

Challenges to the rule in the 1990s highlighted a rather colorful history of the EBR between the legislature and the judiciary. The Illinois Supreme Court in *Geja’s Café v. Metropolitan Pier & Exposition Authority* acknowledged the intent of the constitutional framers to avoid judicial nullification of statutes on procedural grounds yet pointed out that “*the General Assembly has shown remarkably poor self-discipline in policing itself. Indeed both parties agree that ignoring the three-readings requirement has become a procedural regularity... If the General Assembly continues its poor record of policing itself, we reserve the right to revisit this issue on another day to decide the continued propriety of ignoring this constitutional violation.*”³¹ A subsequent string of court cases addressing issues with the three-readings constitutional requirement would be brought before the Illinois Supreme Court with the court upholding the Enrolled Bill Rule.³²

This most recent challenge to the Enrolled Bill Rule, coupled with an appellate court’s vocal begrudging acceptance of the EBR, poses a question on whether or not the winds are shifting for the rule. At the very least, these cases keep those interested in parliamentary procedure “on a swivel.” In reading some of the cases in Illinois, this review would even go so far as to pose the question on “how many times will the supreme court (and appellate courts) voice their displeasure to the legislature before the court decides to act on its threat to overturn the Enrolled Bill Rule.”

Kentucky and the Extrinsic Evidence Rule

Kentucky serves as an example of a state that decided to reject the Enrolled Bill Rule in its entirety and adopt the Extrinsic Evidence Rule as the legal precedent governing enrollments. Prior to the state’s rejection, Kentucky had maintained the EBR since 1896 in their decision in *Lafferty v. Huffman*. The *Lafferty* opinion provided a heavy critique of legislative journals in the following:

“The enrolled bill, so attested and signed, and approved by the Executive is easy of access and inspection; but what shall we say of the journals? At the session at

²⁹ *First Midwest Bank v. Rossi* (2023 IL App (4th) 220643; pages 53, 60).

³⁰ Kasper, Michael J. *Using Article IV of the Illinois Constitution to Attack Legislation Passed by the General Assembly*, 40 Loy. U. Chi. L. J. 847 (2009); pp. 857-858.

³¹ *Id.* at p. 858. See also *Geja’s Café v. Metropolitan Pier & Exposition Authority* (606 N.E.2d 1212 (Ill. 1992)).

³² *Id.* at p. 859. See also *Cutinello v. Whitley*, 641 N.E.2d 369 (Ill. 1994); *People v. Dunigan*, 650 N.E.2d 1026 (Ill. 1995); *Cincinnati Insurance Co. v. Chapman*, 691 N.E.2d 374 (Ill. 1998); *Orr v. Edgar*, 698 N.E.2d 560, 573 (Ill. App. Ct. 1998).

which the law under consideration was adopted, those records consist of over 4,000 pages. They seem to have been hurriedly and imperfectly indexed, as in the nature of things they must be. This is usually prepared by the subordinate officials, hurriedly amidst the excitement and confusion incident to legislative bodies, and with small concern for those details which are to become so important if the record is to be subjected to judicial scrutiny but the chances of mistake are very great in the makeup of the journals as they are ordinarily kept; and, if it be understood that the enrolled bill may be impeached by them, the chances of fraud are likewise great. They are usually read from loose sheets or hurriedly made memoranda, and are approved with slight attention, and are then passed to the journal clerk or some copyist to be transcribed formally in the journal. They receive, usually, no further consideration at the hands of the body.”³³

Just as *Field* maintained, the courts in Kentucky held a general mistrust in the ability of journal clerks to maintain accurate records of house proceedings. Fifty-two years later, William Coldiron, who would eventually become a solicitor for the Department of the Interior, made an observation of the Kentucky courts that “*when the journals show facts which are of use to the court, the court is not adverse to the use of such records and seem to indicate that the court would give greater weight to and make more extensive use of legislative journals if they were more complete and more accurately kept.*”³⁴ Alongside Coldiron’s observations, Columbia University law professor Harry Willmer Jones would write “*Extrinsic Aids in the Federal Courts*” citing various instances where federal courts would lean on Congressional journals and committee notes to discern legislative intent in particular bills. While courts were not of the mind to look behind an enrolled act in weighing in on issues of parliamentary procedure, they were becoming increasingly comfortable with using the accounts provided in journals to aid in rulings related to the language within the enrolled act itself—a deviation from the *Field* assertion that journals should not hold the ability to impeach legislative acts.

The opinions from Coldiron and Jones were evidence of a destination that Kentucky would eventually arrive at when the Associate Justice Robert F. Stephens, two years before he would become the Chief Justice of the Kentucky Supreme Court, drafted an opinion in *D. & W. Auto Supply v. Department of Revenue*:

“It is clear to us that the major premise of the Lafferty decision, the poor record-keeping of the legislature, has disappeared. Modern equipment and technology are the rule in record-keeping by our General Assembly. Tape recorders, electric typewriters, duplicating machines, recording equipment, printing presses, computers, electronic voting machines, and the like remove all doubts and fears as to the ability of the General Assembly to keep accurate and readily accessible records.

³³ *Lafferty v. Huffman*, 99 Ky. 64, 80, 88-90, 35 S.W. 123, 125-126 (1896). See also Coldiron, William H. (1948) “*The Use of Extrinsic Aids in Statutory Interpretation in Kentucky*,” *Kentucky Law Journal*: Vol. 36: Iss. 2, Article 3, footnote 36.

³⁴ Coldiron, on page 198.

It is also apparent that the ‘convenience’ rule is not appropriate in today’s modern and developing judicial philosophy. The fact that the number and complexity of lawsuits may increase is not persuasive if one is mindful that the overriding purpose of our judicial system is to discover the truth and see that justice is done. The existence of difficulties and complexities should not deter this pursuit and we reject any doctrine or presumption that so provides.

Lastly, we address the premise that the equality of the various branches of government requires that we shut our eyes to constitutional failings and other errors of our coparceners in government. We simply do not agree... We are sworn to see that violations of the constitution --- by any person, corporation, state agency or branch of government --- are brought to light and corrected. To countenance an artificial rule of law that silences our voices when confronted with violations of our constitution is not acceptable to this court.

We believe that a more reasonable rule is the one which Professor Sutherland describes as the ‘extrinsic evidence’ rule... Other jurisdictions have embraced this rule, which we hereby adopt as the law of this case and future cases. Under this approach there is a prima facie presumption that an enrolled bill is valid, but such presumption may be overcome by clear, satisfactory and convincing evidence establishing that constitutional requirements have not been met.

We therefore overrule Lafferty v. Huffman and all other cases following the so-called enrolled bill doctrine, to the extent that there is no longer a conclusive presumption that an enrolled bill is valid.”³⁵

The 1980’s Kentucky Supreme Court disputed most of the conclusions made in the *Field* ruling. It made clear that the unimpeachable ground that enrolled acts once found themselves on could be dismissed by the judiciary because of the improvements in legislative recordkeeping unimagined by the *Field* court. Nor did the court believe that *stare decisis* was grounds to uphold the Enrolled Bill Rule. The one agreeable point that *Field* and *D.&W.* shared was that the certified signatures on an enrollment can be *prima facie* evidence of a duly enacted law. However, the courts at the time of *D.&W.* were not faced with the lack of verifiable evidence that were once of concern to the courts that made rulings that have since long passed.

