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Clerk
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IN THE SUPERIOR COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

JOSE P. MAFNAS, personally and as President of the Seventh Commonwealth Senate, Plaintiff, v. ELOY INOS, in his capacity as Director of the Department of Finance, JOSEPH INOS, JESUS R. SABLAN, EDWARD U. MARATITA, FRANCISCO M. BORJA, and HENRY DLG. SAN NICOLAS, in their capacity as Members-Elect of the Seventh Commonwealth Senate, FELIPE Q. ATALIG and ABRAHAM TAISACAN, Defendants.	CIVIL ACTION NO. 90-31 MEMORANDUM DECISION ON ORDER TO SHOW CAUSE FOR DECLARATORY RELIEF

BACKGROUND

This matter involves a dispute among certain members and members-elect of the Seventh Commonwealth Senate. In order to resolve the dispute, the plaintiff filed for declaratory and injunctive relief.

The defendants do not oppose the form of action but embrace it in their response and answer in which they ask, in effect, for their own declaratory relief.

In analyzing the complaint, it essentially asks for declaratory relief. Any injunctive relief is directed at the

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finance officer, Eloy Inos, so that he will not disburse funds to the other defendants. As seen infra, this matter is not of current concern.

In an action, such as this one, declaratory relief is available to obtain rapid relief. Rule 57, Com.R.Civ.Pro., which parrots the federal rule on declaratory relief, states that: "The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar." Phis is what was done by the issuance of the Order to Show Cause on January 10, 1990. The defendants responded with points and authorities and an answer.1/

A declaratory relief action is not an action for equitable relief, but rather a statutory/rule remedy procedure, Hargrove v. American Cent. Ins. Co., 125 F.2d 225 (CA10, 1942). Under Rule 57, the trial court has broad discretion in fashioning declaratory relief where it is appropriate. Marchwinski v. Oliver Tyrone Corp., 461 F.S. 160 (WD PA, 1978).

The availability of declaratory relief depends on whether there is a live dispute between the parties. Powell v. McCormack, 395 U.S. 486, 89 S.Ct. 1944 (1969). That test is more than adequately met here. The pleadings of the parties and

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1/ Although plaintiff's complaint is primarily for declaratory relief and the request at oral argument was to declare the plaintiff the President of the Senate, plaintiff's counsel intermittently asserts this is a temporary restraining order hearing pursuant to Rule 65. This Is not so. The plaintiff originally requested a temporary restraining order on January 10th but the court refused to issue it and amended the proposed order to an order to show cause.

response to the motion by the defendants present a clear cut and definitive dispute ripe for declaratory judgment relief. Not only will tic application of Rule 57 serve a useful purpose In clarifying and settling the legal Issues, it will terminate the dispute and afford relief from uncertainty, insecurity, and controversy giving rise to the proceeding. Maryland Casualty Co. v. Rosen, 445 F.2d 1012 (CA2, 1971).

While declaratory judgment relief is made available to litigants, it does not mean jurisdiction is created automatically in the court. Barr v. United States, 478 F.2d 1152 (CA10, 1973), cert. den. 414 U.S. 910. Therefore, if it is determined the court has jurisdiction, the court may terminate the dispute and afford relief from the uncertainty and controversy now existing between the parties.

Of major concern to all parties is the need to resolve the dispute as soon as possible. Consistent with that need and in an effort to avoid an obfuscation of the issues, a decurate outline of the plaintiff's complaint will be set forth.

THE DISPUTE

In the organization of the Senate on January 8, 1990, a dispute arose as to who would be the presiding officer. As a result, two senators, Guerrero and Inos, in two different meeting places "organized" the Senate.[2/]

In the session presided over by Senator Guerrero, two significant events occurred. The credentials committee refused

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[2/] For the purposes of simplicity, reference will be made to the "Guerrero session" and the "Inos session". Both occurred at about the same time.

to seat members-elect Inos, Maratita, Borja and San Nicolas and then with three senators voting, elected Senator Mafnas, the plaintiff herein, as President of the Senate.

