

State of Texas
House of Representatives



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August 9, 2007

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

Re: Scope of authority of the Speaker of the Texas House of Representatives (Request No. 0589-GA)

Dear General Abbott:

Thank you for expanding the initial invitation to submit comments regarding Opinion Request 0589-GA as well as the subsequent extension of time. Some respondents were compelled to submit supplemental arguments after the extended deadline in what seems to be a rebuttal. Without belaboring that point, or any of the well documented arguments supported on point by judicial and legal precedents throughout this state and the United States, I hope you accept this letter as a means of inserting reason into the discussion.

Please permit me to make three points.

First, the argument has been made that you have no business interpreting House Rules and you should refrain from any re-interpretation of House Rules. I agree. There is no need or precedent for the Attorney General to interpret the Rules of the Texas House of Representatives. That is why I, and five other House members, filed a brief with your office which addresses only those parts of the request pertaining solely to our state's constitution.

We clearly demonstrate that the questions before you in Opinion Request No. 0589-GA are easily framed in a manner falling well within your authority to offer a legal opinion. If, however, you feel that our brief would be more easily handled as a separate opinion request, please feel free to designate it as such and move forward accordingly. As you know, one of the signers of that brief is a sitting committee chair.

Second, an argument has been put forth stating, "...the results they seek could, if they had any broad-based support, be achieved through the democratic process. Those members could, in the next session, push through changes in the rules regarding the speaker's power of recognition, if they had the votes to do it." The irony of this statement is almost beyond words, and it speaks precisely to our point -- with absolute power comes the ability to negate the will of the majority.



The question at hand is whether the Texas Constitution allows for unchecked power of the Speaker over certain decisions committed by the Constitution to the members of the House. The supposition held by some is that a speaker enjoys absolute power and has the authority to deny recognition to anyone, at any time, for any purpose, with no mechanism to balance that power at the hands of the majority. If we follow that rationale to its conclusion, we find a striking contradiction.

Stating that members could simply "push through changes in the rules" disregards what led us to this point in the first place. One must remember that the election of a House speaker occurs *before* the adoption of House rules. To amend the rules requires a speaker to recognize a member to offer an amendment or a resolution. Under the rationale offered by those advocating for absolute power, there is no guarantee that recognition would ever be granted to amend the rules. Following the arguments set forth in support of absolute power, the Speaker would never be required to recognize anyone for a motion regarding anything that he or she didn't already support. The will of the House, including changes to the House Rules, would forever be subjugated to the wishes of one individual.

Finally, and most importantly, while the academic discussion surrounding what may or may not happen to the House Rules during the 81st Legislature is interesting, it is irrelevant.

The questions now before you are not hypothetical. The rules currently exist and are reality for the 80th Texas Legislature. Actions were taken that called upon the Texas Constitution. Furthermore, the 80th Legislature stands ready to be called to special session with notice of the Governor. Should that occur, we will again find ourselves at a Constitutional crossroads concerning the scope of a speaker's power.

To reiterate, with respect to the Rules, the question before you in its most basic form is whether Rule 5 of the Rules of the Texas House may be used to trump the constitutional privilege of a majority of members of that House to select their presiding officer to serve at their pleasure.

Today as I appeal to you for interpretation of the Texas Constitution, the issue reaches a new threshold. Some would have you believe this matter is solely internal House politics. That simply is not the case. Whatever may have been the genesis of this state of affairs, it has passed. The questions before you are constitutional in nature and beyond the politics or personalities of any single House member. The opinion you are being asked to render is historic and will serve to guide future leaders of our great state.

In short, unlike some would suggest, please know that I am not advocating the destruction of our legislative process. Just the opposite, many of us are attempting to preserve the fundamental integrity of our democracy. Essential to true democracy is a process by which a minority of one is heard while a majority rules. On certain inalienable questions, no speaker should ever -- past, present or future -- be afforded the absolute power to unequivocally silence a single member and deny the vote of a majority. To do so would be an affront to the core principles of representative democracy.

Thank you for your thoughtful consideration and your service to Texas.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Geren".

Charlie Geren