THE PRACTICAL IMPACTS OF OPEN VOTING IN PARLIAMENTARY MANDATE LOSS PROCESSES: A CASE STUDY OF CONSTITUTIONAL AMENDMENT NO. 76 OF 2013

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ABSTRACT

This article aimed to conduct a case study on Constitutional Amendment No. 76 of 2013, which amended Article 55, § 2 of the 1988 Brazilian Federal Constitution to abolish secret voting in the judgment of representations for breach of parliamentary decorum aimed at the loss of a parliamentary mandate. The justifications presented in the legislative proposals advocating for the end of secret voting argued that transitioning to open voting would ensure transparency and enable constituents to monitor parliamentary actions. History shows that the modality of parliamentary voting operates as a two-way street. Secret voting, as opposed to open voting, has been used both to oppress parliament members within legislative houses and to evade accountability to the electorate. During the legislative process, despite proposals and speeches emphasizing transparency and accountability, and even with significant parliamentary support, various maneuvers delayed the proposal's progression. Following the adoption of open voting, contrary to the arguments made in parliamentary discourse, the analysis revealed a decrease in transparency and greater challenges in ensuring accountability by representatives.

Keywords: Parliament, Mandate loss, Open voting, Transparency, Accountability.

INTRODUCTION

Members of Parliament accused of conduct leading to a mandate revocation process in Brazil are tried by their peers in the Ethics Council of their respective Houses, and the voting dynamics of the judges operate as a two-way street. When voting is secret, constituents may lack control over the actions of the representatives who speak on their behalf. Conversely, if the vote is open, parliamentary relations may exert pressure, inhibiting the representative from freely expressing their position.

According to Gomes (2022), secret voting is incompatible with democracy, and its elimination "is a way to align the exercise of the legislature with democracy, and, most importantly, to strengthen the relationship between representatives and constituents." Rezende (2019), on the other hand, argues that "secret voting is tied to the protection of freedoms of conscience, opinion

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formation, and decision-making by the elected representative in the face of other public and private powers."

In defending the incompatibility of secret voting with democracy, Marques and Negri (2008) presented two arguments, one moral and the other political. Based on Kantian theory, they argued that, in the moral sphere, representative republics have no room for secret voting by representatives, who must be accountable for their representative actions. Politically, drawing on Condorcet's theory, they claimed that secret manifestations hinder popular oversight, potentially fostering a form of "representative despotism."

Custódio Filho (2007), in a legal opinion on the constitutionality of legislative proposals seeking to introduce open voting in the deliberations of the Curitiba City Council (Paraná), differentiated subjective rights from potestative rights and identified "functions" as a third category. In this regard, he stated that "the inherent powers and duties" belong to the category of "function" and cannot be exercised for personal benefit, establishing the obligation of representatives to be accountable. This obligation, termed "parliamentary responsibility" by Mill (1964), ensures that representatives serve the public interest.

Although the 1988 Federal Constitution provided for secret voting in parliamentary decisions on mandate loss processes, from 2001 onward, constitutional amendment proposals began to emerge advocating for the adoption of open voting. The justifications, in most cases, emphasized the pursuit of transparency and the possibility of ensuring accountability to the constituents.

However, following the conviction for acts of corruption under the judgment rendered in Criminal Action No. 396 of Rondônia in 2010 and the order for the imprisonment of Federal Deputy Natan Donadon (PMDB/RO) on June 26, 2013, by the Brazilian Supreme Federal Court, the issue of parliamentary mandate loss was submitted to the Federal Chamber of Deputies for deliberation. Despite his imprisonment, the legislative body decided to maintain the deputy's mandate, a decision largely attributed to the secret voting process, as then provided by the constitutional text in force.

This case caused widespread shock not only among society but also within political circles, triggering several consequences. Among these were legislative proposals introduced as a political response to the situation, including debates on the automatic loss of parliamentary mandate upon a final criminal conviction. Additionally, the case expedited the processing of proposals to eliminate secret voting in disciplinary actions concerning the loss of parliamentary mandates.

The incident is often identified as one of the catalysts for the approval of Constitutional Amendment No. 76 of 2013 (CA 76/13), which removed the term "secret" from paragraph two of Article 55 of the 1988 Federal Constitution (FC/88). Since then, parliamentary votes in cases concerning breaches of decorum that aim to revoke a mandate have been conducted openly.

This context led to the formulation of the research problem addressed in this article, seeking to understand the practical impacts arising from the change in voting modality in parliamentary proceedings concerning breaches of decorum aimed at mandate revocation.

To address the research problem, the study set out a general objective: to identify the practical consequences of the change in voting modality in cases involving breaches of parliamentary decorum that result in mandate loss. The following specific objectives were established: (1) to conduct a literature review through an examination of scientific publications in academic journals and information available on the internet, primarily from websites maintained by the Chamber of Deputies, the Federal Senate, and the Presidency of the Republic; (2) to quantitatively analyze data related to disciplinary cases processed by the Chamber of Deputies; and (3) to qualitatively analyze the practical effects observed following the change in voting modality.

