

Independent candidacies for Speaker of the Chamber of Deputies: between the constitutional principle of party proportionality and the consolidation of parliamentary custom

Bruno Ávila

Master's student in constitutional law at the Brazilian Institute of Education, Development and Research (IDP). Specialist in constitutional law from IDP. Specialist in legislative law from IDP. Bachelor of Laws from the University of Brasília. Member of the Research Group Contemporary Perspectives of Constitutional Jurisdiction. Secretary-General of the Deputy Board of the Chamber of Deputies. E-mail: bruno.sampaio@camara.leg.br

Lucas Ribeiro Almeida Júnior

Master of Laws from the University of Pennsylvania Law School. Specialist in procedural law and public law. Bachelor of Laws from the University Center of the Federal District. Lawyer. Secretary-General of the Board of the Chamber of Deputies. E-mail: lucas.almeidajunior@camara.leg.br

Maxuel Christian da Silva Machado

Master's degree from the Haas School of Business at the University of California – Berkeley. Lawyer. Legislative consultant at the Chamber of Deputies. E-mail: maxuel.silva@camara.leg.br

Table of contents: 1. Introduction; 2. Principle of Proportionality; 3. The “snapshot” of the composition of Parliamentary Blocs; 4. The emergence of the customary norm; 4.1 Objections within the Chamber of Deputies; 4.2 Statements within the Supreme Federal Court; 5. Conclusions; References.

Abstract: This paper analyzed the compatibility between the constitutional rule establishing party proportionality in the composition of the Board of the Brazilian Chamber of Deputies and the customary practice – gaining normative force – that allows independent candidacies for the position of Speaker of the Chamber of Deputies, even when originating from parties other than those entitled to the seat based on proportional criteria. To this end, a methodological approach based on documentary and normative analysis was adopted, involving constitutional and procedural provisions, as well as parliamentary and judicial decisions and transcriptions of floor debates in the Chamber of Deputies. The research demonstrated that this practice emerged due to a normative gap regarding the moment when the party “snapshot” is set for the distribution of Board positions. Despite this gap being subsequently addressed by a procedural amendment, the practice became consolidated. The study concluded that the admissibility of independent candidacies does not, in itself, constitute a violation of the Federal Constitution or the Internal Rules of the Chamber of Deputies, as it is supported by legislative tradition and doctrinal interpretations. To substantiate this practice, the concept of defeasibility – broadly recognizing the possibility of flexibility in certain legal norms – and the principle of functional conformity – which guides the adaptation of institutional rules to parliamentary dynamics – were employed. However, it was argued that the formal codification of this matter, combined with deeper legal and political debate, could enhance predictability in the Chamber’s internal electoral process, optimizing the balance between the sovereignty of the House Floor and compliance with the constitutional principle of party proportionality.

Keywords: independent candidacies; party proportionality; parliamentary law; customary law; defeasibility; functional conformity.

1. Introduction

The election for the positions of the Board of Directors of the Chamber of Deputies is one of the most significant events of the Brazilian Parliament, as it defines the management structure responsible for both conducting the legislative work and the administrative services of the House¹. According to art. 14 of the Internal Regulations of the Chamber of Deputies (RICD), the Board is composed of a president, two vice-presidents, four secretaries and four alternate secretaries (Brazil, 2024a).

The composition of the Board complies with the principle of party proportionality, established in art. 58, § 1, of the 1988 Constitution, which determines that “in the constitution of the Boards and of each Committee, proportional representation of the parties or parliamentary blocs that participate in the respective House is ensured, as far as possible” (Brasil, 2024b). This principle is reinforced by art. 7, item I, and by art. 8, caput, both of the RICD, which regulate the internal electoral process and require that the parties or parliamentary blocs choose candidates for the positions distributed to them based on the principle of proportionality (Brasil, 2024a). These provisions attest to the structuring nature of proportionality in the internal electoral process for the positions of the Board of the Chamber of Deputies.

Despite this robust regulatory framework, consolidated political practice allows individual candidacies for the position of Speaker of the Chamber of Deputies, regardless of party affiliation or parliamentary blocs. This practice, which has become established as a *customary norm*², contrasts with the general rule of respect for party proportionality. This situation raises questions about whether the practice complies with constitutional and procedural norms and opens the way for a critical analysis of the relationship between positive law and parliamentary practices. In theory, if a candidate from a party other than the one who would be nominated for the position of Speaker of the Chamber of Deputies wins the election, the Board may have a composition that does not respect the aforementioned principle of proportionality.