A Modern Examination of the EBR in the 5th Circuit

The State of Texas sued the U.S. Federal Government challenging the U.S. House’s use of proxy voting during the COVID-19 pandemic to pass the Consolidated Appropriations Act of 2023. When presenting their arguments in the district court, Texas claimed that the act should be invalidated because the Quorum Clause (outlined in Article I, Section 5 of the *U.S. Constitution*) requires a

³⁵ *D.&W. Auto Supply v. Department of Revenue*, 602 SW 2d 420 (1980); 424-425.

physical presence of elected members in order to conduct business. In countering Texas' claim, the Federal Government asserted that the Enrolled Bill Rule requires courts to accept the enrolled bill as having established proper passage---examining whether or not a quorum was present prior to the bill's passage would require a court to look beyond the authenticated measure.³⁶

When the district court heard the case, they concluded that the enrolled bill rule did not preclude the court from reaching the merits of whether or not Congress passed the bill in accordance with the U.S. Constitution (in line with the rationale adopted in *United States v. Munoz-Flores*, 495 U.S. 385 (1990)) in that courts can look behind an enrolled bill so long as there are disputed facts that question the constitutionality of the passed measure. When handing down its ruling, the district court upheld, after examining the process with which the Consolidated Appropriations Act was passed, that the use of proxy voting was unconstitutional theorizing that the "Quorum Clause is not a majority-participation requirement, but a majority-presence requirement."³⁷

The determinations that the 5th Circuit made in *Texas v. Bondi* concurred the district court's opinion that the Enrolled Bill Rule did not bar the court from looking beyond the authenticated measure, yet disagreed with the court's assessment that the Quorum Clause required a "physical presence."³⁸ Judge James E. Graves Jr., when addressing the Enrolled Bill Rule for the 5th Circuit, provided an understanding both of the complexities of the arguments presented in past judicial precedents along with noting the applicability of the Enrolled Bill Rule which provides deference to Congress' ability to make and enforce its own internal rules so long as there are not "questions of constitutionality."³⁹

Author's Conclusions

There is a statement that at its face would seem like an obvious one – "that what has happened in the past is what got us here today." The idea of legislative supremacy comes from a society that imposed itself on as much of the world as it could in British colonial conquest. Parliamentary doctrines that are held in high regard in the United States, while unique in their application, have been emulated by many other countries that were once colonies of the Crown. Such constitutional doctrines share a timeline that reach into centuries past – from an era of monarchies, fledgling democracies, and chaotic creations of societies to a period of technological and legal innovation unrecognized by the EBR's original framers. These entrenched philosophies are challenged by problems as unique as the moment they find themselves within.

Even something as small as "when" and "in what manner" a document transforms itself into law is predicated on answers to important questions that tug at the roots of proper representative governance. Does the use of extrinsic evidence represent the delegation of legislative authority to the clerk of record? Have improvements in legislative recordkeeping technology nullified the argument that unreliable journals should excuse the court from looking behind an enrolled act? The discussions held by jurists in the 1600s have held some relevance as those conversations have evolved the body of law overtime. Yet what was once perceived as a necessary distrust towards legislative

³⁶ *Texas v. Bondi*, No. 24-10386 (5th Cir. 2025).

³⁷ 719 F. Supp. 3d 567. See also, *United States v. Ballin*, 144 U.S. 1, 6 (1892)).

³⁸ *Bondi*, on page 28.

³⁹ *Id.* on page 10. To note, the question of constitutionality presented in *Bondi* regards whether or not the Quorum Clause requires a physical presence or not when votes are tabulated on a measure. As stated in the 5th Circuit's opinion, the EBR can essentially bar courts from looking past an enrolled measure so long as there are not any questions of constitutionality being presented to the court.

recordkeepers in the 1800's is a much more circumspect presumption when technology provides corroboration to the proceedings they claim to have happened. There is a point to be made that in most modern-day parliamentary bodies, it is the legislature itself that adopts the minutes of the previous day's proceedings. Questions of unconstitutional delegation of lawmaking authority are otherwise put to rest when a legislature agrees to the events having taken place through its own consent.

The political philosophies of proper governance may seem simplistic – if I may paraphrase the Baron de Montesquieu as an example, that if any one of the three branches were to be combined, then tyrannical laws would be enacted. Keeping power in its rightful place in the separate branches becomes invariably more complicated as the finer details of how to do exactly that unfold. Those details have pushed jurisdictions to allow for the introduction for extrinsic evidence to impeach legislative acts while others have maintained relevant distinctions between the legislative sovereign and the other two branches of government.⁴⁰ For the societies that have modified its interpretation of the Enrolled Bill Doctrine, the justifications are either that the unique circumstances surrounding a particular enactment of a law are a “one-off” where courts are invited to look beyond the enrolled act yet the courts themselves do not mean to ultimately limit the legislature from its own sovereignty, or that certain cases have established a necessity to examine long-standing procedures and precedents – that maybe there is too much of a focus on the philosophy of maintaining separate branches of government, yet perhaps not enough attention paid to fostering a healthier system of checks and balances.

The cases in this review represent but a small sample of discussions surrounding the Enrolled Bill Rule. If there is just one conclusion that I would like a reader to take away from this review, it is that even the manner with which those responsible for the enrolled act carry out in its last steps in the legislative process can have a substantial effect on how it is implemented in society. That much is evident with cases like the one regarding the Nationality and Borders Act 2022^[1] in Great Britain, the abovementioned *First Midwest Bank v. Rossi* from the state of Illinois, and the even more recent ruling handed down in *Texas v. Bondi*⁴¹ serving as modern conflicts over enrolled measures. Regardless of whether a jurisdiction maintains the well-respected traditional view of the Enrolled Bill Rule and legislative supremacy or if one seeks to change the relationship between the legislative branch and the other branches of government, these debates, as they have happened hundreds of years in the past, will inevitably continue hundreds of years into the future when other people will look back to see what got them to where they are at now.

⁴⁰ An apt description of the issues surrounding the EBR is essentially if an enrolled measure is conclusive evidence that a law was enacted constitutionally or if the circumstances with which a bill is enrolled can be rebutted against.

^[1] Bailey, Diggory. “What is an Act of Parliament?” https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4558180. Referenced September 26, 2023.

Bailey noted that, when it comes to enrolled acts – “While errors are rare, the documentation that accompanies the legislative process is detailed and complex and to a significant extent depends on manual processes that are susceptible to human error. The volume of work and the need for speed means that despite the professionalism of the clerks and the great care that is taken in producing amendment papers, Bill prints, House Bills and so on, mistakes occasionally creep in.”

⁴¹ I would like to make an additional point that my intention when mentioning *Texas v. Bondi* in this review is to note that modern developments in legislative administration like proxy voting can very well bring about questions on whether or not courts invite themselves to examine legislative processes.



C.J. Cavin

Reconsider vs. Rescind: Revisiting Decisions in Legislatures

By C.J. Cavin, Esq., CPP-T, PRP

There is an art and a science to the legislative process and to parliamentary procedure generally. Furthermore, there are inherent challenges to understanding how an idea becomes reality, i.e., how a bill becomes a law. This issue is compounded when there is confusion about what words, and in this case, motions, mean. There is often confusion about which motion is used in particular situations, especially when they have similar outcomes. The unique motion of *Reconsider*, and how it differs from the motion *Rescind*, is one example that occurred and became an item of contention during the 2025 Regular Session in the Oklahoma House of Representatives.