To achieve these objectives, an empirical study was conducted using a mixed qualitative and quantitative approach with a deductive nature, starting from general theories to address the specific objectives. The chosen method was a case study, focusing on the legislative process and implications of CA 76/13.

The research object was delimited to the years between 2005 and 2022, corresponding to the sum of nine years prior to and nine years following the change established by Constitutional Amendment No. 76 of 2013 (CA 76/13). To identify the changes, a comparative analysis was conducted between the processes handled in the nine years before and those handled in the nine years after the amendment.

The choice of the nine years after the amendment as the delimitation period reflects the natural passage of time, as the research was conducted at the end of the possible timeframe. The delimitation of the nine years prior to the amendment was justified by the similarity in duration to the post-amendment period, ensuring more credible comparative results and allowing for the analysis of different legislative terms.

The data collection was also limited to cases involving the loss of mandates of Federal Deputies, which were exclusively processed by the Ethics Council of the Chamber of Deputies. These cases were systematically made available for public consultation and best represent the behavior of the Brazilian Parliament. Data from processes handled by the Ethics Council of the Federal Senate were excluded due to the lack of systematized public access to such data.

The research was conducted in three stages. The first stage consisted of a bibliographic review of scientific works published in academic journals on the subject, as well as an analysis of information available on the internet, primarily from the websites of the Chamber of Deputies, the Federal Senate, and the Presidential Palace. In the second stage, primary data were collected from publicly available internet sources, with a focus on the Chamber of Deputies' website, particularly

the section dedicated to the Ethics Council. In the third stage, the collected data were analyzed in three phases: pre-analysis, material exploration, and result processing, culminating in analytical descriptions.

Finally, the conclusions were presented through analytical descriptions, considering the theoretical framework built around the topic and the correlation between the quantitative and qualitative analyses of the collected data.

THEORETICAL FRAMEWORK FOR ANALYZING THE STUDIED OBJECT

According to Ruzon (2007), parliamentary manifestations became secret starting with the French Constitution of 1791, based on the understanding that open manifestations hardened the parliament and limited its freedom. For the author, open manifestations were subject to judicial control, which ended up preventing the parliamentarian's freedom to express their preferences freely.

In Brazil, the 1891 Constitution, the first republican one, although it did not expressly include the terms "open vote" or "secret vote" in its text, established that votes would be held in public sessions (Art. 18). The 1934 Constitution established voting in public sessions, unless parliamentarians decided otherwise (Art. 27), secret voting in elections and in deliberations on vetoes and the President's accounts (Art. 38), and in the appointments of judges, Ministers of the Court of Auditors, the Attorney General, and Heads of Diplomatic Missions abroad (Art. 90, a). The 1937 Constitution, while maintaining the republican form and establishing voting in public sessions unless parliamentarians decided otherwise (Art. 40), did not include the term "secret vote" and suspended the activities of Congress until 1946, which prevented parliamentary manifestations.

In the constitutional phase of 1946, which Silva and Milagres (2010) called the redemocratization and the need for strengthening the parliament, it was established in Article 43 that votes in cases addressed by Articles 45, § 2, 63, n. i, 66, n. VIII, 70, § 3, 211, and 213 would be secret. Even though the constitution established the publicity of acts, it ensured secret voting in cases of control over the acts of other powers to inhibit persecution due to the manifestations.

The 1967 Constitution maintained secret voting for the same situations established by the 1946 Constitution, adding that the suspension of parliamentary immunity during a state of siege would be by secret vote (Art. 154, sole paragraph). However, this constitution underwent several amendments that weakened parliament, establishing that veto overrides and the election of presidents and vice presidents should be by open vote (Silva and Milagres, 2010).

With the use of open voting as a means of oppression against Parliament by the Executive Power in the previous period, the 1988 Federal Constitution, although establishing a democratic republic (Art. 1), encompassing among its principles publicity (Art. 37) and the exercise of power by

representation (Art. 1, sole paragraph), included in its text cases where parliamentary manifestations would be by secret vote (Rezende, 2019).

The 1988 Constitution originally established secret voting for the approval of the selection of Magistrates, Ministers of the Federal Court of Accounts appointed by the President of the Republic, Governors of Territories, Presidents and Directors of the Central Bank, Attorney General of the Republic (Art. 52, III), Heads of Diplomatic Missions (Art. 52, IV), dismissal of the Attorney General of the Republic (Art. 52, XI), certain cases of loss of mandate by Parliamentarians (Art. 55, § 2, I, II, and III), and the consideration of vetoes (Art. 66, § 4).

Contrary to what Custódio Filho (2007) proposed, the exercise of this parliamentary function is strictly linked to the citizen, and representatives must be aware that their manifestations should be subject to control, given the separation of powers, which is also adopted by the 1988 Constitution (Art. 2). The constituent understood that it was necessary to establish situations in which voting should be secret.

