

IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

IN THE MATTER OF INTERPRETATION OF)
SOUTH DAKOTA CONSTITUTION) REQUEST OF LARRY RHODEN
REGARDING PRESIDENT OF THE) GOVERNOR OF SOUTH DAKOTA
SENATE'S POWER TO VOTE ON FINAL) FOR AN ADVISORY OPINION
PASSAGE OF LEGISLATION IN THE CASE)
OF A TIE)

COMES NOW, I, Larry Rhoden, Governor of the State of South Dakota, and pursuant to the authority vested in the Governor under Article V, § 5 of the South Dakota Constitution, and on this solemn occasion, hereby request an advisory opinion of the Supreme Court regarding the question of law set forth below.

BACKGROUND

1. January 13, 2026 was the first day of the 101st Legislative Session. Due to illness, the Senator from District 12 has not been present and may not likely return during the regular session. This excused absence leaves an even number of senators when all others are present.

2. On January 22, 2026, the 6th Legislative Day, a vote on final passage of Senate Bill 25 (as amended) resulted in a tie vote of 17 yeas, 17 nays, and 1 excused. Given the tie vote, the President of the Senate, Lt. Governor Tony Venhuizen, cast a tie-breaking vote in favor of the bill and declared it to have passed. Consistent with Senate rules, a senator noted an intent to move to reconsider the result by which Senate Bill 25 had passed, which could be taken up the following legislative day.

3. On January 23, 2026, the 7th Legislative Day, before a motion to reconsider Senate Bill 25 was offered, Senator Chris Karr raised a point of order questioning the President's declaration that the day before Senate Bill 25 had passed. President Venhuizen explained the rationale for his ruling, after which Senator Karr challenged the President's ruling and explained his rationale.

4. On a roll call vote, the Senate voted to support Senator Karr's challenge, overruling the President. This meant that the President's "yea" vote on Senate Bill 25 was not counted, and the President declared that Senate Bill 25 had failed by a vote of 17 yeas, 17 nays, and 1 excused. At this point, a Senator gave notice of intent to reconsider the vote. (This entire exchange can be viewed on South Dakota Public Television's archived video of the State Senate Session at <https://www.youtube.com/watch?v=aCu2T1BTtPY> beginning at 34:40.)

5. Any future tie vote on final passage of a bill in the Senate will present an opportunity for this procedural uncertainty to be repeated. This circumstance is made more likely due to the continued absence of the Senator from District 12, which means Senate votes will typically include an even number of Senators voting. Each future

instance of a tie will require a ruling from the President, and if that ruling is challenged, a vote by the Senate.

6. Judicial interpretation would bring clarity and certainty to this matter going forward. At this early juncture of the legislative session, the Senate is likely to cast several hundred more roll call votes, many of them on final passage of bills.

QUESTION OF LAW

This is a pure question of law, with no factual dispute, regarding how to reconcile two provisions of the South Dakota Constitution.

Article III, § 18 requires, in part, that “no law shall be passed unless by assent of a majority of all the members elected to each house of the Legislature.”

Article IV, § 5 specifically authorizes and grants that “[t]he lieutenant governor shall be president of the senate but shall have no vote unless the senators be equally divided.”¹

On this solemn occasion the Governor requests the advisory opinion of the Chief Justice and the Associate Justices of the South Dakota Supreme Court on this question:

Does the state Constitution grant the Lieutenant Governor while serving as the President of the Senate the authority to cast a tie-breaking vote on final passage of a bill or joint resolution in the Senate?

The Governor may “require opinions of the Supreme Court upon (1) important questions of law involved in the exercise of [the governor’s] executive powers and (2) upon solemn occasions.” S.D. Const. Art. V, § 5. Answering an advisory opinion request is discretionary when one of these situations are met. *In re Noem*, ¶ 8, 950 N.W.2d at 680 (citing *In re Daugaard*, 2011 S.D. 44, ¶ 4, 801 N.W.2d 438, 439).

This is indeed a solemn occasion, a matter of great public importance, and of significant impact on state government.

Clarity as to the constitutionality of final passage of legislation is important to the rule of law and the need for clarity presents an important and solemn occasion. “It is in the public interest that there be a proper method to break deadlocks and to avoid impasse in the Senate. This was the rationale for vesting in the Vice President the casting vote in the United States Senate: ‘to secure at all times the possibility of a definitive resolution of the body.’ The Federalist Papers, No. 68: Hamilton. The more important the matter pending for decision, the more essential such tie-breaking device is

¹ Note that no question has been raised as to the Lieutenant Governor’s constitutional authority as President of the Senate to cast a tie-breaking vote in matters other than the final passage of legislation.

to the public welfare.” *Opinion of the Justs.*, 225 A.2d 481, 485 (Del. 1966) (considering whether the Lieutenant Governor can cast tie votes on final action).

The merits of Senate Bill 25 are irrelevant to this question. No private right is at issue. While there is urgency in answering this question early in this Legislative Session, there is sufficient time to interpret and reconcile Article III, Section 18 with Article IV, Section 5, so that the State Senate can move forward with clarity as to the scope of the constitutional grant of power to the Lieutenant Governor to cast tie-breaking votes.

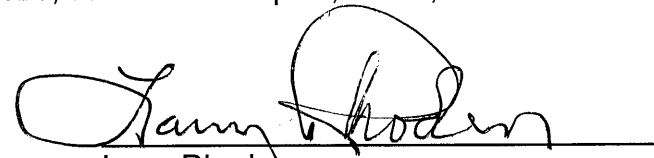
An advisory opinion from the Court is the only realistic way to resolve this question during the current Legislative Session. It has been the Court’s common practice to issue advisory opinions without briefing or oral argument. *See contra In re Noem* (distinguished as considering fact-intensive questions affecting the interests of many individual legislators and potential legislators.)

A resolution as to the fate of Senate Bill 25 would not render this request moot. This matter presents a classic example of a question that is “capable of repetition, yet evading review.” *see e.g. FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007). A tied vote on final action of any given piece of legislation requires a decision by the Lieutenant Governor within a few seconds, and even if that result is reconsidered it will be resolved within a few legislative days. But resolution of one piece of legislation does nothing to answer this question when a tie vote on the next bill occurs.

In 1991, the Court was asked to review a different clause of Article III, Section 5 and declined because the Governor’s ability to request an advisory opinion “is confined exclusively to such questions as may raise a doubt in the executive department, never in the legislative.” *Matter of Constr. of Article III, Section 5, of the S. Dakota Const.*, 464 N.W.2d 825, 826 (S.D. 1991) (citing *In re Construction*, 3 S.D. at 551, 54 N.W. at 652). That request was exclusively a legislative question of reapportionment of districts and had no intersection with the executive branch. In contrast, this question relates to a provision of the executive article and to the power of the Lieutenant Governor, a member of the executive branch, to cast tie-breaking votes as President of the Senate. If a tie-breaking vote cannot be cast for final passage, it will be impossible for any such piece of legislation to pass the legislature and be presented to the Governor for signature or veto, which would otherwise present an additional instance of an exercise of executive power that would justify a solemn occasion and a request for an advisory opinion from the Court.

For these reasons, on this solemn occasion I respectfully request an advisory opinion from the South Dakota Supreme Court.

Dated this 26th day of January, 2026, at the State Capitol, Pierre, South Dakota.


Larry Rhoden
Governor