In the practice of parliamentary procedure, few concepts are as essential, and as frequently misunderstood, as the distinction between the motions to *Reconsider* and *Rescind*. Both provide mechanisms for assemblies to revisit decisions already made, but they serve different purposes, operate under distinct procedural frameworks, and reflect divergent principles of parliamentary law. This article explores these two motions through the lens of the two leading authorities used in legislative and organizational governance: *Robert's Rules of Order Newly Revised (12th Edition)* and *Mason's Manual of Legislative Procedure (2020)*.

The Role of Corrective Motions in Deliberative Assemblies

Corrective motions like *Reconsider* and *Rescind* play an essential role in shielding assemblies from the effects of rash decisions, changing circumstances, new information, or just flat-out mistakes. Without these procedural options, an assembly might be stuck with decisions that no longer benefit it, lacking an organized way to review them. However, while both motions aim to revisit previous decisions, their procedures, scope, and limitations vary significantly.

During the 2025 Regular Session, a dispute arose over Senate Bill 2, prompting a careful analysis of the differences between *Reconsider* and *Rescind* motions. The controversy centered on an existing House Precedent stating that a motion to rescind cannot be used to negate an action that would otherwise constitute final action under the House Rules.

After thorough deliberation and parliamentary review, this precedent was ultimately overturned, recognizing that the fundamental purpose of the rescind motion is precisely to enable assemblies to undo decisions that are no longer advisable or in the best interest of the organization.

In the practice of parliamentary procedure, understanding what constitutes "Final Action" is crucial for determining when and how decisions can be revisited. In the Oklahoma House of Representatives, Final Action under House Rules means that the House cannot consider the effect of a particular piece of legislation for the remainder of that Legislature's existence.

Mason's Manual of Legislative Procedure (2020) addresses this concept in §481, stating that "A legislative body can rescind an action previously taken as long as no vested rights have arisen from the original action." This principle was at the center of a contentious dispute during the 2025 Regular Session of the Oklahoma House of Representatives. Upon review of the precedent's history and the practical implications and differences between the motion to *Reconsider* and the motion to *Rescind*, the precedent was overturned by a Point of Order and sustained on appeal. The original precedent and the new precedent are provided in Appendices A and B.

Reconsider: A Motion to Reflect Before Action

a. Purpose and Characteristics

The motion to *Reconsider* is a procedural safeguard that allows an assembly to revisit a motion that has already been voted on, typically within the same session. It is tightly constrained in terms of who may offer it and when.

Under *Robert's Rules of Order*, only a Member who voted on the prevailing side may move to reconsider, and the motion must be made on the same day the original vote was taken if it is a one-day meeting or in a multi-day session on the next succeeding day within the session on which a business meeting is held. The effect of moving to reconsider is to suspend the implementation of the original action until the motion is resolved. (*RONR (12th ed.) §37:1–37:45*)

Mason's Manual does not adopt similar procedural limitations. Any Member may make a motion to reconsider, and it need not be made on the same or next legislative day, but must be made before any intervening rights have vested. If adopted, the motion puts the original question again before the body, as if no vote had previously occurred. (*Mason's (2020), §§ 450–473*)

Rescind: A Broader Tool for Revoking or Amending Past Decisions

a. Purpose and Characteristics

The motion to *Rescind* (or to *Amend Something Previously Adopted*) provides a broader authority to nullify or alter a previous action. It is not limited to the same session and may be offered by any Member, regardless of how they voted on the original question.

Under *Robert's Rules*, a rescind motion may be made at any time, provided that no irreversible action has been taken as a result of the original decision. Because rescind can substantially alter the organization's course, its adoption requires a higher threshold: either a majority with prior notice, a

two-thirds vote without notice, or a majority of the entire membership. (*RONR (12th ed.) §35:1–35:13*)

Mason's Manual addresses rescinding under the broader umbrella of repealing, repealing and reenacting, or amending prior actions or laws. It is typically used in a legislative context to revoke a standing rule or statute. Like *RONR*, *Mason's* recognizes the need for caution when rescinding actions that may already have been implemented. However, *Mason's* only requires a majority vote for adopting the motion to rescind. (*Mason's (2020)*, §§ 480–483)

Comparative Analysis: Key Differences

a. Timing

- *Reconsider* is a time-sensitive motion, depending on the context: under Robert's, it must be made within a narrowly defined window, typically the same day or the next. Under *Mason's*, it may be made any time the action could be suspended or reversed.
- *Rescind* can be moved at any future meeting, subject to the feasibility of reversing the action.

b. Initiating Member

- *Reconsider* is limited to a Member who voted on the prevailing side per Robert's. *Mason's* does not have the same restriction and may be made by any Member.
- *Rescind* may be made by any Member, regardless of their original vote.

c. Debate and Scope

- *Reconsider* and *Rescind* are fully debatable on the merits of the question as long as the question was originally debatable.
- *Reconsider* suspends the original action until the assembly decides whether to confirm or reverse its earlier vote.
- *Rescind* immediately nullifies or amends the prior action if adopted, if that action has not already been carried out in a way that cannot be undone.

Strategic Use in Governance

Understanding when and how to use these motions is a critical skill for both Members and presiding officers. *Reconsider* is best used to correct errors or incorporate new information before an action is implemented. It reflects the parliamentary principle of prudence: allowing for second thoughts before a decision is finalized.

Rescind, by contrast, is a tool of reversal, used when a body determines that a prior action is no longer valid or beneficial. It is often used in the context of strategic realignment, changes in external conditions, or legislative bodies repealing outdated rules.

Presiding officers and parliamentarians should be prepared to advise Members on the implications of each motion, including timing constraints, voting thresholds, and potential consequences of reversal.

Conclusion

The motions to *Reconsider* and *Rescind* provide crucial checks and balances in the procedural toolkit of any deliberative body. While they both aim to revisit a decision, they operate under distinctly different rules and varying levels of procedural rigor.

Mastery of these motions enables leaders and Members alike to navigate the dynamic realities of governance, ensuring that past decisions do not become inflexible constraints and that corrective action is always available when new facts or better judgment come to light.

By understanding not just the form but also the function and philosophy of *Reconsider* and *Rescind*, Members can ensure that their assemblies remain both procedurally sound and substantively responsive.

Appendix A: Original House Precedent

6.8 – 4 (2010) Motion to Rescind May Not Be Used to Avoid Final Action

Rule – House Rule 6.8, paragraph (a) states in part:

(a) The following action shall constitute final action on any bill or resolution:

...a motion to reconsider the vote on Third Reading or Fourth Reading [that] fails to prevail...

History – Representative Nelson moved to reconsider the vote whereby Senate Bill 2207 failed, which motion failed of adoption.

Representative Nelson moved to rescind the vote whereby the reconsideration motion failed.

Representative Reynolds raised a point of order stating that the motion to rescind was dilatory.

The presiding officer stated that the motion to rescind the vote to reconsider was not in order because when a motion to reconsider fails on a measure which itself previously failed, the failed motion to reconsider constitutes final action on the measure and therefore is not in order to consider further.

Ruling – It is the ruling of the Chair that a motion to rescind cannot be used to negate an action which would otherwise constitute final action.

Appendix B: 2025 Precedent

6.8 – 7 (2025) Motion to Rescind May Be Used For Any Proper Purpose

Rule – House Rule 6.8, paragraph (a) states in part:

(a) The following action shall constitute final action on any bill or resolution:

...a motion to reconsider the vote on Third Reading or Fourth Reading [that] fails to prevail...

History – Representative Trey Caldwell moved to reconsider the vote whereby Senate Bill 2 failed, which motion was adopted.