After the promulgation of the 1988 Constitution, the debate over secret voting intensified, with criticism from those who argued that it was incompatible with the democratic state (Gomes, 2022) and from those who saw it as a mechanism incompatible with the limitation of power (Silva and Milagres, 2010). These views led to the emergence of movements in parliament advocating for the change or even the abolition of secret voting.

In this context, on May 9, 2001, in the Chamber of Deputies, a Bill of Amendment to the Constitution (BAC), was presented to abolish secret voting in parliamentary manifestations, proposing amendments to Articles 52, 53, 55, and 66 of the Federal Constitution, under number 349[2]. Still in 2001, other proposals were also presented, such as numbers 350[3], 352[4], 361[5], 390[6], and 403[7], and in 2003, proposal number 39[8].

In the plenary session of 2006, the substitute adopted by the Special Committee was approved, rendering all other attached proposals void and sending the text for preparation to be

[2] BAC 349/01: Proposed by Deputy Luiz Antônio Fleury, this amendment seeks to alter the wording of Articles 52, 53, 55, and 66 of the Federal Constitution to abolish secret voting in the decisions of the Chamber of Deputies and the Federal Senate.
[3] BAC 350/01: Proposed by Deputy Barbosa Neto and others, this amendment alters Articles 52, XI, 53, § 3, and 55, § 2, aiming to remove secret voting provisions.
[4] BAC 352/01: Proposed by Deputy José Antônio Almeida and others, this amendment modifies Articles 52, III, IV, XI, and the sole paragraph, 53, § 3, 55, § 2, and 66, § 4, with the objective of eliminating secret voting in several parliamentary procedures.
[5] BAC 361/01: Proposed by Deputy Rose De Freitas and others, this amendment changes Articles 52, III, IV, and XI, 53, § 3, 55, § 2, and 66, § 4, removing the provision for secret voting.
[6] BAC 390/01: Proposed by Deputy Gervásio Silva and others, this amendment alters Articles 52, III, IV, and XI, 53, § 3, 55, § 2, and 66, § 4, with the intent to abolish secret voting in parliamentary decisions.
[7] BAC 403/01: Proposed by Deputy José Genoíno and others, this amendment seeks to replace the expression “secret vote” with “nominal vote” in Articles 53, § 3, 55, § 2, and 66, § 4, eliminating secret voting provisions.
[8] BAC 39/03: Proposed by Deputy José Roberto Arruda, this amendment alters the wording of Articles 47, 52, III, IV, and XI, 55, § 2, and 66, § 4, in a bid to remove secret voting from the constitutional text.

submitted in the second round. The second-round vote in the plenary took place in 2013 and was approved unanimously.

After the approval in the second round, the proposal was forwarded for revision by the Federal Senate, where it was processed under the number 43 — BAC 43/13. In the reviewing chamber, the proposal, which had been approved in two rounds in the Chamber of Deputies, received five amendments during its processing in the Committee on Constitution and Justice (CCJ). Initially, the report was favorable to approval, with only a drafting amendment to change Article 55, § 2, while amendments to Articles 47, 52, and 66 were highlighted, so they would constitute autonomous propositions.

After BAC 43/13 was annexed to BAC 20 and BAC 28, both from 2013, it returned to the CCJ and received a sixth amendment. This amendment was rejected, and the report that had already been approved was submitted to the plenary for voting. On November 26, 2013, the plenary approved BAC 43/13 in the second round, which resulted in a new wording for § 2 of article 55 and § 4 of article 66 of the 1988 Federal Constitution, removing the term "secret vote" from processes related to the loss of parliamentary mandates and presidential veto consideration. After the approval, the proposal was promulgated as Constitutional Amendment No. 76 of 2013 — CA 76/13.

Although the amendment originated from a proposal presented by the Chamber of Deputies, during its processing period, there were also movements initiated by the Federal Senate, which played a role in shaping the political context that enabled the change and had a direct influence on the final text.

In the Senate, the debates intensified and gained greater significance when the archiving of cases related to the issue known as the "Mensalão" scandal occurred (Marques, 2008). This was further compounded by the trial of the case involving the President of the Senate at that time (Silva and Milagres, 2010). However, the catalyst for the series of movements against the secret vote was the decision by the Chamber of Deputies to maintain the mandate of Deputy Natan Donadon (PMDB/RO), who had been convicted of corruption by the Federal Supreme Court.

The movements culminated in Proposal No. 38[9] in 2004 – BAC 38/04, Proposal No. 50[10] in 2006 – BAC 50/06, and Proposal No. 86[11] in 2007 – BAC 86/07, addressing matters similar to those contained in the proposals under discussion in the Chamber of Deputies.