In the Inos session, presided over by member-elect Inos, the credentials committee approved the credentials of all members-elect and then, with six senators voting, elected Senator Inos as President of the Senate.

The thrust of the plaintiff's complaint is to have the court declare the session presided over by Senator Guerrero as the lawful one and therefore to reaffirm the selection of the plaintiff as the President of the Senate and to, in effect, limit the members of the Senate to the plaintiff, Guerrero, Manglona and Torres.[3] It is further asked of the court to declare any actions and selections of officers in the Inos session to be null and void. Paralleling this requested relief is the plea of the plaintiff to enjoin anyone other than the Guerrero session officers from acting in any official capacity and that defendant, Eloy Inos, as finance director of the government, be enjoined from disbursing any funds to the Inos session group.[4]

3/ Senator Manglona is a holdover senator but who participated In the Inos session. Senator Torres is a member-elect whose credentials were approved and attended the Guerrero session. One other Senator, Jesus Sablan, was approved by the credentials committee of the Guerrero session but since he attended the Inos session he did not take his oath in the Guerrero session. The plaintiff asserts that until he does this, he is not properly seated.

4/ The Executive Branch, through the Attorney General's Office, has stated that no funds will be disbursed to the Senate until this matter is resolved and a stipulated order has been filed in this respect.

It is clear from the outset the dispute concerns the very basic functioning and viability of the Senate. With the uncertainty as to which faction is the official body to deal with, the other house of the Legislature, the House of Representatives, as well as the Executive Branch are unable to conduct business with the Senate. This results In a legislative impasse and curtailment of the normal legislative process. Thus, there is an urgency to the matter and a need to have the matter resolved as quickly as possible. The issues presented are indeed intriguing and are ones which are rarely (fortunately) presented to a court. However, "No matter how tantalizing a problem may be, a ... court cannot scratch intellectual itches unless It has jurisdiction to reach them." Director, OWCP v Bath Iron Works Corp., 853 F.2d 11, 13 (1st Cir. 1988).

It Is to the question of whether this court should proceed to entertain the matter that the court now turns.[5/]

DOES THE COURT HAVE JURISDICTION
IN THIS MATTER AND, IF SO, SHOULD IT EXERCISE IT?

This litigation offers food for thought in several senses of the phrase, "Standing of the plaintiff," "political question" and "separation of powers" are judicial and legal buzzwords which raise significant concerns. The knee-jerk reaction of any court is to avoid even the appearance of

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5/ Neither party has raised the issue of the propriety of the court hearing this matter. However, it is beyond cavil, that jurisdiction is so basic, the court must raise it sua sponte. This is particularly true where, as here, the doctrine of the separation of powers comes into play.

meddling In the internal affairs of a co-equal branch of the government. This is particularly true in suits brought by members of a legislative body.

One class of suits are those brought by a member or members of a legislative body which challenges an action of the executive branch as injurious to some interest he or she claims to have as a legislator.[6]

The other type of suit is the one presented in this action which involves a dispute among the members of a legislative body and the proper procedures to be followed in the organization of the Senate which results in its subsequent

A. Standing.

In order to provide the court as a forum for the plaintiff, he must initially show that he has standing which means he must allege an injury that is judicially cognizable. Vander Jagt v. O'Neill, 699 F.2d 1166 (D.C. Cir. 1983). The material allegations of the complaint must be construed in favor of the complaining party. Warth v. Seldin, 422 U.S. 490, 501, 95 S.Ct. 2197, 2206 (1975).

Senator Mafnas has alleged the events leading up to and ending In the formation of two factions in the Senate with two sets of officers of the Senate, Clerks, and Sergeants at Arms. The composition and organization of the Senate is placed in

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6/ See, McGowan, Congressman in Court: The New Plaintiffs, 15 GA L.Rev. 241 (1981).

doubt and this results In injury not only to Mafnas as an individual but to the very body which he purports to head. It is apparent from the allegations of the complaint that with the Senate organization and composition in disarray, the other branches of the government cannot interact nor relate to the Senate. This is tantamount to a nullification of Senator Mafnas' vote In the Senate and this has been held to be sufficient injury to support standing. Riegle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir. 1981). Even if it can be said that Senator Mafnas still has the right to vote there are allegations that with the Inos faction purporting to be in power, Mafnas' influence has been diminished. This situation too has been sufficient to give standing. Vander Jagt, supra, at 1168. Additionally, until the matter is resolved no funds will be disbursed for expenses, salaries, or the like for any members of the Senate including the plaintiff.