Representative Trey Caldwell moved to rescind Third Reading on Senate Bill 2, which was adopted. Representative Trey Caldwell moved to rescind the vote whereby Senate Bill 2 was advanced from General Order, which was adopted. Representative John Kane moved to strike the title, which was adopted.

During the consideration of Senate Bill 2, Minority Floor Leader Fugate raised a point of order stating that the motion to rescind was out of order due to House Precedent 6.8-4.

The presiding officer, Speaker Pro Tempore Anthony Moore, stated that the motion to rescind was in order because the House has never adopted a Rule that limits the application of the motion to rescind and for that reason the motion to rescind is necessary to restore a measure to its earlier position, regardless of whether the measure has passed or failed.

Minority Floor Leader Fugate appealed the decision of the chair. The ruling of the chair was sustained upon a vote of the membership of the House.

Ruling – It is the ruling of the Chair that the motion to rescind is in order unless a written Rule to the contrary is adopted.

Reasoning – Mason's Manual of Legislative Procedure states in Section 480 that the motion to rescind is used to reverse a previous action after the time for consideration has passed. Mason's Manual further states in Section 61, "if a legislative body passes or refuses to pass a main motion, that motion is disposed of for the session unless the vote is reconsidered or rescinded." This language explicitly allows for the usage of the motion to rescind even if the action being rescinded would otherwise be final action. Because no House Rule has been adopted contradicting the written Rules, the motion to rescind is in order.

Continuity of Government

By: National Conference of State Legislatures (NCSL) Staff

The first case of COVID-19 in the U.S. was confirmed January 20, 2020. Over the next two years, the virus challenged nearly every aspect of American life, and state legislatures were not immune. In early March 2020, legislatures began adopting safety measures—closing galleries in their chambers, ending public tours through their Capitol buildings and even adopting rules to allow legislators to participate in sessions remotely.

Legislators spent the rest of 2020 and 2021 rapidly adapting to the circumstances under which they were forced to operate. Strategies to ensure continuity of operations varied by legislature and even chamber, but even with the fast-paced nature of implementing these policies, key decision-makers in legislatures recognized the importance of archiving their decisions.

In the spirit of that goal, NCSL began researching the challenges and benefits of the approaches used by different legislative chambers. From June 2022 to June 2023, NCSL interviewed eight legislative leaders and 18 legislative staff, including staff directors and clerks and secretaries, who were in key decision-making positions about how their legislature adapted to the challenges presented by the COVID-19 pandemic, what strategies worked especially well, and what continuity of operations plans were used in response. Interviewees represented chambers and legislative staff offices from the following states: Colorado, Georgia, Michigan, New Jersey, New Mexico, North Dakota, South Carolina, the US Virgin Islands, Utah, Virginia, Wisconsin and members from NCSL’s Legislative Staff Coordinating Committee (LSCC) from Georgia, Kansas, Missouri, New Hampshire, Puerto Rico, Tennessee, Virginia and Washington. NCSL used this information to identify themes in the major procedural and operational changes legislatures considered and adopted: sessions; remote participation; health, safety and security; and staffing. NCSL highlights these themes because it may be beneficial for chambers as they contemplate future planning on continuity in an emergency plan.

Sessions

When the world began to shut down in early 2020, most legislative chambers realized their continuity plans did not account for the realities of a global pandemic. Legislator and staff leaders had to quickly assess how to adapt their legislative procedures while adhering to their constitutional provisions, laws, customs and practices. In some cases, it was necessary to take action to change provisions and laws.

A Michigan House leader told NCSL “legislators have two jobs constitutionally: show up and vote.” Where and how chambers permitted legislators to do that varied, in no small part due to how their constitution specified whether the seat of government can be changed and under what circumstances.

In state constitutions, the seat of government determines where governing bodies must meet to conduct business. In some cases, the state constitution clearly specifies the seat of government. For example, Article IX, Section 16 of the Maine Constitution states – “**Seat of government.** Augusta is hereby declared to be the seat of government of this State.” In other states, like Oregon, a county is specified. In yet other cases, seat of government clauses allow for flexibility, but specify certain conditions that apply including:

- Disasters.

- Enemy attack.
- Emergencies.
- Pestilence.
- Public danger.
- War
- Insurrection.

Article 3, Section 62 (c) of the Texas Constitution allows that during a period of emergency due to enemy attack, the “Governor, after consulting with the Lieutenant Governor and the Speaker of the House of Representatives, may suspend the constitutional requirement that the Legislature hold its sessions in Austin, the seat of government. When this requirement has been suspended, the Governor shall determine a place other than Austin at which the Legislature will hold its sessions during such period of emergency or immediate threat of enemy attack.”

Given the highly contagious nature of COVID-19, social gatherings were discouraged or outright forbidden in many places. Limiting or restricting opportunities to gather and social distancing became norms across the country. This quickly affected 2020 legislative sessions. On March 12, 2020, the day before a nationwide state of emergency was declared by President Trump, several states, including Maine, Ohio, North Carolina, and Missouri, began to implement safety measures such as closing galleries in legislative chambers and ending public tours. Maryland adjourned early for the first time since the Civil War. Colorado, constitutionally required to have a 120-day session ending in early May, asked the Supreme Court to weigh in on how it counted calendar days versus session days. New Jersey passed legislation allowing conduct of state business and legislative sessions at locations other than Trenton, the capital, during periods of emergency or other exigency.

By March 24, 2020, of the 46 legislatures that convened in regular session that year, 12 adjourned sine die, and 26, plus three chambers, postponed sessions. In the remaining chambers, creative solutions were adopted regarding where and how legislators could meet, such as physically distancing legislators across the chambers and galleries, with voting machines installed in galleries to allow lawmaking to continue.

Still, other states were not restricted by seat of government language, allowing them to meet in other locations. The New Hampshire House of Representatives, the largest state legislative chamber in the country with 400 members, eventually experimented with meeting in a number of ways. The chamber had been in session for three days before its suspension in March 2020. In June 2020, the body met outside of the legislative chambers for the first time since the Civil War in the hockey arena at the University of New Hampshire. Later, the House held a drive-in session where members sat in their cars in the parking lot of the Capitol (in alternate spots) using bullhorns and honking to conduct business.

Similarly, the Virginia Senate met off-site at the Science Museum of Virginia. Chair of the Senate Rules Committee said partnership was pivotal in the continuity of their session: “When it became clear that the pandemic was going to last longer than we thought, the museum really rolled out the red carpet for us.” The clerk of the Senate elaborated that hardware including cameras, sound equipment, and voting boards were transferred to the Science Museum to ensure floor and committee

proceedings were still able to be livestreamed. The Senate also utilized a nearby building for Senate offices, allowing sufficient space for members who wished to meet with constituents.

Executive Power and Legislative Sessions

There are two main types of legislative sessions, regular and special (sometimes known as extraordinary). A regular session is the annual or biennial gathering of legislators, the starting date (and often, the length) is set by constitution or statute. Unlike regular sessions, special sessions have no specific timing, occurring intermittently to deal with specific issues or topics. Usually, the scope of a special session is limited to the issues specified in the notice calling for the special session. Legislatures may be called into special session during an emergency. In 37 states, the governor and the legislature have the [ability to convene a special](#) session. In the remaining 13 states, however, only the governor has that authority. During COVID-19, conflict arose between the executive and legislative branches related to whether and how governors called, or did not call, special sessions. Tensions were predictably high in states with split party control, but conflicts arose even in chambers where the governor and the legislative leadership aligned politically. Both Utah and Tennessee, with Republican trifectas, called themselves back into special session after their governors implemented executive orders about COVID-19. In New Mexico and Virginia, with Democratic trifectas, legislators still asserted the importance of the legislative role. Utah's Senate President explained the Utah Legislature's reasoning for challenging executive power: "Our founding fathers got it right that a bigger group should create the policy and the executive should implement the policy."