[9] BAC 38/04, authored by Senator Sérgio Cabral, which amends Articles 52, 55, and 66 of the Federal Constitution to establish open voting in the specified cases, ending the use of secret voting by parliamentarians.
[10] BAC 50/06, authored by Senator Paulo Paim, which includes Article 50A and amends Articles 52, 55, and 66 of the Federal Constitution to establish open voting in the specified cases, ending secret parliamentary voting.
[11] BAC 86/07, authored by Senator Álvaro Dias, which amends the wording of § 2 of Article 55 of the Federal Constitution to state that in the cases referred to in items I, II, and VI of the article, the loss of mandate will be decided by the Chamber of Deputies or the Federal Senate by absolute majority and in open vote, upon request by the respective Board or a political party represented in the National Congress, ensuring full defense.

Initially, there was no progress, and the proposals faced difficulties in the legislative process. In the Federal Senate, the debates only advanced with BAC 86/07, which aimed to amend Article 55, § 2, to replace the term “secret vote” with “open vote” in cases involving the loss of a parliamentary mandate.

During the process, in compliance with Article 354 of the Senate Internal Regulations, the CCJ (Committee on Constitution, Justice, and Citizenship) issued an opinion affirming the constitutionality, legality, and good legislative technique, presenting Amendment No. 1 for a minor adjustment in legislative technique, and issuing a favorable opinion for approval. In the plenary session, Amendment No. 2 was presented, which substituted the term “open vote” with “ostensible vote” and introduced a proposal for a Resolution to regulate the procedure, which would require the proposal to return to the CCJ, where the amendment was rejected by the Rapporteur.

On March 31, 2009, the proposal was once again removed from the voting agenda for analysis of the possibility of unifying it with the texts of BAC 38/04 and BAC 50/06[12]. A subsequent request was presented and approved, determining that the proposals would proceed together, with the matter returning to the Constitution and Justice Commission (CCJ). In this context, the rapporteur was appointed, and he presented Amendment No. 3, a substitute, proposing the approval of BAC 38/04 and recognizing the prejudicial nature of BAC 50/06 and BAC 86/07.

After the approval of a request to remove BAC 50/06 from being linked to the other proposals, allowing it to proceed independently, BAC 86/07 was submitted for a plenary vote. The original proposal was approved in the first round with 56 votes out of 58 Senators present. In the second round, it received 55 votes out of 56, and it was then forwarded to the Chamber of Deputies for review.

In the Chamber of Deputies, the Senate's proposal was received on July 10, 2012, and it proceeded under special procedure as BAC 196/12. The proposal received a favorable opinion from the Committee on Constitution and Justice and Citizenship (CCJC). The House President then ordered the formation of a Special Committee, where an amendment was proposed to alter articles 47, 52, 55, and 66 of the Constitution, essentially aiming to eliminate secret voting from all parliamentary manifestations. The rapporteur's opinion was in favor of approving BAC 196/12 and rejecting the amendment, which was unanimously accepted.

The proposals arose during a time of public discredit towards the Brazilian parliament, as outlined in the justification for the proposal, which attributed the outcomes of processes decided against the opinion of the Ethics Council to the secret vote[13]. However, the change only occurred in 2013, with the conversion of BAC 349/01 into Constitutional Amendment No. 76/13. This change

[12] Request No. 701 of 2009, presented by Senator Antônio Carlos Valadares (PSB/SE), for joint processing of BACs 38/2004, 50/2006, and 86/2007.
[13] Justification for the Proposal of Constitutional Amendment No. 86 of 2007.

took place during another period of significant popular mobilization, also driven by the public's lack of trust in politicians, marked by a series of protests (Avritzer, 2018).

Some situations observed drew attention during the processing of the proposals to amend the constitutional text to exclude the secret vote. One of them is that, despite the idea being the subject of several proposals, all of which favored it, the processing still took twelve years to occur. When it finally happened, it was limited to only two situations: in cases involving the loss of a parliamentary mandate and in the review of presidential vetoes. Procedural maneuvers were observed during the process, mostly disguised as attempts to expand open voting to all parliamentary manifestations, but which ultimately only served to delay the change.

Another situation is the relationship between BAC 349/01, authored by the Chamber of Deputies, and BAC 86/07, authored by the Federal Senate. While the former, after approval in two rounds in its respective house, was sent to the revising house on 04/09/2013, the latter, after being approved in two rounds, was sent to its respective revising house on 09/07/2012.

After being approved by the Federal Senate, BAC 86/07 was sent to the Chamber of Deputies for review, where it was processed under the number 192/12. During this stage, it received a substitute amendment[14] to include in its text the same proposal approved by the Chamber of Deputies in BAC 349/01[15].

As if engaged in a dispute over which legislative house would ensure the ownership of the change, the Chamber of Deputies, seemingly equipped with a grand plan, while the BAC 192/12 was being processed, which considered BAC 86/07 as a revising house, sent BAC 349/01 to the Federal Senate.

In this context, the Federal Senate received BAC 349/01 as BAC 43/13 and proposed to promulgate its proposal without depending on the manifestation of the revising house regarding BAC 86/07. It did so by highlighting the proposed amendments to articles 47, 52, and 66, and reincluded the amendment to article 66 to approve its original intention, which was the exclusion of the secret vote in parliamentary actions in processes related to the loss of parliamentary mandates.