In short, Mafnas may invoke this court's authority because he has shown actual or threatened injury as a result of the putatively illegal conduct of the defendants. Valley Forge Christian College v. Americans United for Separation of Church & State, 454 U.S. 464, 102 S.Ct. 752 (1982); Gladstone, Realtor v. Village of Bellwood, 441 U.S. 91, 99 S.Ct. 1601 (1979).

Of course, what has been said as it relates to the plaintiff, likewise applies to the defendant Inos and the other Senators of the Seventh Senate. Standing Is accorded.

B. Separation of Powers.

The resolution of the standing issue does not resolve

the problems of the separation of powers and a different and distinct analysis is required. Flast v. Cohen, 392 . 83 at 97, 88 S.Ct. 1942 at 1951 (1968); Vander Jagt v. O'Neill, supra, at 1169.

This analysis must take into consideration:

(1) the three equal but separate branches of the Commonwealth Government as established in Articles II, III, and IV of the Commonwealth Constitution; and

(2) the pertinent provisions of Article II, Section 14 a) and b) of the Constitution.7/

The Superior Court has original jurisdiction over all civil actions, in law and in equity and may issue all writs and orders necessary and appropriate to the full exercise of its jurisdiction. 1 CMC § 3202. Inherent in this power is the need to determine whether the civil action presents a non-justiciable "political question." Put in the converse, a determination must be made by the court whether the claim of the plaintiff is justiciable and this means whether "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can

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7/ "a) Each house of the legislature shall be the final judge of the election and qualifications of its members and the legislature may vest in the courts the jurisdiction to determine contested elections of members....

b) Each house of the legislature shall choose its presiding officer from among its members, establish the committees necessary for the conduct of its business, and promulgate rules and regulations...."

be judicially molded." Baker v. Carr, 369 U.S. 186, 198, 82 S.Ct. 691, 700 (1962).

It Is also well established in the federal courts that those courts will not adjudicate political questions, See, e.g., Coleman v. Miller, 307 U.S. 433, 59 S.Ct. 1972 (1939); Oetjen v. Central Leather Co., 246 U.S. 297, 38 S.Ct. 309 (1918). That such a principle should apply in the Commonwealth makes sound judicial sense,

It is with this backdrop that the pertinent issues be first examined to determine if the court should proceed to consider the matter and if so, what relief, if any, Is to be rendered.

THE DISPUTE OVER THE PROCEDURES TO BE FOLLOWED IN ORGANIZING THE SENATE

Pursuant to Article II, Section 14 b) of the Constitution, the Sixth Senate promulgated Rule 1, Sec. 2 which essentially states that in the absence of the President of the Senate, the member with the longest consecutive service is to be the presiding officer for organizational purposes. The plaintiff asserts this Is Senator Guerrero simply because he Is a member at the time of the organization of the Senate[8] and Senator Inos, having been re-elected, is not a member but a member-elect until the credentials committee approves his credentials and he is duly sworn in.

8/ Article II, Section 13 of the Constitution provides that the legislature shall meet on the second Monday of January in the year following the regular general election to organize. For the purposes of the Seventh Legislature, this was January 8, 1990.

Obviously, Senator Inos takes umbrage with this position and argues that the Senate Is not a continuous bod; and therefore the Sixth Senate cannot bind the Seventh Senate with Rule 1, Sec. 2 and it has no application.

Thus, the two factions, arriving at different views of the procedures to be followed now come before the court and request a resolution.

This Is not the simple case of a unified legislative body interpreting its own rules of procedure. In such a case, the court must give great weight to the legislative body's construction thereof. United States v. Smith, 286 U.S. 6, 52 S.Ct. 475 (1932).