This article aims to analyze the compliance of independent candidacies for Speaker of the Chamber with the constitutional and regulatory provisions, investigating the historical evolution of the customary norm that supports this practice. The principle of proportionality, the criteria for the composition of the Board and the implications of the admission of independent candidacies on the governability and legitimacy of legislative decisions will be examined.

The research adopts a normative and historical approach, based on the analysis of the relevant legal provisions, bibliographical review and documentary analysis in order to enable a case study of the emergence of the customary norm. The work is justified by the legal and political relevance of the topic, considering the challenges that the coexistence between positive and practical norms presents to the democratic organization of the Chamber of Deputies.

¹ Nascimento (2025) presents an exemplary list of constitutionally defined attributions for the Board of the Legislative Houses, such as the arrangement for the spontaneous appearance of authorities to present matters of relevance to their activities and the forwarding of written requests for information to the authorities of art. 50, § 2, of the Constitution.

² According to Nascimento (2025): “By custom, exceptionally for the position of president of the Board, the Chamber accepts individual candidacies from benches other than the one that would be entitled to the position. Even without any provision in the rules to this effect, the practice has historically been adopted.” Pinto (2009, p. 89) also mentions this custom without any provision in the rules.

2. Principle of Proportionality

The provision for proportionality in the representation of parliamentary committees has its origins in the 1934 Constitution, which, in its art. 26, determined the guarantee of proportional representation of the currents of opinion ³in the committees. From the 1946 Constitution onward, proportionality was established as a right of political parties.⁴

The Federal Constitution establishes, in art. 58, § 1, that “in the constitution of the Boards and of each Committee, proportional representation of the parties or parliamentary blocs that participate in the respective House shall be ensured, as far as possible” (Brazil, 2024b). This constitutional provision is the foundation for the application of the principle of proportionality in the Brazilian Legislative Houses. It seeks to ensure that the composition of the internal bodies reflects the representativeness of the various political groups present in Parliament.⁵

The principle of party proportionality, as applied in the composition of the Board of Directors of the Legislative Houses, does not operate in isolation, but is profoundly influenced and informed by other fundamental constitutional principles, notably the democratic principle and the principle of due legislative process.

The democratic principle, expressed in Article 1 of the Federal Constitution, establishes that all power emanates from the people, who exercise it through their elected representatives. Party proportionality, by ensuring that the composition of the Board reflects the political diversity of the House, promotes pluralist participation and representation of the different segments of society ⁶. This ensures that decision-making power is not concentrated in a single group but is distributed in a way that reflects the popular will expressed in the polls.

Proportionality, in this sense, is a mechanism to strengthen the legitimacy of the legislative process and prevent the dominance of circumstantial majorities that may not represent the diversity of interests in society. By ensuring that political minorities have their voices heard and their participation guaranteed, the principle of proportionality acts as an instrument to protect democracy.

In turn, the principle of due legislative process, although not explicitly named in the Constitution, is intrinsically linked to the principle of due legal process, contained in art. 5, item LIV, of the Federal Constitution, which, in its substantial dimension, requires that the legislative process, in all its phases, including the composition of its bodies, follows fair and reasonable procedures ⁷.

³ At that time, there was no regulation on the existence and activities of political parties, and the composition of the Chamber of Deputies included both representatives elected by the people, through the proportional system, and representatives of professional organizations, which is why proportionality concerns, at that time, currents of opinion (Ferraz, 2018, p. 1,170).

⁴ According to Ferraz (2018, p. 1,170), similar provisions are found, for example, in the Constitution of the Portuguese Republic (arts. 178, 2, and 180, 2, a), in the Fundamental Law of the Republic of Germany (art. 53-A), in the Spanish Constitution (art. 78.1), in the Constitution of Italy (art. 72), in the Constitution of the Republic of Angola (art. 100, 2) and in the Constitution of the Republic of Cape Verde (art. 159, 2).

⁵ For Moraes (2023, p. 925), proportionality aims to make Parliament as faithful a mirror as possible of the national party color, and it is natural that its internal bodies follow the same guideline.

⁶ Moraes (2023, p. 926) argues that the principle of proportionality ensures that Parliament (and in Parliament) has representation proportional to the number of votes obtained by each political party. Thus, citing Mirabeau, he argues that “Parliament should be a reduced map of the people”.