In other words, although CA 76/13 resulted from the conversion of BAC 349/01, the final text was based on the initial proposal of the Federal Senate in BAC 86/07, which aimed to establish an open vote in processes related to the loss of a parliamentary mandate, seeking transparency and the possibility of oversight.

The next section will present a quantitative analysis of the data concerning the number of representations that processed in the Chamber of Deputies' Ethics Committee during the defined

[14] Substitute Amendment presented in BAC 192/12.
[15] Result of the voting in the Plenary of BAC 349/01.

period and compare the periods before and after CA 76/13, in order to verify the changes that occurred.

QUANTITATIVE ANALYSIS

The CA 76/13 altered the voting modality for parliamentary manifestations in decisions regarding the loss of parliamentary mandates. Data were collected to observe the impacts of this change. To identify these impacts, data regarding procedures from 2005 to 2013 will be presented first, followed by data from procedures between 2014 and 2022. Finally, the data will be compared to verify the changes that occurred.

All data concerning the numbers analyzed regarding the representations processed in the Chamber of Deputies were collected from the Ethics Council's website. They were separated and categorized by year, number of representations, mandate losses, resignations, and archivals. The archivals were further divided into preliminary decisions by the Ethics Council, terminations at the end of legislative terms, and archivals based on Articles 164, I and II, of the Internal Regulations of the Chamber of Deputies (IRCD).

OF THE REPRESENTATIONS THAT PROCEEDED BETWEEN 2005 AND 2013

During the first period, when the secret vote still prevailed for parliamentary motions in processes related to the loss of mandate, 116 representations against Federal Deputies were processed in the Chamber of Deputies' Ethics Council. Of the total, 18 resulted in loss of mandates, 19 were archived preliminarily by decision of the Ethics Council, 3 were withdrawals before the end of the process, 45 were archived due to the end of the legislature, and 28 were archived by the House Speaker, with 27 based on Article 164, I, of the Internal Rules of the Chamber of Deputies (RICD) and 1 based on Article 164, II, of the RICD, as represented in the following data:

Table 01 – Period Between 2005 and 2013

YEAR	REPRESENTATIONS	MANDATE LOSS	RESIGNATIONS	ARQUIVAMENTOS		
				Preliminary	End of Mandate	Article 164, I and II of the IRCD
2005	23	12	0	9	0	0
2006	71	4	2	0	44	28
2007	7	0	0	7	0	0
2008	1	0	0	0	0	0
2009	1	0	0	1	0	0
2010	1	0	1	0	1	0
2011	3	1	0	0	0	0

2012	4	0	0	2	0	0
2013	5	1	0	0	0	0
Total	**116**	**18**	**3**	**19**	**45**	**28***

* Except for one of the filings, which was based on Article 164, II, all others were based on Article 164, I, of the IRCD.

Table prepared by the Author.

Of the total representations, only 16.24% resulted in the loss of parliamentary mandates. 78.63% were archived, either due to a preliminary decision by the Ethics Council, the end of the legislative term, or by a decision of the President of the Chamber, based on Article 164, I and II, of the IRCD.

Another observation was that most of the representations occurred between 2005 and 2006, accounting for 80.34% of the total. This suggests a direct connection to the mensalão case. Only 19.66% of the representations were distributed across other years, representing an average of 2.81% in the following years.

When examining the loss of mandates, the highest concentration occurred in 2005 (12) and 2006 (4), with only 2 occurring in the subsequent periods. Regarding the filings, with one exception in 2010, all others occurred in 2006, largely due to the end of the legislative term transitioning into 2007.

Between 2007 and 2013, the period of legislative debate regarding the abolition of the secret vote, there were no significant numbers of representations (22), resulting in 2 mandate losses, 10 preliminary filings by the Ethics Council's decision, one filing due to the end of the legislative term, and no filings based on Article 164, I and II, of the IRCD.

OF THE PROCEDURES THAT CIRCULATED BETWEEN 2014 AND 2022

Between the years of 2014 and 2022, during the period of open voting for parliamentary manifestations in processes related to the loss of mandate, 97 representations against Federal Deputies were processed in the Ethics Committee of the Chamber of Deputies, resulting in 6 loss of mandates, 47 preliminary dismissals by the Committee’s decision, no resignations before the end of the proceedings, 1 dismissal due to the end of the legislature, and no dismissals based on Articles 164, I and II, of the Internal Regulations of the Chamber of Deputies (IRCD), as shown in the following data:

Table 01 – Period Between 2014 and 2022

YEAR	REPRESENTATIONS	MANDATE LOSS	RESIGNATIONS	FILING		
				Preliminary	End of Mandate	Article 164, I and II of the IRCD
2014	8	2	0	4	1	0
2015	5	1	0	4	0	0
2016	6	0	0	4	0	0
2017	5	0	0	3	0	0
2018	14	1	0	9	0	0
2019	22	0	0	14	0	0
2020	0	0	0	0	0	0
2021	12	2	0	3	0	0
2022	25	0	0	6	0	0
Total	**97**	**6**	**0**	**47**	**1**	**0**

Table prepared by the Author.

