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# Impeachment with impunity throws spanner into Brazil's recovery

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A manoeuvre orchestrated behind the scenes to water down the August 31 decision by Brazil's Senate to remove President Dilma Rousseff from office threatens to plunge Brazil back into the crisis of governability that her impeachment was supposed to resolve.

It could prolong the transition period from Rousseff to the new president, Michel Temer, and erode the new leader's efforts to gain legitimacy. It has exposed latent tensions in the coalition of parties that backs Temer and has put the country's Supreme Court on the spot. It threatens to undermine Temer's efforts to get the country out of its deepest and longest recession, as he strives to convince investors that Brazil is a stable democracy governed by the rule of law. Unless it is resolved, it could end in Rousseff being restored to power by November, with the economic and financial meltdown such an outcome would bring with it.

Brazil's Supreme Court will now have to review the Senate's vote to impeach Rousseff by an overwhelming majority of 61 to 20 – a task the justices would rather avoid as it will test the Court's own credibility as the only one of the three powers of the Brazilian Republic that enjoys wide public support.

The Senate's unexpected ruling, which spared Rousseff from punishment for the crimes of which she was convicted, was allegedly concocted by her Workers Party with the help of Senate president Renan Calheiros and with the blessing of Supreme Court president Ricardo Lewandowski, who chaired the impeachment hearings.

It resulted from a highly controversial decision presented by Lewandowski in the final moments of the trial. Based on a novel interpretation of article 52 of the Brazilian Constitution, the ruling split the verdict into two separate decisions: one on the president's removal from power, the other on its legal consequences, which include being barred from public office for eight years, as mandated by the constitution.

Two senior members of the Supreme Court and a plethora of jurists lost no time in pointing out the unconstitutionality of the move.

“Article 52 of the Constitution is a unitarian structure, indivisible, indecomposable,” said the dean of the Court, Celso de Mello, a normally cautious judge who avoids the spotlight but was alarmed enough by the implications of the Senate decision to volunteer his opinion to the media. The suspension from public office for eight years, he said, “is a natural consequence... and the necessary effect” of the Senate's guilty verdict.

Justice Gilmar Mendes called Lewandowski's move “bizarre, to put it politely”, saying it would not pass “a

kindergarten-level test of constitutional law". Mendes, Mello and their nine colleagues in the Supreme Court will decide on the matter in the coming weeks.

By the end of last week, 10 appeals had been filed. One came from Rousseff's lawyers, arguing for an annulment of her removal from office. The others asked that the second ruling be struck down. The strongest appeals came from the pro-Temer PSDB party, which went back and forth on the decision under mounting pressure from its militants and from public opinion.

In the end, the PSDB's appeal was endorsed by all the major parties in the new government's coalition, including the PMDB of Temer and Calheiros. Yet the PMDB only joined the appeal after much hesitation and following a denial by Temer's office of reports that he had signed off on the manoeuvre to give Rousseff a free pass. This suspicion was reinforced by the ongoing pressure from leaders of his party to undermine Lava Jato, the criminal investigation of systemic corruption involving state oil giant Petrobras, and to reassert Brazil's tradition of impunity for people in high places.

One of these, Calheiros, is under investigation by Lava Jato. Temer and some of his ministers have been cited as beneficiaries of tainted money in plea agreements. All deny the allegations. Undermining Lava Jato would benefit them directly, while the free pass for Rousseff could clear the way for others to escape punishment.

Eduardo Cunha, the former speaker of the Chamber of Deputies, who was removed from office by the Supreme Court in May after being indicted by Lava Jato, was reportedly in upbeat mood following the Senate vote. The Chamber is set to vote on September 12 on his expulsion from the house. Former Senator Delcídio Amaral, who was arrested last November by Lava Jato and later expelled from the Senate, saw the impeachment decision as grounds to prepare a comeback. Recently indicted by the Federal Police, along with former president Luiz Inácio Lula da Silva and Rousseff, for attempting to obstruct Lava Jato, Amaral asked the Supreme Court last Friday to reinstate his eligibility for public office on the grounds that the separation of guilt from punishment in Rousseff's case should apply to him, too.

Striking down the vote that preserved Rousseff's political rights is easier said than done. The former president's lawyers, and even one lawyer that co-sponsored the action for her removal, say the Court cannot cancel just one of the two votes. One alternative would be to order the Senate to vote again, in the manner as mandated by the Constitution.

But there is no guarantee that, under this format, the required two-thirds or 54 of the 81 senators would vote to remove Rousseff from office. If they failed to do so, she would be reinstated and Temer would go back to being vice-president. Rousseff could also be reinstated if the appeal is not resolved before November 12, when the six months allowed for the impeachment process runs out. In either case, the economy, which has started to recover, would be likely to spiral into a meltdown.

The difficulty of the decision facing the Supreme Court may explain why leaders of the PMDB decided to join an appeal against a decision their senators supported. They may have concluded that the Court will not get involved and will reject all appeals. This would give them perfect political cover.

It would also strengthen Rousseff's argument that the impeachment was, as she has insisted all along, a conspiracy to remove her from power and undermine Lava Jato – a narrative that could also help the Workers Party's post-impeachment strategy to get out of the political hole it dug for itself and go on the offensive against the Temer.

Under Lula's orders, the party last week reversed its opposition to a referendum on a constitutional amendment allowing early presidential elections, supported by public opinion.

Clever calculations by discredited politicians could, however, be undone by the two women and two men who will lead the Supreme Court when it deliberates on the impeachment appeals.

Justice Carmén Lúcia Antunes Rocha will replace Lewandowski as president of the Court on Monday. She is not a judge to be taken for a ride by politicians. Minister Cármen Lúcia, as she likes to be addressed, made her mark last November at a crucial moment of the investigations. "Crime will not prevail over Justice", she wrote in support of a decision that sent then senator Amaral and others to jail. She also warned "the sailors in the murky waters of corruption and inequities" that their crimes would not go unpunished.

Justice Teori Zavascki, who supervises the Lava Jato, and Edson Fachin, the newest member of the Court, will report on the two appeals asking that the whole process of impeachment be thrown out or that senators vote again.

Justice Rosa Weber will report on the eight appeals that seek the annulment of the separate Senate vote to spare Rousseff from punishment. Weber's reputation as a technical judge comes from the guilty verdicts and prison sentences she handed down four years ago against Workers Party leaders accused of corruption in the watershed trial on a scandal that preceded the Petrobras case.

She was assisted in that case by a young federal judge – Sérgio Fernando Moro, who has since gained the admiration of Brazilians as the first-level judge of dozens of those accused by the Lava Jato.

Judge Moro has done more than any other single judge to burnish the newly-enhanced reputation of Brazil's justice system. The Supreme Court may feel compelled to build on his good work.

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