⁷ Novelino (2023, p. 488) emphasizes that “substantive due process of law is directed, in the first instance, at the legislator, constituting a limit to his/her actions, which should be guided by the criteria of justice, reasonableness and

The principle of proportionality, by determining the representation of the various political forces on the Board, ensures the participation of all relevant actors in the decision-making process. By ensuring that decisions are made in a transparent manner, this principle does not allow one group to arbitrarily control the legislative process but rather promotes a more equitable debate and fairer decision-making. The due legislative process, therefore, is realized in one of its facets through the observance of the principle of proportionality in the composition of the Board, which ensures that decisions are made with the participation of the main political forces represented in Parliament.

In this way, the interaction between proportionality, the democratic principle, and due legislative process creates a system in which the legitimacy of legislative decisions is reinforced. Proportionality promotes inclusion and pluralism; the democratic principle guarantees the legitimacy of representation; and due process ensures that decision-making is fair and transparent. Together, these principles form a solid foundation for building a legislative environment that respects constitutional values.

Leaving for the internal field corporis of the Chamber of Deputies, the RICD details the practical application of the principle of proportionality, by establishing in art. 8 that “in the composition of the Board, proportional representation of the parties or parliamentary blocs that participate in the Chamber will be ensured, as far as possible, and they will choose their respective candidates for the positions that, in accordance with the same principle, they are responsible for filling [...]” (Brazil, 2024a). In this sense, the political party with the largest number of deputies, or the largest party within the largest parliamentary bloc, would be given the first choice of position on the Board of Directors, which would naturally fall to that of President of the Board, as it is one of the positions of greatest constitutional relevance in the Brazilian Republic.

Proportionality, as a constitutional rule, is binding, that is, it does not allow for its arbitrarily disregard. However, as discussed in this article, the admission of individual candidacies for the Presidency of the Legislative Houses can be interpreted as a relaxation of this principle. This possibility, as will be demonstrated, is based on a custom consolidated in legislative practice ⁸. The analysis that follows seeks to investigate whether such customary practice finds support or contradicts the constitutional mandate, promoting a reflection on the compatibility between these normative elements.

3. The “snapshot” of the composition of Parliamentary Blocs

The definition of the “portrait” of the composition of the party benches in the Chamber of Deputies is a structuring element for the legislative organization and the proportional distribution of internal positions. According to art. 8, § 4, of the RICD, the size of the party benches is set, for the purposes of distributing positions in the Board, based on the results proclaimed by the Electoral Court, which reflect the number of deputies elected by each party. This definition remains valid throughout the legislature, disregarding any subsequent changes in party affiliation.

rationality”. If these criteria should guide the legislator's main activity, it is fair and appropriate that they also guide the internal processes of the Legislative Branch, notably the composition of the body that directs legislative work.

⁸ Carneiro, Santos and Netto (2024, p. 107), in a more grammatical interpretation of the Internal Regulations, state that the “tolerance of the Board of the Chamber in accepting, for the position of president, individual candidacies from benches other than the one that, by party proportionality (or agreement), is entitled to this position on the Board does not have regulatory support”. Such practice, then, would be based on “historical occurrences”.

However, for the distribution of positions on the Board of Directors, the RICD allows the formation of parliamentary blocs ⁹. In order to apply proportionality, these blocs must be formalized by two specific times, as established in art. 12, § 10, of the RICD: by February 1 of the first year of the legislature, for the election of positions on the Board for the first two years of the legislature; and by February 1 of the third year, for the election of positions on the Board for the second two years of the legislature.

Thus, the proportional composition, for the purposes of distributing positions on the Board, is static throughout each two-year period. There is, however, the possibility of the composition being changed by the formation of blocs at the beginning of the third year of the legislature. This characteristic allows a certain flexibility for internal adjustments, without distorting the size of the benches determined by the electoral result.

On this topic, part of the doctrine (such as Ferraz, 2018, p. 1,173) points out reservations regarding the distortions that the formation of parliamentary blocs can cause in the application of the principle of proportionality for the composition of the Boards of the Legislative Houses. In this sense, the formation of blocs in an opportunistic and casuistic manner, with the inclusion of parties with evidently divergent political orientations, could harm the clarity of political choices, making it difficult for society to understand the positions taken by the actors involved. Thus, there is a risk that the blocs function as mere instruments for obtaining privileged positions in Parliament, to the detriment of a more evident ideological or programmatic alignment. For this reason, it is warned that the procedural regulation on the formation of parliamentary blocs must be judicious, in order to avoid the inappropriate use of this mechanism of parliamentary action, preserving the integrity of the aforementioned principle of proportionality.