When comparing the number of representations with the number of mandates lost, it was observed that during this period the proportion was 6.18%, with a considerable increase in the number of preliminary dismissals by the Ethics Committee's decision, which accounted for 48.45% of the representations processed during the period. Of the 97 representations, 12 are still ongoing, all distributed in the year 2022.

COMPARISONS BETWEEN THE PERIODS

When comparing the data from both periods, five changes stood out. The first is related to the distribution of representations; the second to the decrease in decisions on the loss of mandates; the third to the increase in preliminary dismissals by decision of the Ethics Committee; the fourth to the decrease in dismissals due to the end of the legislature; and the last to the elimination of dismissals based on Article 164, I and II, of the Internal Rules of the House of Representatives (IRCD).

The distribution of representations, which in the first period was concentrated in the years 2005 and 2006, showed a wider spread in the second period, with the highest number of cases distributed over a four-year period, coinciding with the legislature from 2018 to 2022, which totaled 73 representations, or 75.25% of the total submitted. It is important to note that in 2020, when the COVID-19 pandemic began in Brazil and the country implemented the most restrictive lockdowns, there were no representations.

The distribution of representations is noteworthy because the first period was marked by what became known as the "mensalão" scandal, considered by some to be one of the largest in the country's history (De Souza Neto, 2020). Despite the 2013 protests, when Brazilians took to the streets to criticize political institutions, the number of representations was much lower than the figures recorded in 2005 and 2006, suggesting that the data from this period were atypical.

In the second period, although there were no events proportionally similar to the mensalão scandal or the 2013 protests, there was an increase and concentration in the number of representations during the 2018-2022 legislature. This suggests greater conflict between parliamentarians or a more intense role by the opposition, especially when considering the numbers regarding mandate losses.

Regarding the decrease in the number of mandate losses, it was possible to observe a significant reduction, even though the number of representations did not change proportionally. In the first period, mandate losses accounted for 16.23% of the representations, while in the second period they represented only 6.18%. This could initially support the idea that there was an increase in opposition activity and perhaps not so much a greater conflict between parliamentarians.

When the difference between the two periods is compared proportionally, it becomes even more apparent, as the second period accounted for 82.90% of the representations compared to the first. However, when the number of mandate losses is compared, it shows a proportion of 31.57%, confirming that there was a proportional decrease in the relationship between the number of representations and the number of mandate losses between the two periods.

Regarding preliminary dismissals by decision of the Ethics Committee, a dramatic increase was observed, with the first period showing 19 dismissals and the second period recording 47. This corresponds to 48.45% of preliminary dismissals of representations processed in the second period, whereas in the first period the proportion was 16.24%.

When comparing the data on preliminary dismissals by decision of the Ethics Committee between the two periods, it was possible to observe an increase of 247.36%, indicating that after the change in the voting modality, there was an exponential rise in this type of dismissal. This could suggest empty representations, but it could also indicate that the instrument was used as a means of preventing representations, under the cover of open voting, from being debated in the plenary.

Regardless of the reasons, the results may not be entirely positive, as the increase in preliminary dismissals by decision of the Ethics Committee suggests that a considerable number of representations are being resolved in the meetings of the Ethics Committee, away from public debate and with little oversight by those being represented.

Regarding dismissals due to the end of the legislature, the first period saw 45 occurrences, while in the second period there was only one. This may indicate that there was an increase in concern among parliamentarians about concluding these representations. Alternatively, the exponential increase in dismissals could be due to a reduction in the number of cases submitted to the Plenary, which directly contributes to the decrease in dismissals due to the end of the legislature.

Although the transition from the year of this research to the next may cause dismissals due to the end of the legislature, what can be observed is that, even if hypothetically all the representations in

progress were dismissed due to the end of the legislature, it would still represent a much smaller number than in the first period analyzed.

QUALITATIVE ANALYSIS

From the quantitative analysis, the main practical effects that can be observed with the adoption of the open vote modality in parliamentary manifestations in processes related to the loss of mandate are the reduction in the number of representations that resulted in the loss of the parliamentary mandate and the increase in preliminary dismissals by the Ethics Committee of the Chamber of Deputies.

When the quantitative data is associated with the debates on the motivations for the suppression of secret voting, the analysis takes on new dimensions. Particularly considering that the author of BAC 86/07 during the mensalão scandal argued that, if the vote had been open, the outcome might have been different. The author suggested that the possibility of making statements without notifying the represented party would provide security to the representative so that they would not simply replicate the popular will. Certainly, although subjectively, the author of the proposal disagreed with the outcomes of the processes that led to these representations.

