

**IN THE SUPREME COURT  
OF  
THE STATE OF LOUISIANA**

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No. 2005-OC-1191

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**ROBERT M. MARIONNEAUX, JR., AND LEE JOSEPH "JODY" AMEDEE, III**

**VERSUS**

**DONALD E. "DON" HINES, PRESIDENT OF THE SENATE AND  
ARTHUR J. LENTINI, PARLIAMENTARIAN OF THE SENATE**

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**ORIGINAL BRIEF BY  
ROBERT M. MARIONNEAUX, JR.  
and LEE JOSEPH "JODY" AMEDEE, III  
upon  
Writ of Certiorari to the Nineteenth Judicial District Court,  
Parish of East Baton Rouge, Curtis A. Calloway, District Judge**

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- State ex rel. Garland v. Guillory*, 184 La. 329, 166 So. 94 (La. 1935)
- In the Matter of the Number of Elective Members of the Legislature Required for a Majority*, 1892 WL 1114 (Hawai'i King), (1892)
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- Pollasky v. Schmid*, 87 N. W. 1030 (1901)
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- City of New Orleans v. Texas & N.O.R. Co.*, 195 F.2d 882 (5th Cir. 1952)
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### CONSTITUTIONAL, CODAL, AND STATUTORY PROVISIONS

- LSA - Const. Art. I , §1
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Rule II, §2 of the Rules of the Supreme Court of Louisiana.

OTHER SOURCES

Rules of Order of the Senate, State of Louisiana

Rule 5.3

Rule 12.10,

Rule 15.3

Mason's Manual of Legislative Procedure (2000 ed.)

Sec. 500

Sec. 501(1)

Sec. 501(3)

Sec. 512

Records of the Louisiana Constitutional Convention of 1973

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## I. INTRODUCTION

The question presented is what constitutes the "elected members" of the Senate in determining the requisite number for quorum purposes and for votes necessary to pass bills pending before the Senate. Does "elected members", when referring to the members of the Senate, as used in the 1974 Constitution, mean the constitutionally and statutorily established membership of the Senate under LSA-Art., III §§1 and 3 and LSA-R.S. 24:35.1, or does it mean a lesser number?

## II. STATEMENT OF THE CASE

On January 12, 2004, thirty-nine duly elected individuals were sworn in as Senators in this state, each representing one of the thirty-nine districts described in LSA-R.S. 24:35.1. Included in that number were Lambert Boissiere, elected to represent the people of Senate District Number 3, and John J. Hainkel, Jr., elected to represent the people of Senate District Number 6. On April 12, 2005, Senator Boissiere resigned his seat in the Senate following his election to the office of constable for the First City Court of New Orleans. On April 15, 2005, Senator Hainkel passed away.

At the present time, each of these seats in the Senate is vacant and will remain so until elections can be held to fill those two seats. The primary election for Senate District Number 3 is to be held May 21, 2005, and the run-off election, should one be needed, is to be held June 18, 2005. The primary election for Senate District Number 6 is to be held June 4, 2005 and the run-off election, should one be needed, is to be held July 9, 2005. The result is that the Senate will conduct its business for a substantial portion of the on-going 2005 Regular Session, which began April 25, 2005 and is scheduled to end no later than June 23, 2005, with thirty-seven rather than thirty-nine members.

This factual situation places the Senate in the position of being uncertain as to how to determine the number of Senators necessary for a quorum and the voting requirements for matters pending before the body. For example, LSA-Art. VII, § 2.1 provides that any new fee or civil fine, or an increase in either of these, imposed or assessed by the state or any board, department, or agency of the state shall require a two-thirds vote of the elected members of each house of the legislature. LSA- Const. Art. III, § 15(G) provides that no bill shall become law without the favorable vote of at least *a majority of the members elected to each house*.