Remote Participation

COVID-19 forced many legislatures to adopt the use of new technology in the legislative process. The implementation of remote participation and the technological change it necessitated was one of the most apparent impacts of the pandemic, with rules or policy changes that addressed legislators and the public.

Legislator Remote Participation

Remote participation by legislators took several forms, with varying success. Most chambers did not have remote participation policies prior to 2020. As a result, many turned to their backup parliamentary manual, like Mason's Manual, or had to create a rule, often without or with limited precedent. In March 2020, both chambers in Utah became among the first to adopt rules to allow remote participation in their legislative session.

How chambers adopted these rules varied. Most remote participation rules were temporary — tied to an emergency order by the governor or chamber leadership and contained a specific sunset date or were adopted as temporary rules. Remote participation could exist on the floor, in committee, or both, and members may or may not be allowed to speak while participating remotely. Beyond the ability to participate remotely, chambers had to adopt rules on how remote participation would be governed. Issues to be considered included:

- How to recognize a member during floor debate?
- How to define decorous behavior for those participating via computer?
- Should a member be required to always have their camera on?
- Is a uniform background required?

- Does dress code extend to remote participation?

Answers to these procedural questions were as diverse as legislatures themselves. Some chambers ruled that members participating remotely may vote but may not participate in floor debate, or vice versa. Some chambers specified that a member always be visible by camera, while others only required its use during votes. Other chambers specified that acting decorously included using the chamber approved Zoom background and maintaining chamber dress code.

NCSL's interviews revealed that most were generally apprehensive of legislators participating in legislative procedure remotely. Members and staff expressed the same sentiment — remote participation by legislators can be helpful in many cases, but in order to preserve decorum, collegiality and the institution overall, it should not be the norm of legislative actions. Utah's Senate President told NCSL "We've found that the effectiveness of the legislature is diminished when people aren't there in person." A Georgia staff director agreed, saying "Nothing can substitute the in-person [act of governing], but for some things it's appropriate." A staff director from the Washington House of Representatives put it simply: "My experience in legislatures is that relationships are at its core."

In some states, legal challenges arose after chambers adopted pandemic-related rules, policies and protocols. In February 2021, several New Hampshire House minority lawmakers sued the Speaker of the House for not allowing remote participation options. The suit alleged the Speaker did not offer reasonable accommodations, required under the Americans with Disabilities Act (ADA), to protect immunocompromised legislators from contracting coronavirus while fulfilling their legislative duties. "It's a big deal because there are ramifications for every legislative body in the country," noted the House clerk. The case was eventually heard by the New Hampshire Supreme Court, which ultimately ruled that legislative immunity does apply to the speaker of the House's decisions. Idaho and New Mexico are examples of other states where lawsuits were filed by lawmakers over leadership's decisions regarding remote participation or lack thereof.

Remote Public Participation

Remote public participation is divided into two categories: 1) the ability to stream legislative proceedings online and 2) the ability to testify in committee proceedings remotely.

1. Livestreaming Floor and Committee Proceedings

Prior to 2020, many state legislative chambers streamed their floor proceedings online, and some did so with committee proceedings as well, using video, audio or a combination of both. As the pandemic progressed, all legislative chambers in the 50 states, five territories and Washington, D.C., began doing so, with many also adding streaming in committee rooms. Some chambers also added or increased their ability to archive those proceedings on their websites. A North Dakota staff director explained that live streaming of proceedings was a positive development given the effort and distance constituents must undertake to be in Bismark, saying, "we live in a rural state with harsh winters ... I don't know if we'll ever go back." The House majority leader agreed, reflecting upon the positive feedback the legislature heard from the public and lobbyists. A Georgia staff interviewee said the increased access streaming provided for the public promoted a higher level of transparency and accountability to the legislative process. Legislators and staff across the country suggested that this

demystification of the legislative process allows citizens to more adequately connect to the legislative institution.

2. Remote Testimony

Remote testimony for the public was a foreign concept for many legislatures in 2020, but not all. Colorado had capacity for members of the public to testify remotely prior to the pandemic, albeit in a different form. One staff director explained that for 20 years, on certain bills, members of the public could sign up to testify from specific college campuses across the state. With the expansion of remote public testimony made as a response to the pandemic, that number drastically increased, saying that 13,000 people connected to the online system, 9,000 of which were just for remote testimony. The Alaska, Hawaii and North Carolina legislatures are other examples of those that permitted remote public participation.

While using technology in new ways was perhaps the most universal experience across legislatures, the effort it took each chamber to do so varied. In New Jersey's Office of Legislative Services, the rapid pivot to several Zoom broadcasts of committee meetings was a significant lift for the staff. Georgia staff agreed, indicating that approaches had to be refined over time. Conversely, in North Dakota, one of four states that meets biennially, staff noted that North Dakota had more time to implement changes. After sine die in 2019, the legislature was able to take the long interim to use Coronavirus Aid, Relief, and Economic Security (CARES) Act funding to increase the size of the committee rooms, install cameras and test out systems before the next session started in 2021.

Unlike remote participation by legislators, interviewees felt remote public participation was positive for the legislative institution. In fact, this COVID innovation was the most highly regarded by interviewees. Several legislators shared they did not think they could ever go back to in person testimony only. Utah Senate leadership said it best: "We've had people from all over the state give electronic testimony on a number of issues, and it's a big deal! Our legislating is impacted for the better by public participation." Now, in 2025, 24 chambers allow [remote participation by legislators](#) and many chambers [allow members of the public to testify remotely](#). The Chief Clerk of the Kansas House of Representatives said that from an institutional standpoint, "legislatures can appear resistant to change, but the pandemic made us say 'do we really have to do it that way?'"

Legislatures responded to technological needs remarkably fast during the pandemic, sometimes acting on technological upgrades that were long overdue. Investing in these advances was vital to the implementation of remote sessions — in New Jersey this included upgrading licenses and software; Georgia legislators were provided tablets allowing them to vote and indicate a point of inquiry while participating in a socially distanced (six feet apart) fashion from the gallery. These innovations have left legislators and staff wondering what other changes may be adopted in the future. For example, some have been pushing for paperless operations for years. While some still hesitate to completely pivot to a 100% digital model of governing, the COVID-19 pandemic is proof that legislatures do have the ability to adapt to change more quickly than may have been believed before.

Health, Safety, and Security

Continuity of legislature plans, as conceived in the mid-20th century, primarily contemplate the threats posed by enemy attack rather than battling a virus. However, there are states that include disease as a reason for relocating the seat of government. The Wisconsin Constitution, Article V, Section 4 states: "The governor shall be commander in chief of the military and naval forces of the

state. He shall have power to convene the legislature on extraordinary occasions, and in case of invasion, or danger from the prevalence of contagious disease at the seat of government, he may convene them at any other suitable place within the state.” Colorado and Kentucky are examples of states with similar provisions. When possible, chambers followed these existing provisions, and any existing precedent at the onset of the COVID-19 pandemic. But in many cases, they had to forge new ways to address how to meet safely in terms of health and security.