A similar criticism was made by Congressman Ibsen Pinheiro, President of the Chamber of Deputies during the 1993 Board election. As will be seen below, this was the first internal election in the Chamber of Deputies in which an independent candidacy for the position of President of the Chamber of Deputies was admitted by a parliamentarian whose bloc would not have the right to the vacancy under the purely proportional criterion¹⁰.

4. The emergence of the customary norm

The practice of admitting individual candidacies for the position of President of the Chamber of Deputies regardless of the candidate's party or bloc, although currently consolidated, is the result of a historical and political process ¹¹.

⁹ As Ferraz (2018, p. 1,172) points out, the constitutional right of parliamentary blocs to proportional representation in the Board of the Legislative Houses is an innovation introduced by the 1988 Constitution, since it was not present in previous constitutions. The formation of parliamentary blocs, however, is not regulated by the Constitution, but rather by the internal regulations of the Legislative Houses.

¹⁰ As the deputy said during the session in which the aforementioned electoral process took place: "The most the president can regret is that the Constitution [and he does so in his personal name] has given parliamentary blocs the same treatment as political parties. But this was a decision of the constituent, which we must respect" (Brasil, 1993, p. 121).

¹¹ According to Ferrara (1978, p. 143 et seq.) who taught about the importance of the process of understanding the historical process for understanding a given norm: "a norm of law does not spring forth from a jet, like Minerva armed with the head of Jupiter the legislator. Even when it deals with new relationships, regulation is often inspired by the imitation of other relationships that are already regulated in the system. [...] It is understood that a precious aid for the full understanding of a text comes from discovering its historical origin, and following its development and transformations, until the definitive arrangement of the subject in the present. Formulas and principles that, considered

As already mentioned, the rule of proportional representation in committees (including the understanding of the Board as a committee) comes from the 1934 Constitution. At that time, the constitutional norm provided for proportional representation in the composition of committees of the “currents of opinion” present in Parliament. Subsequently, the constitutions of 1946 and following defined the proportional composition of fractional bodies as a right of political parties. Currently, we have art. 58, § 1, of the Federal Constitution of 1988, which innovated by providing for the proportionality of parties or parliamentary blocs.

In the first election for the Presidency of the Chamber of Deputies after the promulgation of the Federal Constitution of 1988, in 1989, two candidates from the PMDB, the largest party at the time, ran – that is, there was no independent candidacy from another party. In the following election, in 1991, there was also no candidacy of this type, and the Presidency was contested by a single candidate, also from the PMDB.

It was only in 1993 that the first case occurred in which an independent candidacy from a party bloc was accepted, which would not have been entitled to the position according to the purely mathematical criterion of party proportionality. That year, the candidates for the position were Congressman Inocêncio Oliveira (PFL), from the parliamentary bloc formed by parties such as PFL, PTB and PRN, and Congressman Odacir Klein (PMDB), from the Democratic Parliamentary Bloc, formed by parties such as PMDB, PT and PSDB. Although the position, according to proportional logic, should have been occupied by Congressman Odacir Klein, from the Democratic Parliamentary Bloc, the candidacy of Congressman Inocêncio Oliveira was accepted, and he was ultimately elected president.

At the time, the then Speaker of the Chamber, Deputy Ibsen Pinheiro, justified the acceptance of the independent candidacy based on the “sovereignty of the Plenary”:

As the honourable deputies know, the Internal Regulations of the House, in compliance with the provisions of the constitutional text, determine the election of the new Board of Directors for the first fortnight of February.

[...]

The applicable rules of procedure allow the parties represented in the House and the blocs to form a multi-party Board that represents all parties. When this is the case, there are rules of procedure that express the proportion of each party or bloc in the composition of the Board. It was understood that, if this path had been followed, the rules of procedure regarding the composition of the multi-party slate would have been applied. This was the criterion that governed the selection of the Board whose term is ending today.

As is well known, a dispute has arisen over the presidency of the Chamber. I understand what the Regiment consecrate – nor it could be of mode diverse – the sovereignty of Plenary. This is not a sterile formulation regarding the sovereignty of the Plenary. Regarding Committees, for example, the sovereignty of the Plenary is limited, and the President of the Chamber may declare the Presidency of a Committee vacant if it does not correspond to the proportion between the parties. However, as for the Table Director, that is not the principle in force. Vigor the principle from the sovereignty of Plenary, what he must, both as possible, observe the proportionality. However, it is sovereign to deliberate in ways it deems convenient. (Brazil, 1993, p. 118, our emphasis)

Also in the same session, a point of order was raised by deputy Genebaldo Correia, on the same subject:

only from a rational point of view, seem like true enigmas, find the key to a solution in historical reason, in the recollection of conditions and concepts from a distant time that gave them a special appearance”.