On the other hand, after the change in the voting modality, what can be observed is a decrease, both in absolute and proportional numbers, of representations that resulted in the loss of the parliamentary mandate. Another effect observed was the reduction in the submission of these representations to the Plenary, characterized by the exponential increase in the number of preliminary dismissals by the Ethics Committee.

In other words, contrary to the argument of the author of BAC 86/07, if the vote had been open during the mensalão period, based on the result of the quantitative analysis, the outcome could have been fewer convictions for the loss of mandates.

Based on this information, could it be said that the expected effect was reversed?

To answer this question, it is important to revisit what was presented in the introduction: parliamentary manifestations are a two-way process, insofar as secret voting removes pressures and prevents the investigation of the legislator's subjective element. However, at the same time, it makes it impossible for citizens, who are the ones interested in the actions of those who represent them, to exercise control (Silva and Milagres, 2010).

From this assumption, it can be stated that both in the open and secret voting modalities, it is possible to identify both positive and negative factors. As Gomes (2022) aptly demonstrated, when arguing that secret voting is incompatible with democracy, the abolition of this modality "is a way to reconcile legislative practice with democracy, and, above all, to strengthen the relationship between representatives and the represented".

On the other hand, Rezende (2019) argues that "secret voting is linked to the protection of the elected representative's freedom of conscience, opinion formation, and decision-making in the face of other public and private powers".

As noted, among the defenses regarding the parliamentary voting modality, a duality of effects can be extracted between: the representative's accountability to the represented and parliamentary autonomy. Both effects exist, and what determines whether one is positive or negative will depend on the interpreter, who can use the arguments to defend either point of view. What matters for this work is that, regardless of whether one considers the voting modality in parliamentary manifestations to be positive or negative, it is not easy to identify the intention behind the debates presented by the parliamentarians regarding the proposals.

Some may use the debate to argue that they support open voting because secret voting hinders the representative's accountability to the represented. Others may use the same reasoning to argue against open voting, claiming that secret voting guarantees the autonomy of parliamentarians. However, it will rarely be possible to identify the real intention behind the defense of one or the other modality in the political scenario.

Although, morally, it is important to ensure the publicity of parliamentary acts in a representative democracy (Consani & Klein, 2014), there are plausible, and even moral, justifications for ensuring parliamentary autonomy. Especially when considering that open voting may be used as a mechanism to coerce the parliamentarian in their statements, as opposed to coercing them to represent the will of their constituents.

As proposed by Rezende (2019), the justification for popular control over parliamentary statements has historically been used as a form of control by political leaders and other powers. Citing the Albertine Statute, he argued that the purpose of secret voting was "to protect and guarantee the freedom and autonomy of parliamentarians in the face of potential controls and constraints by the king and government."

In Brazilian political history, Silva and Milagres (2010) suggested that the adoption of secret voting in the 1946 Constitution aimed precisely at avoiding persecution of the parliament, given that there was still a strong movement around Getúlio Vargas' authoritarian ideology. During the constitutional period of 1967, despite maintaining secret voting for specific cases, several amendments were made that eventually established open voting for the appreciation of presidential vetoes and for the elections of presidents and vice-presidents, with the goal of weakening the parliament.

Despite the defense that secret voting is incompatible with democracy because it prevents the control of representatives' actions by the represented, open voting has historically been used, and

several times, for non-democratic purposes, which reveals that classifying it solely as a mechanism for democratic acts is unjustified.

Another argument that weakens the democratic nature of open voting is that, in representative democracies, according to DAHL (2012), the individual actions of the representatives are not important. What matters is the collective manifestation of the representatives, and it should satisfy the majority of the represented, considering that satisfying everyone would be ideal but unlikely. Using the author's arguments, one could argue that representative democracies are not made from individual or group manifestations, but from the overall result of those manifestations, with the final decision being evaluated by the citizen, who still retains the right, in elections, to express whether they approve or disapprove of their parliament.

That said, the proposals for the establishment of open voting must be evaluated carefully, particularly in cases related to the subject of this work, as the motivations behind such manifestations could differ from what is presented. These proponents could even use the idea of transparency in parliamentary actions to conceal their real intent, which might be to pressure the parliamentarian to vote contrary to their convictions, coerced by the concern of being controlled, not only by their constituents but also by political leaderships and other powers.

Even though it is difficult to identify the real motivation behind the establishment of open voting, particularly in the context of parliamentary mandate loss processes, two elements can serve as indicators: the timing of the proposal and occurrences during the proceedings.

Regarding the timing of the proposal, even though CA 76/13 is represented by the conversion of BAC 349/01, authored by Federal Deputy Luiz Antônio Fleury Filho of PMDB SP, its content can, in fact, be associated with the result of BAC 86/07, authored by Senator Álvaro Fernandes Dias of PSDB PR. It must be considered that the proposal of BAC 349/01 initially aimed to amend the text of Articles 52, 53, 55, and 66 of the 1988 Federal Constitution. However, after being approved in two rounds in the Chamber of Deputies, it was submitted to the Federal Senate, which, in a clear maneuver to approve the substantial content of BAC 86/07, highlighted the amendments to Articles 52 and 53 and submitted to a vote only those amendments compatible with the Senate's original proposal, which ultimately ended up incorporating the amendment to Article 66.