Early in the pandemic, some legislatures closed Capitol buildings or legislative offices or limited public access. Depending on the state, the meaning of “closed” varied to include:

- Tours and gallery access suspended but the public could still access general areas of Capitol buildings.
- Buildings open only to legislators, legislative staff and members of the press.
- Buildings completely closed except for those with legislative business.
- Completely open but limitations on events (receptions, choirs, etc.).

Closures were sometimes contentious. In some states, disagreement followed party lines; in others, disagreements lay between the legislative and executive branches.

Of buildings and grounds that remained open, limitations were common. When Washington began gradually reopening in 2021, capacity was limited. In Georgia, major gatherings for legislators, lobbyists, and staff were cancelled for several years and capacity limits were implemented in committee rooms. Wisconsin also limited the number of people in a committee room at any given time. When North Dakota’s regular session started in 2021, the legislature limited public access, cancelled tours and provided only one entrance which contained a body temperature scanner. Any person wishing to enter but who registered a temperature over 100.2 was pulled aside for a COVID test.

The goal of closing down or limiting visitors to Capitol buildings was to limit close contact between people, as recommended by the Centers for Disease Control and Prevention (CDC). At the outset of COVID-19, the CDC recommended people who met in person should exercise social distancing and remain at least six feet apart. Chambers implemented a number of strategies to legislate with this policy in mind, explaining why the New Hampshire house met in the hockey arena, the Virginia senate met in the Science Museum of Virginia and why chambers made efforts to keep those who were in their buildings a safe distance from each other. Tim Bommel, photojournalist in the Missouri House, explained that when it was time for legislators to vote, they would be called from their offices in groups of five, vote, then exit the chamber from the opposite door as the next group came in.

Aside from social distancing, chambers also adopted mask policies. NCSL’s March 2021 assessment of mask policies found that at least 69 legislative chambers required masks for legislators, staff, the public or any combination thereof. Some chambers implemented these policies with bipartisan collaboration—a senior staff member in South Carolina highlighted that the majority and minority worked together to create a chamber mask policy that both parties agreed with. However, in others, much like the rest of the country, mask sentiments fluctuated and sometimes caused conflict. In one example, a legislator was temporarily removed from the chamber by the body for refusing to follow the chamber’s masking policy. In another state, lawmakers were repeatedly fined for doing the same.

Legislative staff were often the key policy implementors after a debate on masks. Staff directors interviewed by NCSL explained that their offices were often the “boots on the ground” in Capitols,

ensuring governing could continue, and thus their safety was of the utmost importance. These directors highlighted that due to the relatively small size of their teams, one or two people getting sick could greatly impact productivity, particularly during session. Nonpartisan staff in chambers where masks were not explicitly required faced another challenge: the perception of partisanship. The director of the Wisconsin Legislative Council explained that the office adopted an informal policy that if anyone working in or visiting the office was wearing a mask, staff would also wear a mask as a matter of courtesy. Staff echoed the thoughts of other interviewees that wearing a mask had the potential to challenge their nonpartisanship given that whether a staff member chose to wear a mask might be perceived as a political statement. In Wisconsin, the director celebrated staff for remaining focused on the mission of their office, noting, “I think the key is keeping our services at a high level...despite the changes around us.”

Requirements to take COVID tests and proof of vaccination were varied. The U.S. Virgin Islands Senate leadership stated that in the territory, where tourism is an economic driver, members of the public were required to be tested in order to enter the Senate chamber. Additionally, whenever more than seven people gathered in the chambers, in a body comprised of 15 total members, everyone was tested.

Some chambers opted not to require vaccines but made them available to legislators and staff. In Colorado, for example, the governor and legislative leadership worked together to make vaccines available to legislators and staff during a recess of their session in February 2021.

COVID-19 created new security challenges not previously encountered by most legislatures. Chief among them was a phenomenon called Zoom-bombing, where an uninvited participant gains access to a meeting and disrupts it with inappropriate content. The then-House rules chair in New Mexico recalled that as soon as a remote committee meeting started, they were Zoom-bombed, highlighting the need for a screening system for those speaking or testifying. New Jersey staff agreed, explaining the precautions they took: “Every single meeting was moderated.” Additionally, only attendees with the meeting access code could enter the room.

Security concerns went beyond the digital world as well. Protests over government mandates were common and chambers had to consider such protests in conjunction with their safety protocols. Moreover, protests over police violence, the murder of George Floyd and responses to the riots at the U.S. Capitol on Jan. 6, 2021, spurred legislatures to put up fences or increase security. A former Capitol police chief told NCSL that despite having historic fences around the Virginia Capitol, its proximity to Washington, D.C. led to additional fencing. He said security was challenging because it was not just the pandemic the police were dealing with. “[The] pandemic is global, there is huge civil unrest, a massive presidential election, partisan controls switching—all of that created a lot of tension and civility issues.” Despite all of this, legislatures acted swiftly to respond to problems they did not know would arise. The innovation legislatures displayed not only helped them get by day-to-day but also proved the resilience of the legislative institution.

Staffing

When asked what she was most proud of in terms of reacting to the pandemic, a Georgia staff director had one emphatic answer: “STAFF, STAFF, STAFF! You know who made it work? Staff. We figured out how to change the rules, put IT in place, there was not a single section of staff who didn’t help.” All legislator and staff interviewees echoed the sentiment—staff are important to the success of every legislative session, but their value was accentuated during the coronavirus pandemic.

Legislative staff date back to the very first meeting of the Virginia House of Burgesses in 1619. The roles of staff have evolved and grown over time as the demands of legislators and the legislative institution have increased. COVID-19 prompted new innovations in staffing and hastened changes that may have otherwise taken legislatures longer to implement. IT staff have long been an integral, though often behind the scenes, part of the legislative institution. The need to implement software like Microsoft Teams and Zoom required staff to quickly adapt and pushed their role in the day-to-day operation of the institution into the spotlight. “Our IT staff, which is basically four guys, worked hundreds of hours of overtime,” North Dakota staff recalled. IT staff were not only responsible for setting up remote capabilities for legislators, but also for staff who had to participate remotely. They set up remote testimony systems and mechanisms to register for it, and in some cases, built an entire infrastructure for technology in their chambers. Other staff provided key technological support as well. “The pages had to learn how to run the audio and video,” North Dakota House leadership told NCSL. In New Mexico, the legislature hired session-only staff to serve as virtual committee room moderators, similar to New Jersey’s approach.

Retirement, retention, recruitment and hiring freezes became a major challenge as legislatures, like many employers, grappled with the “Great Resignation” spurred by the pandemic. In New Jersey some staff retirements were hastened and some were delayed because of the pandemic. South Carolina staff noted, “we didn’t reduce the number of staff, but we also didn’t increase.” When staff left legislative service either for retirement or another position or even temporarily because they contracted COVID-19, most chambers were not able to fill their positions. This had a significant impact on session-only staff and chambers who relied on them. In Virginia, staff described how the lack of pages, high school students from around the state who live and work in Richmond during the session, affected the Virginia General Assembly’s “[We] usually have pages, but there were no pages that year. They really were missed though. They are our energy and enthusiasm, so we really did miss all of that.” A bright spot highlighted by some staff directors is that they were able to use this opportunity to highlight the importance of staff, even bringing on new staff after hiring freezes lifted and state budgets stabilized.