When a fee bill is presented to the Senate for consideration, will its passage require a two-thirds vote based on a total of thirty-nine members of the Senate or thirty-seven members? Will twenty-five affirmative votes be sufficient to pass the bill or will the bill's proponents need to muster an additional vote for passage? The issue is particularly important in this session, which is a fiscal session under LSA-Const. Art. III, § 2(A), in which revenue measures constitute the bulk of the proposed legislation.

The questions presented here can be answered only after determining what is meant by "elected members" when used in the constitution. In this fiscal session which began April 25, 2005, many of the measures to be voted on by the Senate will require votes under LSA-Const. Art. VII, § 2 (levy of a new tax, increase in an existing tax, repeal of an existing tax exemption), Art. VII, § 6(A) (incur debt or issue bonds), or Art. VII, § 2.1(A) (impose new fee or civil fine or increase an existing fee or civil fine).

LSA-Const. Art. VII, § 2 provides as follows:

Section 2. The levy of a new tax, an increase in an existing tax, or a repeal of an existing tax exemption shall require the enactment of a law by two-thirds of the *elected members* of each house of the legislature. (Emphasis supplied)

LSA-Const. Art. VII, § 6(A) states:

Section 6.(A) Authorization. Unless otherwise authorized by this constitution, the state shall have no power, directly or indirectly, or through any state board, agency, commission, or otherwise, to incur debt or issue bonds except by law enacted by two-thirds of the *elected members* of each house of the legislature. The debt may be incurred or the bonds issued only if the funds are to be used to repel invasion; suppress insurrection; provide relief from natural catastrophes; refund outstanding indebtedness at the same or a lower effective interest rate; or make capital improvements, but only in accordance with a comprehensive capital budget, which the legislature shall adopt. (Emphasis supplied)

Additionally, LSA-Const. Art. VII, § 2.1(A) provides as follows:

Section 2.1.(A) Any new fee or civil fine or increase in an existing fee or civil fine imposed or assessed by the state or any board, department, or agency of the state shall require the enactment of a law by a two-thirds vote of the *elected members* of each house of the legislature. (Emphasis supplied)

In each of these instances, when a bill comes before the Senate for final passage, will the proponents need twenty-five votes to pass the bill or will twenty-six votes be needed?

The Rules of Order of the Senate closely follow the provisions of the constitution. Rule 5.3

provides that a quorum of the Senate is a majority of the elected members of the Senate. Rule 12.10 provides that the vote required to pass bills or concurrent resolutions is a majority of the members elected to the Senate. The vote required for joint resolutions is two-thirds of the members elected to the Senate. A simple resolution may be adopted by a majority of the members present and voting.

Senate Rule 15.3 also provides that where the rules of the Senate are silent or inexplicit, Mason's Manual of Legislative Procedure shall be considered as authority.

Mason's Manual of Procedure provides, relative to a quorum, in Sec. 500, that a majority of the membership of a body constituted of a definite number of members constitutes a quorum for the purpose of transacting business. Mason's further provides that in computing a quorum, the total membership of a body is to be taken as the basis for computing a quorum, *but when there is a vacancy, unless a special provision is applicable, a quorum will consist of the majority of the members remaining qualified.* (Mason's, Sec. 501(1)) (Emphasis supplied.)

Mason's also provides that the authority which creates the body has the power to fix its quorum. The body itself does not have the authority to require the presence of more than a majority to enable it to act unless that authority was specifically granted to it. Additionally, Mason's provides that compliance with a constitutional provision that fixes a quorum at a stated number of members is mandatory. (Mason's, Sec. 501(3))

Mason's requires, relative to votes, that a majority of the legal votes cast, a quorum being present, is sufficient to carry a proposition unless a larger vote is required by constitution, charter, or other controlling provision of law. Sec. 512 provides that when a two-thirds vote is required for any purpose by the constitution, charter, or other controlling law, that vote must be obtained for the vote to be effective, and that where a constitution, charter or other provision of law requires a two-thirds vote of all members that number is required. Finally, Mason's provides that even though there are vacancies, *a vote equal to two-thirds of the total membership* is required. (Emphasis supplied.)