In this context, of all the proposed amendments so far, only the one that established open voting for parliamentary actions in processes concerning the loss of a parliamentary mandate and the consideration of presidential vetoes prevailed. Therefore, it is possible to affirm that the proposal presented by BAC 86/07, in its essence, is the one that was converted into CA 76/13, and not BAC 349/01.

This reflection is important because the essence of the prevailing proposal was presented in a context where the country's political institutions were facing some of their greatest criticisms, and the

proposal was presented by a well-known opponent of the government at that time. Although the justification for the proposal was that citizens were entitled to transparency in the actions of parliamentarians regarding the processes in the Ethics Committee, it was very clear that the positioning indicated a disagreement with the results of the cases related to the mensalão scandal.

As such, it can be asserted that the motivation for establishing open voting in processes concerning the loss of a parliamentary mandate was a disagreement with the outcomes of the mensalão cases. Considering that some of these outcomes were contrary to the Ethics Committee's reports, one could argue that, had the votes been open, there would have been more decisions to revoke mandates. In other words, it could be said that the motivation was to seek more decisions for the loss of mandates, at a time that became known as one of the greatest scandals in Brazilian politics.

Regarding the legislative process, even though BAC 349/01 was presented in 2001 and BAC 86/07 in 2007, CA 76/13, which established open voting for processes involving the loss of a parliamentary mandate, was only promulgated twelve years later. Could this be an indication that the proposal faced resistance during its legislative process?

A superficial observation, taken in isolation, might lead one to say no, because the delay in the processing of the proposal would have been due to the attempt to expand the circumstances in which open voting would be established. The amendments to the proposals, both in committees and in plenary, were always accompanied by the argument that transparency of representatives' actions should be ensured to the represented.

The defense of open voting was consistently advocated in all cases where parliamentarians were called upon to make their views known. In other words, the arguments sought to please those who believed that open voting is indispensable in a democracy. Some of the proposals and amendments were even presented by the government of that time, which seemed to undermine the idea of an opposition-driven proposal, showing that there was general agreement to make all decisions of the Brazilian parliament subject to open voting.

However, in practice, this was not confirmed. In the end, in 2022, twenty-one years after the movement began, the only change made was the establishment of open voting in cases involving the loss of a parliamentary mandate and the appreciation of presidential vetoes. This leaves no doubt that the proposal encountered resistance in both Houses of Congress, contrary to what the justifications suggested.

Thus, the parliamentary maneuvers that blocked the progress of legislative proposals aimed at eliminating secret voting and the resistance to their approval suggest that the arguments in favor of the change did not reflect the true intentions. Similarly, the limitation of open voting to cases involving the loss of parliamentary mandates and the overturning of presidential vetoes represents a

limitation to the claim that secret voting is incompatible with democracy, especially when other circumstances still remain under the secret voting regime in the constitutional text.

CONCLUSION

According to the justifications for the proposals presented in both Houses of the Legislative Branch, the change in the voting modality could increase the number of mandate revocations. This would have changed the outcomes of the processes related to the loss of parliamentary mandates that were being processed in the Ethics Council of the Chamber of Deputies. It would also increase transparency and provide better control over the representatives' actions by their constituents.

Indeed, it was possible to observe changes in the outcomes of the processes that went through the Ethics Council of the Chamber of Deputies after the adoption of open voting. However, contrary to what was proposed in the speeches that supported the parliamentary initiatives, there was a decrease in the number of mandate losses, especially when compared to the number of representations, and an exponential increase in preliminary dismissals, far from the transparency and control that were advocated.

It can be argued that, contrary to the claims made in the speeches, the establishment of open voting in cases concerning the loss of parliamentary mandates, in addition to enabling control by constituents, also allowed for control over the actions of parliamentarians by their peers and political leaderships. This social and political control may have inhibited parliamentarians in their decisions. While social inhibition is legitimate in a representative democracy, political inhibition is a serious issue, as it prevents the freedom of conviction of the parliamentarian and may even compel them to decide against the interests of their constituents in order to cater to the interests of their parties.

Similarly, the increase in preliminary dismissals, even though it could be attributed to potentially unfounded representations, when considered in the broader context, shows the adoption of a strategy to avoid submitting representations to the plenary. In doing so, the need for parliamentarians to cast their votes openly is bypassed, preventing transparency.

In conclusion, the suppression of secret voting can be classified as a negative outcome. Especially considering that decisions began to concentrate in smaller groups of parliamentarians in private deliberations (Ethics Council), away from public debate, which certainly minimizes the control by constituents, weakening democracy and distorting the very essence of open voting.

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