The pandemic allowed new workplace flexibility policies to take shape in legislatures. Similar to remote legislative participation, the adoption of remote work practices varied, even within the same legislative institutions. In some cases, legislative staff worked remotely as legislatures followed guidance from emergency orders or set their own policies. However, due to the unique nature of legislative work, most legislatures required some staff to be physically present, depending on their job functions. For Capitol police in Virginia, remote work was hard due to the nature of their work, but they adapted as necessary. For example, “For succession purposes, the deputy chief and I couldn’t be present in the Capitol at the same time.”

Other chambers, like the Michigan House, implemented a hybrid approach, asking staff to work remotely on non-session days and to accommodate positive COVID-19 tests. In Missouri, most staff worked from home for about eight weeks, with the exception of the video and photography team who remained at the Capitol. There were benefits for staff who worked from home. Washington staff leadership explained the flexibility of remote work was invaluable for staff in the House who also had to provide caregiving during the day. Staff in the Tennessee House noted that while remote work might not be adopted as a long-term strategy used in his chamber, there were good outcomes that came from it. NCSL heard many times that the “genie was out of the bottle.” “I don’t think we can go back to a full-time in-person for staffing,” one director said, “it’s a tight labor market and we

proved we can do the work remotely very well; some people work more!” Another staff interviewee agreed, saying “there used to be a widely held belief that remote work would mean people wouldn’t actually work or constituents wouldn’t be able to get ahold of them, but we’ve proved that’s not true. For the most part, it wasn’t a calamity, a disaster, chaos. We adjusted.”

However, almost all staff interviewed emphasized that having conversations face to face is key to building relationships with legislators and others working in the legislative environment. There was agreement that remote work cannot fully accommodate that reality. Most stressed the importance of in-person presence at the Capitol. New Jersey staff identified another practical need. “Someone has to turn the lights on in the legislature.”

Despite all these successes, it is important to remember the magnitude of the challenge that legislatures faced. While legislatures are sure to maintain records of their procedural changes and lessons learned from this experience, interviews offered advice for future legislators and legislative staff across five categories: preparation in the form of continuity planning, working with the other chamber, focusing on governing, communication, and adaptability.

1. Continued review of continuity processes: Across the board, interviewees expressed that continued review of continuity of government plans was key to maintaining the governing process. In the case of Virginia, New Mexico, and Utah, the legislature felt some of its power slipping towards the governor. A Virginia Senator noted, “The governor kind of had to take the lead. I think the legislature in many ways felt left out, and that we were not quite there on the spot to help and drive those decisions. As a consequence, I believe the legislature is trying to figure out how we, as a legislative body, can be a better partner to the executive branch.” Kansas staff leadership offered that Continuity of Government (COG) plans would continue to be a conversation particularly around power and balancing the branches, even in states where the governor and the majority in the legislature are of the same party. While some states felt caught off guard, states like Wisconsin, Colorado, and Washington had COG or Continuity of Operations (COOP) provisions in place. Even so, staff and legislators in those states emphasized the importance of keeping those plans updated. In Colorado, for example, the Legislative Emergency Preparedness, Response, and Recovery Committee (LEPROC) annually reviews COOP plans, and will continue to do so.

2. Cross-chamber collaboration: Differences between how chambers operate is nothing new in the legislative process. However, during the COVID-19 pandemic, some chambers adopted differing protocols which led to confusion among legislators, staff, and members of the public. Washington staff leadership told NCSL that granting flexibility that was consistent across both chambers made their process easier, “rather than make exceptions, we made sure that everybody was in this together and going through the same thing.”

3. Focus on governing: “Everyone will have a different opinion about how the session worked,” a North Dakota House leader explained. “COVID was serious business, but it was also a distraction from what we needed to do for the citizens.” Legislative work did not pause to accommodate the pandemic—budgets still had to be passed, bills still needed to be considered, and the legislative process had to continue. And in most legislatures, constituent needs and outreach soared. In the case of New Mexico, one House leader said it was the most productive session of his time in the legislature: “Things were flying out of the building about longstanding problems like medical

malpractice, marijuana legalization, liquor license reform, broadband support, trapping and so on.” Key to that was focusing on the work of legislating despite the distractions that COVID-19 brought, including partisan disagreements. These leaders’ advice highlights the importance of remembering that during a crisis, politics is secondary to doing the job a legislature is empowered to do.

4. Communication is key: In every single interview, interviewees stressed that good communication, at multiple levels, was imperative. In some cases, it was microlevel communication. In New Jersey’s Office of Legislative Services, someone from the executive director’s office called and checked on each team member once a day. The emphasis on empathy was very meaningful. Each interviewee expressed how important it was to be open, transparent and willing to ask questions of staff and legislators alike.

5. Flexibility: It is no secret that legislative environments move slowly. Institutions are steeped in tradition and precedent and must contend with legalities, personalities and practice careful consideration. Interviewees advised not to throw away that model but rather look to where the institution has more flexibility than previously discovered. The pandemic raised a lot of institutional questions: Will states add more session days and pay legislators more? What does it mean to be “present and voting?” Should legislatures move to a paperless model and what does that mean? While chambers are left to contend with those questions and more to come, it is hard to overstate the success that legislatures achieved by adapting. “The institution flexed just enough to allow us to make those changes and keep going, but the core of it remained the same,” noted one staff leader.

There is no one-size-fits-all approach for guiding a state legislature through a pandemic. What worked for North Dakota would not have worked in the same way for New Jersey. But legislatures did learn from each other’s experiences and iterations. NCSL hopes that preserving a piece of this history will allow them to continue to do so.

For more information, please contact NCSL’s Center for Legislative Strengthening.

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Fall	2019	Sekerak, Tim et al.	<i>Recent Developments in the Law of Lawmaking</i>
Fall	2016	Smith, Paul C.	<i>Hütchenspiel: Decorum in the Legislature</i>
Fall	2006	Speer, Alfred W.	<i>The Establishment Clause & Legislative Session Prayer</i>
Fall	2020	Speer, Alfred W.	<i>BAD FACTS MAKE BAD LAW</i>
Fall	2001	Tedcastle, Tom	<i>High Noon at the Tallahassee Corral</i>
Spring	1998	Todd, Tom	<i>Nebraska's Unicameral Legislature: A Description and Some Comparisons with Minnesota's Bicameral Legislature</i>
Fall	2023	Treadwell, John	<i>Recent Developments in the Law of Lawmaking</i>

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*

Fall 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.	<i>Planning and Designing Legislatures of the Future</i>
Fall	2000	Arinder, Max K.	<i>Back to the Future: Final Report on Planning and Designing Legislatures of the Future</i>
Fall	2013	Crumbliss, D. Adam	<i>The Gergen Proposition: Initiating a Review of State Legislatures to Determine Their Readiness to Lead America in the 21st Century</i>
Winter	2000	Drage, Jennifer	<i>Initiative, Referendum, and Recall: The Process</i>
Fall	2005	Hodson, Tim	<i>Judging Legislatures</i>
Fall	2010	Maddrea, Scott	<i>Tragedy in Richmond</i>
Fall	2006	Miller, Steve	<i>Where is the Avant-Garde in Parliamentary Procedure?</i>
Winter	2026	National Conference of State Legislatures	<i>Continuity of Government</i>
Spring	1996	O'Donnell, Patrick J.	<i>A Unicameral Legislature</i>
Spring	1998	Pound, William T.	<i>The Evolution of Legislative Institutions: An Examination of Recent Developments in State Legislatures and NCSL</i>
Fall	2009	Robert, Charles	<i>Book Review of Democracy's Privileged Few: Legislative Privilege and Democratic Norms in the British and American Constitutions</i>
Fall	2000	Rosenthal, Alan	<i>A New Perspective on Representative Democracy: What Legislatures Have to Do</i>
Fall	1995	Snow, Willis P.	<i>Democracy as a Decision-Making Process: A Historical Perspective</i>
Fall	2014	Ward, Bob	<i>Lessons from Abroad</i>

