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# Commentary

The Public Affairs Research Council of Louisiana

## Made to Be Broken

### The Senate's bad policy of secret balloting is illegal, unconstitutional, and should be repealed

The Louisiana Senate should repeal its secret balloting procedure to elect the next Senate President. The four-year-old Senate rule created a process that violates the state Constitution and the law. The newly elected Senate should begin its term in January by sending a strong positive message of transparency and accountability.

Similar to the role of the Speaker in the House of Representatives, the Senate selects its own President, who has enormous powers over appointments, procedures and supervisory responsibilities. A simple majority of the 39-member Senate is needed to elect the President.

***Constituents have a right to know and observe how their elected representative voted.***

The vote to select a Speaker or President is one of the most important a legislator will make. Constituents have a right to know and observe how their elected representative voted. Allowing secret votes is bad policy, and hence there's a reason why it's illegal. The new Senate President should have the distinction of being selected legally.

Adopted by the senate in 2015, Senate Rule 3.1.1 calls for an election process for the President and President Pro-Tempore that begins "by secret ballot" to elect one or more nominees subject to a vote of affirmation by the body.

This rule flouts Article XII, Section 3 of the Louisiana Constitution, which is the state's supreme, foundational statement in favor of open and transparent government process, including public documents and the meetings of public bodies. While exceptions are allowed in "cases established by law," such as with specific exemptions provided in statute and privacy reasons, there is no authority exempting the election process for the Senate President.

In fact, Louisiana's Open Meetings Law clearly says the opposite: "Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter."

### **These aren't the droids you're looking for**

How, then, can the Senate defend this process? What statutory exception to the Constitution allows the Senate to do this? The Senate's answer, as provided to PAR, is that under Rule 3.1.1, "The nomination process only is conducted by ballot; the vote to elect is conducted viva voce."

This answer avoids the question, probably because there is no defense or exception under the law. The so-called nomination process is a real vote that directly limits the choices for the so-called final vote. The Senate rule calls for a “secret ballot” and the Open Meetings Law specifically prohibits “secret balloting.”

The argument in favor of the rule is a flimsy attempt at an old Jedi mind trick, and no one but gullible Star Wars Storm Troopers should stand for it.

## Misguided rationale

Senators have noted several motives for passing this rule, including the desire to create a Senate more independent of the governor and whose individual members are less vulnerable to gubernatorial retribution if they vote for a President not in favor with the governor.

We should all seriously question whether secret voting is needed for independence or whether it would grant the wish for safe anonymity. House Speakers are publicly elected without secret ballots and yet two of the last three were of an unusually independent nature. Plus, governors can be shrewd. They will decide for themselves how the senators’ secret votes were cast, and not necessarily with a fair or accurate eye.

*The law on the matter is clear.*

But whatever the argument, it does not change the clear law on the matter. The outcome of the secret election and perhaps everything the Senate does from that point could be challenged in the courts and invalidated if the Senate follows Rule 3.1.1.

Legislators will always feel pressure from other elected officials and outside interests. How they respond to that pressure is part of their job. Constituents should be able to see how they perform.

## A rule made to be broken

Recent press coverage has reported that the outcome of the January Senate President election is now a foregone conclusion. As in previous years, the political jockeying and horse-trading has occurred behind the scenes.

So, what difference does the actual procedure make? For one, those behind-the-scenes negotiations can be influenced by the expectation of a secret election process. Also, whatever the political process, constituents deserve to know and observe how their Senator voted for Senate President.

Our possibly independent new Senate has an opportunity to launch the next legislative term with a positive statement and show its commitment to government accountability and transparency. The senators’ moral authority to opine on fundamental rights is on the line.

When the Senate goes into session in January, it can suspend Rule 3.1.1. Better yet, just eliminate it.

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## **Relevant Louisiana Laws**

### ***Louisiana Constitution***

**Article XII, Section 3:** "No person shall be denied the right to observe the deliberations of public bodies and examine public documents, except in cases established by law."

### ***Louisiana Open Meetings Law***

**RS 42:12 (A):** "It is essential to the maintenance of a democratic society that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. Toward this end, the provisions of this Chapter shall be construed liberally."

**RS 42:14 (B):** "Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter."

**RS 42:14 (C):** "All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document."

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