It is when the members of the legislative body contest among themselves the meaning or construction of their own rules that a more incisive examination need be made to determine whether a court should enter the fray.

In Vander Jagt, supra, the Republicans claimed to have been short-changed on committee assignments pursuant to the House rules. The United States Constitution, Article I, § 5, Clause 2, grants to each house of Congress the power "to determine the rules of its Proceedings." The trial court in Vander Jagt held that this provision provided a "textual commitment of the issue to tne House (and) would oust the court's jurisdiction...."

The Court of Appeals held that notwithstanding the Constitutional provision, the court had the power and duty to review the rule as applied in a constitutional infirmity

context. In addition, the Court of Appeals noted the trend Coward more judicial involvement in such matters on a "case-by-case" basis. The Vander Jagt court relied heavily on the law review article by Judge McGowan.[9] The conclusions reached by Judge McGowan (and the Vander Jagt court) were that there is a proper respect by the courts for the other political branches and a disinclination to intervene unnecessarily in their disputes. However, the concerns of respect and inclination not to act are translated into principle decisionmaking through the discretion of the court to grant or withhold injunctive or declaratory relief.

See Rieqle v. Federal Open Market Committee, 656 F.2d 873 (D.C. Cir. 1981).

Following the dictates of United States v. Ballin, 144 U.S. 1, 12 S.Ct. 507 (1892), this court is not to be concerned with the advantages or disadvantages, the wisdom or folly, of any senate rule. The issue is, If the court determines to resolve the dispute over the rules of procedure, who is the presiding officer for the purposes of organizing the Senate for the Seventh Legislature and thus which session was the proper and legal one.

Examining this specific dispute over the procedures to be followed on a "case-by-case" basis, the crucial and deciding factor In the court's mind is the stalemate and impasse within the Senate which has occurred because of the inability of the

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[9] See, footnote 6.

members of the Senate to resolve the matter. Without a resolution, the Senate Is unable to act meaningfully and with integrity which the other branches of government can rely and depend upon.

"[F]or many years, our nation - with surprising consensus - has relied on the judiciary to remedy longstanding flaws in the political system which impede equal participation in the governmental process." Vander Jagt, supra, at 1170.

Such a flaw is presented in the failure of the Senate to agree on its procedures and the resulting inability of the Senate to function.

In the context the issue is presented, it appears that all the general considerations for justiciability are satisfied as set forth in Baker v. Carr, supra. The parties have asked for the court's "intervention" in this political controversy and it shall do so with caution and with respect for the integrity of the Senate.

ANALYSIS

A. ARE THE RULES OF THE SIXTH SENATE BINDING ON THE SEVENTH SENATE?

The plaintiff maintains that in conducting the organizational meeting of the Seventh Senate, the members attending the Guerrero session were merely following the "Official Rules of the Senate" as adopted by the Sixth Senate. These rules purported to be permanent rules, binding on succeeding Senates. See, e.g., Rule 1, Section 3.

If the Senate is a continuous body, then the rules of

the Sixth Senate are binding upon the Seventh Senate. If it is not a continuous body, then the rules of the Sixth Senate are not binding upon the Seventh Senate, 59 AmJur2d, Parliamentary Law, § 2; Sutherland Statutory Construction, § 7.01 (4th Ed.)

The beginning (if not the end) of the answer to this question is found In Article II, Section 13 of the CNMI Constitution which provides, in pertinent part:

> "The legislature shall meet for organizational purposes on the second Monday of January in the year following the regular general election at which members of the legislature are elected and shall be a continuous body for the two years between these organizational meetings...."

Thus, each Senate meets in session for a period of two years and is then adjourned and replaced by a new Senate.

Moreover, on January 5, 1990 the Sixth Senate adjourned sine die. Such an adjournment is a final adjournment, which calls a House to close without further meetings. The new Senate is composed of different persons and is a different body from the old Senate. French v. Senate of State, 80 P. 1031, 1033 (Cal. 1905). It is concluded that the Senate is not a continuous body but one which is of limited duration.