A Petition for Declaratory Judgment was filed by plaintiffs who are duly elected members of the Senate using a summary proceeding with a rule to show cause in the Nineteenth Judicial District Court on May 4, 2005. Plaintiffs requested judgment interpreting the words "elected members"

concerning requirements for quorum and voting in the Senate. Hearing was set on the rule for May 16, 2005 by the trial court. Intervention by the House of Representatives was granted by the trial judge on May 5, 2005 to join with the plaintiffs. Writ was applied for by Robert M. Marionneaux, plaintiff, Donald E. "Don" Hines and Arthur J. Lentini, defendants, and the Louisiana House of Representatives, intervenor, on May 9, 2005. Writ was granted by this Honorable Court on May 10, 2005.

### III. ARGUMENTS

#### **A. The words "elected members" of the Senate when used in the Constitution are ambiguous and require interpretation by this Honorable Court.**

In interpreting provisions in the 1974 Constitution, our courts have held that they must first determine whether the provision in question is plain and unambiguous and whether its application does not lead to absurd consequences. If not, the courts should not go beyond the provision itself to determine its meaning. In *Louisiana Municipal Association v. State*, 00-CA-0374 (La., 10/6/2000) 773 So.2d 663, this Court stated the rule as follows:

"The starting point in the interpretation of statutory and constitutional provisions is the language of the law itself. *Touchard v. Williams*, 617 So.2d 885 (La.1993). When the language is clear and unambiguous, and its application does not lead to absurd consequences, the provision shall be applied as written without further interpretation in search of legislative intent. La. Civ. Code art. 9; *In re Louisiana Health Serv. & Indem. Co.*, 98-3034 (La.10/19/99), 749 So.2d 610. Only when the language is subject to more than one reasonable interpretation does the determination of the intent of the provision become necessary. *In re Louisiana Health Serv. & Indem. Co.*, 98-3034 at p. 10, 749 So.2d at 615-16." *Id.* at 667.

This Court in *Ocean Energy, Inc. v. Plaquemines Parish Government*, 2004-C-0066 (La., 7/6/04) 880 So.2d 1, stated the following:

"When the constitutional language is subject to more than one reasonable interpretation, it is necessary to determine the intent of the provision. *East Baton Rouge Parish Sch. Bd.*, 02-2799 at pp. 15-16, 851 So.2d at 996. In seeking to ascertain constitutional intent, the same general rules used in interpreting laws and written instruments are followed. *East Baton Rouge Parish Sch. Bd.*, 02-2799 at p. 16, 851 So.2d at 996. When construing an ambiguous constitutional provision, a court should ascertain and give effect to the intent of both the framers of the provision and of the people who adopted it; however, in the case of an apparent conflict, it is the intent of the voting population that controls. *Id.*

In construing a constitutional provision, the courts may consider the object sought to be accomplished by its adoption, and the evils sought to be prevented or remedied, in light of

the history of the times and the conditions and circumstances under which the provision was framed. *Succession of Lauga*, 624 So.2d 1156, 1160 (La.1993). Additionally, if one constitutional provision addresses a subject in general terms, and another addresses the same subject with more detail, the two provisions should be harmonized if possible, but if there is any conflict, the latter will prevail. *Perschall v. State*, 96-0322, p. 22 (La.7/1/97), 697 So.2d 240, 255. However, where the language of a constitutional prohibition makes its aim evident and unequivocal, courts need not consider the historical basis for the prohibition and may not, by separately considering related constitutional provisions, arrive at a construction that detracts from the effectiveness or manifest meaning and purpose of the related provisions. *Perschall*, 96-0322 at p. 22, 697 So.2d at 256." *Id.* at 7.

At the beginning of this current term of the Legislature, thirty-nine persons were sworn in as members of the Senate. At the start of the 2005 Regular Session of the Legislature, only thirty-seven persons hold office as Senators. The constitution does not contain a definition for "elected members." Since the question has arisen as to whether "elected members" means the thirty-nine members of the Senate who were elected for the four year term now being served or the thirty-seven members who are actually serving in the Senate until the current vacancies can be filled by election, we must look beyond the words of the constitutional provisions cited above for clarification as to the intent.