Mr. President, I raise this point of order so that it may be recorded in the annals of this House. It has already been said here that Article 8 of the Internal Regulations establishes that 'the composition of the Board shall ensure, as far as possible, proportional representation of the Parties or Parliamentary Blocs that participate in the Chamber, ...' I also draw everyone's attention, Mr. President, to § 1 of that same article, which states the following:

'§ 1º Unless a different composition results from an agreement between the benches, the distribution of the positions on the Board will be made by the choice of the leaders, from the largest to the smallest representation, according to the number of positions corresponding to them.'

Mr. President, according to the House Rules, the Democratic Bloc is the majority bloc and, according to the provisions of Article 8, caput, and § 1, this bloc would be responsible, according to the tradition of this House, for nominating the candidate for the Presidency of the House.

Your Excellency understood it differently, leaving the decision the criterion of Plenary. We respect Your Excellency's resolution, but we would like to state on record in this House that it was the bloc to which Deputy Inocêncio Oliveira's candidacy belongs that broke the House's tradition, trampled the Regiment and established one new form of choice of president. (Brazil, 1993, p. 120, our emphasis)

Thus, deputy Genebaldo Correia recorded in the annals of the House the emergence of the new rule applicable to the election of president of the Chamber of Deputies.

Following the debates, then President Ibsen Pinheiro was even more explicit:

The Presidency reiterates that the conduct adopted arises from the interpretation of text regimental of what the Plenary and sovereign, including to violate the proportionality. If the Plenary had opted for a multi-party Board, then proportion would be considered. If there is a dispute, the Plenary is the one that can decide the issue sovereignly (Palmas). (Brazil, 1993, p. 121, our emphasis)

It is interesting to note the reason that led the then president to adopt such a position, which potentially violated the Constitution: at the time, there was no established rule that determined when the largest bench should be obtained for the purpose of distributing seats on the Board. This led to a political impasse and the solution adopted was the one already mentioned: to let the Plenary decide. In the words of the then candidate, deputy Odacir Klein:

Mr. President, I begin by congratulating you on your interpretation that the Plenary is sovereign to decide. Imagine Your Excellency if we stayed here discussing the date to establish which bloc holds the majority, or if we had to rely on a notary's decision. We understand – and the noble leader Genebaldo Correia has already spoken about this with great conviction – that ours is the majority. The members of the other bloc understand that theirs is the majority, in function of date, or of start or end of session legislative. It would be disastrous for the image of the Institution to have a dispute over this issue. We will witness here the most legitimate decision: the Plenary, through the 503 representatives of the Brazilian people, will choose the president of the Chamber of Deputies (Palmas). (Brazil, 1993, p. 121, our emphasis)

In 2005, the Chamber of Deputies approved a resolution that amended the RICD in order to fill the regulatory gap regarding the moment to obtain what was called in this work a “snapshot” of the composition of bloc and party benches for the purpose of distributing positions (Brasil, 2024a) ¹².

¹² Art. 12. The representations of two or more parties, by deliberation of their respective benches, may form a parliamentary bloc, under common leadership. [...] § 10. For the purposes of the provisions of § 4 of art. 8 and art. 26 of these Bylaws, the formation of the parliamentary bloc must be communicated to the Board by February 1 of the first year of the legislature, with regard to the Committees and the first two-year term of the Board, and by February 1 of the third year of the legislature, with regard to the second two-year term of the Board. (Paragraph added by Resolution No. 34/2005, in force as of February 1, 2007). (Brazil, 2024a, our emphasis)

Nevertheless, the practice inaugurated in 1993 (on a case-by-case basis, in order to resolve a specific political impasse) has become established as a custom with the force of a norm in the House. Despite this, the constitutionality of this practice is, in theory, debatable, since it implies a relaxation of the principle of proportionality established by the Constitution. This decision highlights the dynamics of negotiation and power in Parliament, but it also raises questions about its possible incompatibility with constitutional parameters.

4.1 Objections within the Chamber of Deputies

On several occasions, the Chamber of Deputies, through its Presidency, has ratified the legitimacy of the admissibility of individual candidacies such as those discussed in this work in decisions on points of order¹³. The following case is considered significant due to the way in which the issue was expressly questioned and answered.