Another reason dictates against the viability of these parliamentary rules, particularly, Rule 1, Section 2a. That rule purports to designate who the presiding officer will be for the organization of succeeding senates. This does not comport with Article If, Section 14 b) which directs that each House shall select its presiding officer from among its members. The

obvious fact is that the membership of the Sixth Senate is not the same as the Seventh. See, French v. Senate of State, supra. The members of one senate simply cannot decide matters for the membership of another senate.

Lastly, Article II, Section 14 b) also provides that each house of the legislature shall promulgate Its rules of procedure. The term "each" must mean not only the respective houses of the bicameral legislature but also every new legislature which is organized on the second Monday of January In the year following the regular general election.

The plaintiff argues that defendant Joseph Inos cannot be heard to attack the constitutionality of the rules since he previously supported them, abided by them, and ostensibly assisted in promulgating them. Citing, American Distilling Company v. State Board of Equalization, 301 P.2d 495 (DCA, Cal. 1956). American Distilling concerned a distilling company which relied on a California statute to sell distilled spirits to retailers and yet, at the same time, asserted the statute was unconstitutional because It imposed certain conditions on the privilege of selling direct to retailers. The California court stated that the company could not rely on the statute to sell to retailers while at the same time attack the conditions imposed. This case is neither analogous nor applicable to the case sub judice. A closer analogy would be a declaration by a court that once a legislator votes for a certain bill he cannot later attack its constitutionality. No authority for such a proposition has been found and it Is doubtful if any exists.

Another argument advanced by the plaintiff is that since the Senate has traditionally re-adopted the former rules as the temporary rules for organizational purposes, the rules of the Sixth Senate become those of the Seventh Senate. However, this is putting the proverbial cart before the horse. It must be shown that, in fact, such a re-adoption of the former rules occurred in the Guerrero session which binds the defendants.

Unless the Seventh Senate properly adopts the rules of the Sixth Senate, It is not bound by Its predecessor's rules.10/ In light of this initial determination, two further questions are raised. First, how does the organization of a new Senate commence and, second, are senators-elect equal participants with holdover senators In this process? In order to treat these questions in an orderly and logical fashion, the court addresses the second question first.

B. **WHO ARE MEMBERS OF THE SENATE FOR ORGANIZATIONAL PURPOSES?**

In Werts v. Rogers, (NJ) 28A 726 (1894), the New Jersey Supreme Court answered this question in a case involving

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10/ The plaintiff also argues that since apparently Senators Inos and Manglona voted-.for the "permanent" rules In the Sixth Senate, they are somehow charged with "bad faith" and "unclean hands" in denying the rules now. How and In what way this would alter the result attained here is not discerned. Perhaps a closer analogy would be to say that Senators Inos and Manglona are "estopped" from using the rules they voted for previously. However, no authority is given for any of these propositions. In any event, an obtuse result would pertain if Senators Inos and Manglona are bound by one set of Senate rules while the remaining senators can abide by others. Politicians, just as anyone else, can practice terglversatlon.

holdovers and newly elected members of the New Jersey Senate.[11]

The New Jersey senate had 21 seats at the time. After an election, Democrats held 10 seats and Republicans held 11 seats. Nine of the 10 Democrats were holdovers while only seven of the Republicans were holdovers. As in the case before this court, the Democrats in Werts had the majority of sworn senators at the commencement of the session.

The organizational meeting began with only the nine holdover Democrats present. They voted one of their members as president pro tem who proceeded to take the roll. The nlne holdover Democrats were the only ones to answer. Later, the 11 Republicans took their seats In the chambers and another roll was taken, but only the 13 holdover senators were counted [12] for purposes of a quorum. The seven Republicans senators-elect were Lgnored by the Democratic president pro tem. A quorum was declared and a resolution was Lntroduced for the appointment of a credentials committee.

A Republican senator-elect rose to speak but was told to be seated. He refused. The sergeant-at-arms was directed to seat him. At that point, the senator-elect left the chambers and invited his colleagues to join him in the senate lobby.