**B. The records of the Constitutional Convention of 1973, as well as the jurisprudence of this state and of other jurisdictions, support the conclusion that "elected members" of the Senate, when used in the Constitution, means the constitutionally and statutorily established membership of the Senate under LSA-Const. Art. III, §§ 1 and 3 and LSA-R.S. 24:35.1, and not some lesser number.**

In the debates on amendments to the proposed language of the constitution relating to the vote required on a bill appropriating money in an extraordinary session convened after final adjournment of the regular session in the last year of the term of office of a governor, the question was asked by Mr. Dennery of Mr. Tate, relative to the words "elected members", whether there were any members of either house who are not elected? He suggested that if not, then in accordance with the rule about omitting needless words,

"why do you need 'elected members of each house' [in the provision]?"

To which Mr. Tate responded,

"Because it means total membership. They wanted to be sure that it meant three-fourths of

the total membership instead of three-fourths of those present that day." See Constitutional Convention Records; 89<sup>th</sup> Days Proceedings—November 18, 1973; Amendment No. 42, Vol. IX, page 2514.

It seems very clear from the dialogue between Mr. Denney and Mr. Tate that "elected members" means the constitutionally and statutorily established membership of the Senate. Permitting the reduction of the number of Senators that constitutes a quorum for conducting business and that constitutes a majority of two-thirds to pass a tax could lead to a situation where less than a majority of the representatives of the people are passing taxes and other laws affecting the people of this state. This flies in the face of our long-cherished representative form of government. To hold that the required votes for passing taxes and other legislation is reduced as vacancies occur in Senate seats establishes a dangerous precedent for our Legislature. This time, the Senate's membership is reduced by only two. Would we want that precedent in place were twenty members of the Senate to perish in a plane crash? Would we want the remaining nineteen members of the Senate to be able to pass taxes by thirteen votes (two-thirds of the nineteen Senators)? Those thirteen votes would represent only one-third of the entire state. Even an affirmative vote of all surviving nineteen members of the Senate would only represent the wishes of less than half the people of this state? Is that representative government?

No recent court decisions on this point have been found. There is an opinion from this Court from 1935 discussing provisions of the Constitution of 1921 that provides some support for the position that "elected members" in the present constitution means the total membership of the Senate and not a lesser number.

At issue in *State ex rel. Garland v. Guillory*, 184 La. 329, 166 So. 94 (1935), was an act of the legislature under the 1921 constitution which rearranged judicial districts. The district attorney of the old 13<sup>th</sup> Judicial District Court, who was then ineligible to hold office in the new 13<sup>th</sup> Judicial District Court, filed suit attacking the constitutionality of the act on several grounds.

One of the grounds was that the act sought to increase the number of judges in the 15<sup>th</sup> Judicial District Court without being passed by a vote of two-thirds of the elected members of the

legislature.

The 1921 constitution provided that "the Legislature may rearrange the judicial districts, and by a two-thirds vote of the membership of each house, may increase or decrease the number of judges in any district."

The court held that this ground was without merit; that two-thirds of each house means two-thirds of a quorum and stated:

"If the framers of the Constitution of 1921 had intended that acts passed in pursuance of section 34 of article 7 of that instrument should receive sixty-seven votes in the House and twenty-six votes in the Senate, they would have, undoubtedly, required a two-thirds vote of the members *elected* to each House, as is done in the case of amendments to the Constitution (art. 21); in the case of the passage of a bill on reconsideration after the Governor has vetoed it (section 15, art 5); in the case of creation of new institutions (section 14, art. 4); in the case of impeachment of public officers (section 2, art. 9); and in the case of address out of office (section 3, art. 9). It therefore appears that in all cases where the Constitution required the votes of two-thirds of the members *elected* to each House, the fundamental law has left the matter free of doubt, by declaring, in no uncertain terms, that the votes of two-thirds of the members *elected* to each House are required." *Id.* at 102.