This is Procedural Question No. 10494/2000 (Brazil, 2000). The author, Congressman Aloizio Mercadante, raised questions about the interpretation of the rules regarding party proportionality in the composition of the Board of the Chamber of Deputies. He highlighted that, while the RICD ensures proportional representation of parties “whenever possible”, the practice of individual candidacies for the Presidency of the Board had recently generated conflicts with this principle.

Mercadante recalled the disputes between Odacir Klein and Inocêncio Oliveira and between Luís Eduardo Magalhães and José Genoíno, to illustrate the variation in interpretations adopted regarding the impact of independent candidacies on the proportionality of the Board. According to Mercadante, proportionality was respected in the Klein-Oliveira case but not in the Magalhães-Genoíno case¹⁴, harming his party (Brazil, 1995).

The parliamentarian argued that independent candidacies for the Presidency, although permitted, could not interfere with the inalienable right of the parties to be represented on the Board of Directors in accordance with their proportionality. He argued that the dispute for the Presidency could not harm the parties in their prerogative to occupy proportional positions, under penalty of compromising the principles of representation, pluralism and diversity. Furthermore, Mercadante requested clarification from the Presidency of the House on the criteria for determining the largest party and proportionality and questioned whether these definitions would be set at the beginning of the legislature (January 1) or at the beginning of voting (February 1).

In his argument, the author expressed himself on the topic addressed in this work:

[...] the only possible dispute is when there is more than one candidate from the same bench; then, yes, it is a dispute in which the Plenary can give its opinion. Otherwise, in our view, the Board

¹³ Despite the undeniable political bias, decisions on points of order also have the nature of legal decisions in terms of preserving the autonomy of the law and the incompatibility with discretion, since they are legally linked to procedural, legal and constitutional rules (Sampaio, 2024). In this sense, this paper uses decisions on points of order to identify how the Chamber of Deputies legitimately interprets the procedural and constitutional provisions regarding individual candidacies for president of the House and proportionality in the composition of the Board.

¹⁴ In the year of the aforementioned dispute, the Workers' Party presented two candidates for the Board: one to which it would be entitled according to party proportionality (3rd secretary) and another, an independent candidate, for the position of president. Since, according to the mathematical criterion, the party was only entitled to one vacancy, the candidacy for the position of secretary was rejected. Since the independent candidate for president was not elected, the party was left without representation on the Board for that two-year period. The issue was taken to the Supreme Federal Court in the form of a writ of mandamus, which was not heard because it was an internal corporate matter (Brazil, 1995).

cannot even accept nominations of candidates who may violate the proportionality established for all instances of this Institution. (Brazil, 2000)

In the decision on the aforementioned point of order, Congressman Michel Temer, then President of the Chamber of Deputies, after discussing the need to observe party proportionality in the distribution of positions on the Board, reiterated the general rule regarding individual candidacies, but immediately confirmed the exception to this rule for the position of President:

[...] any candidate may run for the positions on the Board that fit your representation, by means of written communication to the President of the Chamber, ensuring the same treatment as other candidates.

[...]

Exceptionally, to the position of president, other individual candidacies offered by any other deputies interested parties, as a result of their personal initiative, that is, without indication of party leadership. (Brazil, 2000, our emphasis)

Congressman João Herrmann filed an appeal with the Plenary, after hearing the Committee on Constitution and Justice and Drafting (CCJR), against the aforementioned decision on a point of order, specifically regarding the admissibility of individual candidacies for the position of Speaker of the House, regardless of the candidate's party (Brasil, 2001a, p. 639). The appeal received an opinion from the CCJR, which concluded that it should not be accepted (Brasil, 2001b). However, this opinion was never deliberated by the committee, and the appeal ended up being achieved at the end of that legislature, maintaining the understanding espoused in the decision on the point of order.

The decision on Point of Order No. 374/2009 was also in the same sense, in which it was reaffirmed that

[...] since 1991, in the specific case of the Presidency, individual candidacies of any deputy for president have been admitted. Therefore, the decision of the Board is not to change, at this time, what has become, through practice, the rule [...] at this time, in view of the jurisprudence created by successive decisions, my decision is this. (Brazil, 2009)

4.2 Statements within the Supreme Federal Court

The Minister of the Federal Supreme Court (STF) Gilmar Mendes, in his vote in ADI 6524 (Brazil, 2020) ¹⁵, discussed the constitutionality of the admissibility of individual candidacies for the Presidency of the Legislative Houses, highlighting that such practice has been consolidated as an element of Brazilian parliamentary law.