Process

Spring	2010	Austin, Robert J.	<i>Too Much Work, Not Enough Time: A Virginia Case Study in Improving the Legislative Process</i>
Fall	1996	Burdick, Edward A.	<i>Committee of the Whole: What Role Does It Play in Today's State Legislatures?</i>

Winter	2026	Cavin, C.J.	<i>Reconsider vs. Rescind: Revisiting Decisions in Legislatures</i>
Fall	2017	Champagne, Richard	<i>Organizing the Wisconsin State Assembly: The Role of Memoranda of Understanding</i>
Spring	2003	Clapper, Thomas	<i>How State Legislatures Communicate with the Federal Government</i>
Spring	2008	Clemens, Laura	<i>Ohio's Constitutional Showdown</i>
Fall	2006	Clift, Claire J.	<i>Reflections on the Impeachment of a State Officer</i>
Fall	2008	Clift, Claire J.	<i>Three Minutes</i>
Spring	2004	Dunlap, Matthew	<i>My Roommate Has a Mohawk and a Spike Collar: Legislative Procedure in the Age of Term Limits</i>
Winter	2000	Edwards, Virginia A.	<i>A History of Prefiling in Virginia</i>
Spring	2002	Erickson and Barilla	<i>Legislative Powers to Amend a State Constitution</i>
Spring	2001	Erickson and Brown	<i>Sources of Parliamentary Procedure: A New Precedence for Legislatures</i>
Summer	1999	Erickson, Brenda	<i>Remote Voting in Legislatures</i>
Fall	2013	Gehring, Matt	<i>Amending the State Constitution in Minnesota: An Overview of the Constitutional Process</i>
Fall	2010	Gieser, Tisha	<i>Conducting Special Session Outside of the State Capital</i>
Winter	2021	Gruss and Curry	<i>How the Oregon Legislature Adapted to the COVID-19 Pandemic</i>
Spring	2004	James, Steven T.	<i>The Power of the Executive vs. Legislature – Court Cases and Parliamentary Procedure</i>
Fall	2024	Hedges, Jeff	<i>Impeachment Procedure in the Texas Legislature</i>
Fall	2024	Isvoranu, Krystle Babel, Joshua	<i>A Move to Expel or Censure: Arizona's Changing Landscape</i>
Spring	1997	Jones, Jerry G.	<i>Legislative Powers and Rules of Procedure: Brinkhaus v. Senate of the State of Louisiana</i>
Fall	2023	Kannarr, Susan W.	<i>The Role of the Committee of the Whole in Kansas</i>

Spring	1998	King, Betty	<i>Making Tradition Relevant: A History of the Mason's Manual of Legislative Procedure Revision Commission</i>
Spring	2010	Kintsel, Joel G.	<i>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</i>
Fall	2002	Maddrea, B. Scott	<i>Committee Restructuring Brings Positive Changes to the Virginia House</i>
Spring	2009	Marchant, Robert J.	<i>Legislative Rules and Operations: In Support of a Principled Legislative Process</i>
Fall	2016	Mason, Paul	<i>Parliamentary Procedure</i>
Fall	1997	Mayo, Joseph W.	<i>Rules Reform</i>
Spring	2011	McComlossy, Megan	<i>Ethics Commissions: Representing the Public Interest</i>
Winter	2021	Miller, Dana	<i>Working within a Pandemic: Missouri House of Representatives</i>
Fall	2014	Miller, Ryan	<i>Voice Voting in the Wisconsin Legislature</i>
Spring	2002	Mina, Eli	<i>Rules of Order versus Principles</i>
Spring	2011	Morgan, Jon C.	<i>Cloture: Its Inception and Usage in the Alabama Senate</i>
Fall	2022	Nacario, Tashi	<i>The Engrossing and Enrolling Process</i>
Winter	2026	Nacario, Tashi	<i>A Historical Review of the Enrolled Bill Rule</i>
Fall	2008	Pidgeon, Norman	<i>Removal by Address in Massachusetts and the Action of the Legislature on the Petition for the Removal of Mr. Justice Pierce</i>
Fall	2007	Robert and Armitage	<i>Perjury, Contempt and Privilege—Oh My! Coercive Powers of Parliamentary Committees</i>
Fall	2024	Rutledge, Obie Sekerak, Timothy	<i>Oregon's First Legislative Expulsion</i>
Fall	2017	Silvia, Eric S.	<i>Legislative Immunity</i>
Fall	2015	Smith, Paul C.	<i>Wielding the Gavel: The 2014 NH House Speaker's Race</i>
Spring	2003	Tucker, Harvey J.	<i>Legislative Logjams Reconsidered</i>

Fall	2005	Tucker, Harvey J.	<i>The Use of Consent Calendars In American State Legislatures</i>
Summer	2000	Vaive, Robert	<i>Comparing the Parliamentary System and the Congressional System</i>
Fall	2001	Whelan, John T.	<i>A New Majority Takes Its Turn At Improving the Process</i>

Staff

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

Technology

Spring	1996	Behnk, William E.	<i>California Assembly Installs Laptops for Floor Sessions</i>
Spring	1997	Brown and Ziems	<i>Chamber Automation in the Nebraska Legislature</i>
Fall	2020	Carlson, Brittany Y.	<i>An in-depth look at assistive technologies provided by the Washington Legislature for Lt. Governor Cyrus Habib</i>
Fall	2008	Coggins, Timothy L.	<i>Virginia Law: It's Online, But Should You Use It?</i>
Spring	2002	Crouch, Sharon	<i>NCSL Technology Projects Working to Help States Share Resources</i>
Spring	1997	Finch, Jeff	<i>Planning for Chamber Automation</i>
Summer	1999	Galligan, Mary	<i>Computer Technology in the Redistricting Process</i>
Summer	1999	Hanson, Linda	<i>Automating the Wisconsin State Assembly</i>
Fall	1995	Larson, David	<i>Emerging Technology</i>
Fall	2022	Martin, Megan	<i>Time for a Change</i>
Fall	1996	Pearson, Herman et al.	<i>Reengineering for Legislative Document Management</i>
Fall	1995	Schneider, Donald J.	<i>Full Automation of the Legislative Process: The Printing Issue</i>
Spring	2006	Steidel, Sharon Crouch	<i>E-Democracy – How Are Legislatures Doing?</i>
Fall	2007	Sullenger, D. Wes	<i>Silencing the Blogosphere: A First Amendment Caution to Legislators Considering Using Blogs to Communicate Directly with Constituents</i>
Spring	2009	Taylor, Paul W.	<i>Real Life. Live. When Government Acts More Like the People It Serves.</i>
Fall	2009	Taylor and Miri	<i>The Sweet Path – Your Journey, Your Way: Choices, connections and a guide to the sweet path in government portal modernization.</i>
Fall	1997	Tinkle, Carolyn J.	<i>Chamber Automation Update in the Indiana Senate</i>
Fall	2009	Weeks, Eddie	<i>Data Rot and Rotten Data: The Twin Demons of Electronic Information Storage</i>

Fall 2013 Weeks, Eddie

*The Recording of the Tennessee General Assembly by
the Tennessee State Library and Archives*