The court also cited Cooley's Constitutional Limitations, vol. 1, p. 291:

"For the vote required in the passage of any particular law the reader is referred to the Constitution of his state. A simple majority of a quorum is sufficient, unless the Constitution establishes some other rule; and where, by the Constitution, a two-thirds or three-fourths vote is made essential to the passage of any particular class of bills, two-thirds of three-fourths vote of a quorum will be understood, unless the terms employed clearly indicate that this proportion of all the members, or of all those elected, is intended." *Id.* at 102.

Other states have grappled with this issue, although apparently not in recent times.

The Supreme Court of the Kingdom of Hawaii, in 1892, provided that a vote of want of confidence in a Cabinet which was required by the 41<sup>st</sup> Article of the Constitution of Hawaii to be passed by a majority of all the elective members of the legislature meant "a majority of the full quota of the Elective members required by the Constitution, not diminishing the number by vacancies in the seats." *In the Matter of the Number of Elective Members of the Legislature Required for a Majority, 1892 WL 1114 (Hawai'i King), (1892)*

The court in this case also seemed concerned that to hold otherwise would diminish the effect of a representative government and cited *Osborne v. Staley, 5 W. Va., 85 (1871)*.

"The true theory of representative government is that a majority of the representatives of all the people to be bound by any law should assent to it, and it cannot be doubted but that the people, when they put this provision in the Constitution, intended to secure themselves

against the passage of any law to which a majority of all the people should not consent. The representatives of the people should be governed by the spirit of the Constitution, and in doubtful cases should decline the exercise of power." 5 W. Va. 85.

Similarly, our constitution declares that government originates with the people and is instituted to protect the rights of the individual and for the good of the whole. LSA-Const. Art. I, § 1.

Again, in 1967, the Supreme Judicial Court of Maine held in *Opinion of the Justices of the Supreme Judicial Court Given Under the Provisions of Section 3 of Article VI of the Constitution, 230 A.2d 802 (1967)*, that the number of votes required to pass an emergency measure, which under the Maine constitution required "a vote of two-thirds of all the members elected to each House" referred to "the constitutionally established membership, the numerical figure to which the requirement for passage of emergency legislation is applied." The court stated:

"Such interpretation does not reflect vacancies by death in or resignation from the legislative body." It does, however, establish certainty in the number of votes necessary to comply with the Constitution in the enactment of emergency legislation, as against continual recomputation to take into account fluctuations in the numbers available for participation in the legislative process." 230 A.2d 802.

Courts have also ruled in the same manner when dealing with municipal entities. In *State (Stanton et al, Prosecutors) v. Mayor, etc of Hoboken, 18 A.685 (1889)*, the charter of Hoboken provided that after the veto of an ordinance by the mayor, two-thirds of the members of the council elected was required for passage of the same ordinance. The council was composed of eight members, one of whom had died. Five members passed a vetoed ordinance. The court held that the veto override required the votes of six members.

*Wood v. Gordon, 52 S. E. 261 (1905)* stands for the proposition that "Whenever the words, the council for the time being shall by a majority of all the members elected or words of like import, shall occur in the charter of a municipal corporation relative to the members of the common council thereof, they shall be construed to mean a majority of the whole number of members to which the common council is entitled under its charter."

The court in *Wood* cited *Pollasky v. Schmid, 87 N. W. 1030 (1901)*, in which the Supreme Court of Michigan declared that a provision of the Detroit City Charter which provided that two-thirds of all the members elected to the common council was necessary to pass an ordinance over a

veto, a two-thirds vote of the *remaining* aldermen was not sufficient to pass an ordinance over a veto. The court added:

"That the use of the term 'elect' in section 489 How. Ann. St., has a purpose, is plain, but we think it more reasonable to believe that it was intended to require the consent of a two-thirds of a full board than that it was designed to deprive townships of a voice in the proceedings. It was intended to preclude action by two-thirds of a quorum of a board whose members had been lessened by vacancies. It is admitted that if 2 of the 34 aldermen had been temporarily absent, the ordinance would not have been passed. We cannot see how the fact that 2 of the 34 aldermen elected were permanently absent, instead of being temporarily so, would change the terms of the charter. The language is not ambiguous." 87 N.W. 1030.