According to his argument, although a literal reading of art. 58, § 1, of the Federal Constitution, as well as art. 8 of the RICD, emphasizes the observance of proportionality in the composition of the Board, the customary practice of individual candidacies would reflect the sovereignty of the Plenary and the need to adapt the rules to concrete political dynamics. This practice, according to the minister, encourages the presentation of candidates who best represent the average thinking of the House, preventing partisan agreements from resulting in the imposition of names disconnected from parliamentary interests.

¹⁵ The topic discussed in ADI 6,524 was the possibility of re-election of the presidents of the Legislative Houses in the same legislature, notwithstanding the provisions of § 4 of art. 57 of the Constitution. Minister Gilmar Mendes, the rapporteur, used the case of independent candidacies as an argument to defend that the interpretation of constitutional and regulatory norms cannot be done in a merely literal way, especially when it comes to parliamentary law (Brazil, 2020).

The minister used the concept of “defeasibility” in his vote as a vector to understand what he considers to be the correct constitutional interpretation of the aforementioned provisions in the parliamentary sphere. According to the vote, defeasibility refers to the idea that legal norms are not absolute but rather defaults that regulate the majority of normal cases, without necessarily offering definitive solutions for all exceptional situations. This flexibility allows Parliament to adapt to complex political realities without the need to formally change its norms, which, in the specific case of individual candidacies, ensures the functionality of the legislative process and institutional autonomy.

For the minister, requiring a formal review of standards as a response to each specific dysfunction would be impractical, given the difficulty of approving constitutional amendments and the risk of political-institutional impasses.

Additionally, the minister invoked the principle of functional conformity, which sets limits on the adaptation of rules and protects the balance between the Powers. This principle prevents any political party or group from being granted an advantage that could not be obtained through the normal development of the political game. In the context of individual candidacies, functional conformity ensures that the constitutional interpretation does not eliminate *ex ante* the space for institutional conformation necessary for parliamentary deliberation, respecting internal political dynamics without compromising the fundamental principles of the legal system.

When articulating the concepts of defeasibility and functional conformity, Gilmar Mendes argued that the customary practice of accepting independent candidacies does not violate the principle of proportionality but rather strengthens the deliberative capacity of Parliament. The minister emphasized that the general rule of proportionality increases the political costs of independent candidacies, but does not make them unfeasible, allowing Parliament to balance concrete political interests and institutional stability. Thus, the customary practice, far from being an affront to the constitutional text, is presented as a functional solution that harmonizes the principles of legislative autonomy and proportionality.

Although in the aforementioned ADI the STF did not directly express itself on the constitutionality or otherwise of this customary rule of Brazilian parliamentary law, the argument presented by the reporting minister, with which the authors of this work agree, substantiates the compatibility of this practice with the Federal Constitution.

5. Conclusion

The analysis developed in this article allowed us to understand the tension between the constitutional rule that establishes party proportionality in the composition of the Board of the Chamber of Deputies and the customary practice that allows individual candidacies for the position of Speaker of the House, even if from a party or parliamentary bloc different from the one to which the position would be held by the literal application of party proportionality. Through a methodological approach based on documentary and normative analysis that involves constitutional, procedural and case law provisions, in addition to parliamentary decisions and historical debates, it was possible to identify the consolidation of this practice and its respective legal repercussions.

The research showed that the so-called “portrait” of the party composition and parliamentary blocs plays a fundamental role in the distribution of positions on the Board of Directors and is a structuring criterion of the representative model adopted by the Brazilian Parliament. As seen, the regulatory gap regarding the moment in which this “portrait” is established is at the origin of the customary rule

regarding the admission of individual candidacies for the position of President of the Chamber of Deputies.

The authors of this study consider that the consolidated practice of admitting individual candidacies does not, in itself, represent a violation of the Federal Constitution or the RICD. The interpretation that underpins its admissibility, especially based on the sovereignty of the Plenary and the malleability of parliamentary law, is supported by legislative tradition and also by the vote of a minister of the Supreme Federal Court – even though there is no specific case law on the subject.

However, it is understood that any positive normative adoption, accompanied by a more in-depth legal and political debate on the subject, could contribute to the consolidation of a model that balances, in a more transparent manner, the sovereignty of the Plenary with the need to preserve the party representation provided for in the Constitution. Given the dynamic nature of the political scenario, it is considered essential that Parliament periodically evaluate its internal mechanisms to ensure the legitimacy and functionality of its decisions.