11/ The facts of Werts are recounted in this opinion, in part, to illustrate thelr striking similarity of the facts in the case at bar.

12/ Nine Democrats and four Republicans.

While the Democrats continued their meeting in chambers, the Republicans announced they were holding the organizational meeting in the senate lobby. At their roll call, 11 Republican senators answered including the seven senators-elect. A president pro tem was elected and the senators-elect had their credentials approved and were sworn In.

The governor sued both alleged presidents to determine the legitimate president and the court issued an order to show cause.

The Democrats in <u>Werts</u> justified their actions by arguing that the senate was a continuous body which was already existing and only the holdover senators already admitted could organize the Senate. It was further argued that by virtue of their existing membership status, holdover senators could prevent senators-elect from being seated and participating In senate proceedings until their credentials were approved. The plaintiff justifies the Guerrero session's actions on precisely the same logic.

After finding the New Jersey Senate was not a continuous body and that the Democrats' argument was without merit, the court looked to state constitutional mandates requiring that each senate district be perpetually represented and have a voice in the senate on every measure that comes before it, whatever its nature may be. <u>Id</u>. at 760. The court concluded that to exclude senators-elect from participating In the organizational meeting was to deny those senate districts the;: constitutional right to representation and furthermore it

would be a conspicuous violation of that great fundamental law underlying all our institution - that it is the will of the majority of the people that is supreme. Id. at 761. The court recognized that to hold otherwise would turn the balance of power in the senate upside down.

This court finds the same guarantees of representation in Article II, § 2(a) of the CNMI Constitution. Moreover, § 203(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, states in pertinent part:

> The Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities ... in one house of a bi-cameral legislature.

To acquiesce in the plaintiff's theory of senate membership and admission thereto would be to allow a minority to control the majority. The Werts court recognized this danger when it concluded "when the power to organize Is merely a legal Intendment, the power consists In a right to organize in the customary manner and It therefore excludes the notion of a minority ruling in the transaction." Werts at 761.

Based upon the well reasoned and highly instructive opinion of the Werts court 13/ and constitutional principles of equal representation, the court concludes that all duly elected

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13/ This court has found no cases or authorities and none have been presented to it that controvert or are in opposition to the Werts court's conclusions of law.

senators regardless of tenure or status, enter the senate chambers on an equal footing.

The plaintiff attempts to avoid the result attained above by arguing that there is a clear distinction drawn between a member and members-elect in Rule 1, Section 2(a) and Section 5. However, these rules, if applied as plaintiff suggests, denigrate both the constitutional and statutory mandates for membership in the Senate. 1 CMC § 6427 provides the significant step for the issuance of a Certificate of Election to one who has qualified to the position of Senator by a vote of the franchised voters. The Issuance of the certificate implicates Article VIII, Section 4 of the Constitution which states:

> "Officers elected at the regular general election shall take office on the second Monday of January of the year following the-year in which the election was held." (emphasis added).

This clear constitutional directive makes it abundantly clear that there is no distinction to be made between members and members-elect.

The Commonwealth Senate consists of nine members and on January 8th there were that number attending. No distinction is to be made between holdovers, newly elected or re-elected senators.

C. ARE MEMBERS OF THE SENATE WHO HAVE ELECTION CONTEST COMPLAINTS FILED AGAINST THEM EXCLUDED FROM THE ORGANIZATION PROCESS?

The status of senators-elect being resolved, the question now becomes whether the filing of an election complaint against a senator-elect prevents him from taking office and hence participating in the organizational meeting.

The court in In re Gunn, (Kan.), 32 P. 470 (1893) addressed this very issue. In Gunn, the court was asked to pass on which of two House of Representatives was validly organized. The constitution provided for 125 members. At the organizational meeting, 64 members appeared on the majority side and 58 members appeared on the minority side. The majority group elected Douglas as speaker. The minority group withdrew from this meeting and commenced its own meeting in a different part of the hall. The minority group elected Dunsmore as speaker. The minority group called the roll but excluded the names of 10 majority group members whose seats were contested.[14] The minority group counted 58 present and answering (their faction), 57 present and not answering (the majority faction). The minority group's presiding officer concluded that there was a majority present (115 of 125).