Similarly, the court in *State ex rel Peterson v. Hoppe*, 260 N.W. 215 (1935) pronounced the following rule:

"When, however, the statute requires the vote of a majority or a greater proportion of 'the members' of the council it has been held that a measure cannot be enacted by a majority of those present, unless they also constitute a majority of all the members of the council, both present and absent. A statutory provision that a measure may be passed only by the vote of a certain proportion of the 'entire council' has been construed to mean all the members of the board in existence at the time that such ordinance is passed, and not all of those originally elected. It has been held, however, that when a statute provides that the vote of two-thirds of the members *elected* to the common council shall be necessary to pass an ordinance of a certain character the fact that there are vacancies in office due to death or resignation does not diminish the number of votes necessary to pass the ordinance." 260 N.W. 215, at 217.

It must be noted that there are several cases which provide for a contrary holding. In *City of New Orleans v. Texas & N.O.R. Co.*, 195 F.2d 882 (1952), the Fifth Circuit Court of Appeals held that where ten of seventeen members of the Public Belt Railroad Commission vote for a contract which required the affirmative vote of three-fourths of all the members of the commission, "The words 'all the members of said Commission' include all such persons as are at the time members and capable of voting. They do not include persons who, by death or resignation, have ceased to be members, or those unknown persons who may later be appointed."

The court cited *State ex rel. Peterson v. Hoppe, supra*, in support of its holding. Although the court in *Peterson* did rule that an affirmative vote of a majority of an entire council is satisfied by an affirmative vote of all the members of the council in existence when the measure is passed and not all of those originally elected, the court also stated that when a provision requires a majority vote of the members elected to a council, the vote required is not diminished due to a vacancy.

In *Zemprelli v. Daniels*, 496 Pa. 247, 436 A.2d 1165 (1981) the question involved the

interpretation of the phrase 'a majority of the members elected to the Senate' on the vote required for confirmation of an executive appointment. The court adopted the interpretation of the phrase used by the Senate and provided that a majority of the members elected to the Senate meant a majority of the members "elected, living, sworn and seated." The court in that case seemed constrained to give the provision "a natural reading which avoids contradictions and difficulties in implementation . . ." and which provided the most desirable result.

Plaintiffs in this case believe that the framers of our constitution were fully aware of the distinction that the phrase "majority of those elected" provides and intended that votes in these instances include the total representation of both houses of the legislature.

**C. This matter constitutes a justiciable controversy requiring a judgment declaring the meaning of "elected members" of the Senate, as used in the Constitution.**

The matter before the court is an existing and substantial dispute. The Legislature is currently in its 2005 Regular Session wherein matters are being voted on concerning the levying of new taxes, increasing existing taxes, providing for new fees and civil fines, increasing existing fees and civil fines, authorizing the issuance of bonds, appropriating money for the operation of state government, and proposing amendments to the constitution. The required vote for passage of these matters in the Senate is determined by the interpretation of the words "elected members" as they are used by the constitution. See *Abbott v. Parker*, 259 La. 279, 249 So.2d 908 (1971); *Petition of Sewerage and Water Board of New Orleans*, 248 La. 169, 177 So.2d 276 (1965); and *Tugwell v. Members of Board of Highways*, 228 La. 662, 83 So.2d 893 (1955). These questions are not mere abstract questions of law but actual and substantial disputes. The regular session in this odd-numbered year can last no more than forty-five legislative days in a period of sixty calendar days, so time is of the essence. LSA-Const. Art. III, § 2(A)(4)(a). It is essential to the public interest, the ongoing operation of the Legislature and state government, and the orderly processes of government that this issue be resolved immediately. These matters present issues fundamental to the validity of legislative functioning and legislative enactments at the current session. See *Hainkel v. Henry*, 313 So.2d 577 (La. 1975), at 578.