References

BRAZIL. Chamber of Deputies. Diário da Câmara dos Deputados. Brasília, Feb. 7, 2001a. Available at: <https://imagem.camara.gov.br/Imagem/d/pdf/DCD07FEV2001.pdf>. Accessed on: Jan. 28, 2025.

BRAZIL. Chamber of Deputies. Opinion on Appeal No. 118/2001. Brasília, Feb. 13, 2001b. Available at: https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=422757&filename=Tramitacao-REC%20118/2001. Accessed on: Jan. 28, 2025.

BRAZIL. Chamber of Deputies. Regimento Interno da Câmara dos Deputados. Brasília: Documentation and Information Center of the Chamber of Deputies, [2024a]. Available at: <https://www2.camara.leg.br/atividade-legislativa/legislacao/regimento-interno-da-camara-dos-deputados/arquivos-1/RICD%20atualizado%20ate%20RCD%2011-2024.pdf>. Accessed on: Jan. 24, 2025.

BRAZIL. Chamber of Deputies. Point of Order No. 10.494/2000. Brasília, Nov. 28, 2000. Available at: <https://www.camara.leg.br/buscaQordem/>. Search parameters: “number” = “10.494”. Accessed on: Jan. 28, 2025.

BRAZIL. Chamber of Deputies. Point of Order No. 374/2009. Brasília, Feb. 2, 2009. Available at: <https://www.camara.leg.br/buscaQordem/>. Search parameters: “number” = “374”, “year” = “2009”. Accessed on: Jan. 28, 2025.

BRAZIL. National Congress. Diário do Congresso Nacional. Brasília, Feb. 3, 1993. Available at: <https://imagem.camara.gov.br/Imagem/d/pdf/DCD03FEV1993.pdf>. Accessed on: Jan. 24, 2025.

BRAZIL. Constitution of the Federative Republic of Brazil. Brasília: Presidency of the Republic, [2024b]. Available at: https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: Jan. 24, 2025.

BRAZIL. Supreme Federal Court. Mandado de Segurança No. 22183-6 DF. Full judgment. Rapporteur: Justice Maurício Corrêa. Brasília, Apr. 5, 1995. Available at: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=85696>. Accessed on: Jan. 28, 2025.

BRAZIL. Supreme Federal Court. Vote of the Rapporteur in ADI 6524. Rapporteur: Justice Gilmar Mendes. Brasília, Dec. 4, 2020. Available at: <https://sistemas.stf.jus.br/repgeral/votacao?texto=5153026>. Accessed on: Jan. 28, 2025.

CARNEIRO, André Corrêa de Sá; SANTOS, Luiz Claudio Alves dos; NÓBREGA NETTO, Miguel Gerônimo da. Curso de Regimento Interno da Câmara dos Deputados. 7th ed. Brasília: Edições Câmara, 2024. E-book. (Coleção Prática Legislativa, no. 3).

FERRARA, Francesco. Interpretação e aplicação das leis. 3rd ed. Coimbra: Arménio Amado, 1978.

FERRAZ, Anna Candida da Cunha. Comentário ao § 1º do artigo 58 da Constituição. In: CANOTILHO, J. J. Gomes; MENDES, Gilmar Ferreira; SARLET, Ingo Wolfgang; STRECK, Lenio Luiz. Comentários à Constituição do Brasil. 2nd ed. São Paulo: Saraiva Educação, 2018. (Série IDP).

MORAES, Alexandre de. Direito constitucional. 39th ed. São Paulo: Atlas, 2023.

NASCIMENTO, Roberta Simões. Eleições da Mesa das Casas Legislativas – parte 1: regras e costumes do processo na Câmara e no Senado. 2025. Portal Jota. Defensor Legis column. Available at: <https://www.jota.info/opiniao-e-analise/columnas/defensor-legis/eleicoes-da-mesa-das-casas-legislativas-parte-1>. Accessed on: Jan. 24, 2025.

NOVELINO, Marcelo. Curso de direito constitucional. 18th ed. Salvador: JusPodivm, 2023.

PINTO, Júlio Roberto de Souza. Poder Legislativo brasileiro: institutos e processos. 1st ed. Rio de Janeiro: Forense, 2009.

SAMPAIO, Bruno Ávila da Mata; SAMPAIO, Marília de Ávila e Silva. Paradigma da decisão e discricionariedade na interpretação dos regimentos internos do Poder Legislativo: o interstício entre os turnos de deliberação de propostas de emenda à Constituição. XII Fórum de Lisboa, Lisbon, 2024. Abstract presented at the event. Proceedings are not yet published.