The Douglas and Dunsmore houses continued to operate, each claiming a quorum. The issue was whether the Dunsmore house was correct in excluding contested majority group members from the ranks of the house membership in determining its quorum.

14/ The Dunsmore house went on to unseat the 10 contested members and install their own candidates. The Dunsmore house was recognized by both the governor and senate as the legitimate house.

The issue found its way into the courts when the Douglas house summoned Gunn to appear before it and be failed to do so. When the Douglas house sergeant at arms arrested Gunn, Gunn petitioned the court for a writ of habeas corpus challenging the authority of the Douglas house to issue warrants.

After finding it had the power to exercise jurisdiction in the matter, the Supreme Court of Kansas reviewed the leading treatises on the organization of legislative bodies citing Section 229 of "Cushing's Law and Practice of Legislative Assemblies." The court found that the right to assume the functions of a member in the first instance and to participate in the preliminary proceedings and organization depends wholly and exclusively upon the returns of the certificate of election. Gunn at 472. Moreover, citing from the same volume the court found every person duly returned is a member, whether legally elected or not, until his election is set aside. Id. at 472.

The court also relied on Judge McGrary's "A Treatise on the American Law of Elections" (4th ed. 1987) for guidance. The court took particular note of section 509 of McGrary's treatise which says:

> It is to be observed in the outset that when a number of persons come together, claiming to be members of a legislative body, those persons who hold the usual credentials of membership are alone entitled to participate in that organization. Id. at 471.

Judge McCrary agreed that the certificate of election is the sole determiner of the right to office. "It is ... a

well settled rule that where there has been an authorized election for an office, the certificate of election, which is sanctioned by law or usage, is the prima facie written title to the office." Id. at 471.

The court immediately recognized the implications of allowing only non-contested members to participate in the organizational meeting. "If one member, before organization, can object to any other member duly returned and having a certificate, then all members can be objected to, and there could be no one left to organize any house." Id. at 473. Moreover, again citing Judge McCrary's treatise, the court was aware of the potential for such a practice to thwart the contested member's constituents right of representation. "If the office were to remain vacant pending the contest, it might frequently happen that the greater part of the term would expire before it could be filled; and thus the interest of the people might suffer for the want of a public officer." Id. at 473.

The court also took note of Judge McCrary's warning that such a procedure could be abused for partisan purposes.

> Besides, if the mere institution of a contest were deemed sufficient to prevent the swearing in of the person holding the usual credentials, It is easy to see that very great and serious injustice might be done ... it would only be necessary for an evil-disposed person to contest the right of his successful rival, and to protract the contest as long as possible, in order to deprive the latter of his office for at least a part of the term; and this might be done by a contest having little or no merit

on his side, for it would be impossible to discover in advance of an investigation the absence of merit.

The Gunn court went on to adopt the rule that a person holding the ordinary credentials shall be qualified and allowed to act pending a contest and until a decision can be had on the merits.

As in Gunn, the key to determining who is a duly elected member of the Seventh Senate is the certificate of election issued by the CNMI Board of Elections pursuant to 1 CMC § 6427.

Under the election laws of the Commonwealth, a certificate of election Is the culmination of a series of events and a demonstration that the recipient has satisfied various legal requirements. These include complying with the nomination procedures (1 CMC §§ 6311 - 6315) and, of course, garnering the requisite number of votes to gain electlon.

The declaration of the result of an electlon is an indispensable adjunct to the election process. The declaration furnishes the only authentic evidence of what the choice is and by which the person can know he is entitled to the office. 26 AmJur2d, Elections, § 304. The certificate of election entitles the recipient to take the office as against an incumbent whose term has expired, notwithstanding the pendency of a proceeding to contest the electlon instituted by the incumbent or another. He has the rlght to exercise the functions of the office until the true result of the election is determined. Id, at § 305.