The provisions for declaratory judgment are found in Code of Civil Procedure Articles 1871 through 1883. Article 1871 provides that:

Courts of record within their respective jurisdictions may declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for; and the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The declaration shall have the force and effect of a final judgment or decree.

Article 1876 of the Code of Civil Procedure, states that:

The court may refuse to render a declaratory judgment or decree where such judgment or decree, if rendered, would not terminate the uncertainty or controversy giving rise to the proceeding.

Plaintiffs seek a ruling from this Court as to the meaning of "elected members" when used by the 1974 Constitution in the articles and sections previously cited in this memorandum. The questions raised essentially involve a request for a judicial declaration of rights, status, and other legal relations. The resolution of this issue will end the uncertainty and controversy that gives rise to these proceedings. In a previous case in which members of the Louisiana Legislature sought relief from the court on a matter of significant importance to the Legislature while it was in session, the petitioners sought relief through declaratory judgment. The case was *Hainkel v. Henry*, 313 So.2d 577 (La. 1975). In that case, this Court, at page 578, stated that:

"This action for a declaratory judgment is brought by reason of La.C.Civ.P. art. 1871 et seq. These code provisions authorize the judicial declaration of 'rights, status, and other legal relations whether or not further relief is or could be claimed.' Article 1871. Any interested person affected by legislation, contract, or franchise 'may have determined any question of construction or validity arising under the . . . statute (etc.) and obtain a declaration of rights, status, or other legal relations thereunder.' Article 1872.

In *Stoddard v. City of New Orleans*, 246 La. 417, 165 So.2d 9 (1964), we said: 'These codal articles create a procedural device by which the courts may make a declaration of rights without executory or coercive relief. The articles are remedial in nature and must be liberally construed. Basic to the exercise of these procedures, however, is the existence of a justiciable controversy. The courts are without power to render advisory opinions on abstract questions.' 165 So.2d at 11

[2] The pleadings and evidence before us demonstrate a real (as opposed to an abstract) dispute, with a tangible interest in the plaintiffs to obtain a judgment resolving a dispute which has arisen which will affect much present legislation and the future conduct of the legislative business during this session, and with the defendants having an interest in opposing the plaintiffs' claim that legislative actions \*579 now in progress may be invalid. *Louisiana Independent Automobile Dealers Assn. v. State*, 295 So.2d 796 (La.1974). The pleadings and conduct of the litigation indicate sufficient adversity of interest to assure a fair presentation of the issues required for decision of the case." *Id.* at 578.

Plaintiffs submit that, as in the *Hainkel* case, the provisions of the law authorizing declaratory judgment apply to the matter before the Court.

#### IV. CONCLUSION AND PRAYER

This matter presents a constitutional issue of utmost public interest and serious magnitude. The Legislature is one of the three branches of our state government. It consists of those individuals elected by the voters in designated districts of this state, one senator per district, to represent them in the law-making process, and it is a key cornerstone of government in this state. Requiring a majority or a two-thirds vote of the total membership of the Senate to pass bills is an essential safeguard for our representative form of government which is instituted to protect the rights of the individual and for the good of the whole. We cannot chisel away at that safeguard by reducing the number of votes needed to pass bills, as is being attempted. For the reasons set forth herein, plaintiffs submit that the words "elected members", when referring to the members of the Senate, as used in the 1974 Constitution, mean the constitutionally and statutorily established membership of the Senate under LSA-Const. Art. III, §§ 1 and 3 and LSA-R.S. 24:35.1, namely thirty-nine.

RESPECTFULLY SUBMITTED:

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**Certificate of Service**

I certify that a copy of this Brief has been hand-delivered to each Party and Counsel of Record, this \_\_\_\_ day of May, 2005, Baton Rouge, Louisiana.

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Robert M. Marionneaux, Jr.

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Supreme Court of Louisiana.