I assent.

(L.S.)   Edward Fenech Adami
President

28th September, 2007

ACT No. XXI of 2007

AN ACT to further amend the Constitution

BE IT ENACTED by the President, by an with the advice and consent of the House of Representatives, in the present Parliament assembled and by the authority of the same, as follows:-

1. The short title of this Act is the Constitution of Malta (Amendment) (No. 2) Act, 2007 and the Act shall be read and construed as one with the Constitution of Malta, hereinafter referred to as "the Constitution". Short title.

2. Article 61 of the Constitution shall be amended as follows: Amendment of article 61 of the Constitution.

(a) in the proviso to sub-article (4) thereof, for the words "other relevant factors." there shall be substituted the words "other relevant factors:" and immediately thereafter there shall be inserted the following new proviso:

"Provided further that the Island of Gozo and the islands of the Maltese Archipelago other than the Island of Malta shall together be treated as one electoral division and may not be divided between two or more electoral divisions."< and

(b) immediately after sub-article (4) thereof there shall be inserted the following new sub-articles:

"(4A)   The boundaries of electoral divisions for the purpose of any general elections to be held after the dissolution of Parliament after the 1st of September 2007 shall be those boundaries as existing on that date with such adjustments made in accordance with the provisions of the proviso to sub-article (4B) of this article as may be necessary in order that the electoral divisions for those elections shall comply with the provisions of the second proviso of sub-article (4) of this article and of article 61A of this Constitution.

(4B)   Notwithstanding the provisions of sub-article (1) of this article, the Electoral Commission shall not review the boundaries of the electoral divisions as existing on the 1st of September 2007 except until after the general elections to be held immediately after the dissolution of Parliament immediately after that date which review shall take place at such intervals from the date of the publication of the official result of those elections as provided in sub-article (1) of this article or as otherwise required by the provisions of the same sub-article:

Provided that the Electoral Commission shall by the 30th September 2007 review the boundaries of the electoral divisions to the extent necessary, and only to such extent, to make such adjustments to the said boundaries in order that the electoral divisions for the purpose of those elections shall comply with the provisions of sub-article (4) of this article< and these adjustments sha;;, notwithstanding any other provision of this article, come into force upon the publication of the register as correct on the 30th September, 2007.".

3.   Immediately after article 61 of the Constitution there shall be inserted the following new article:

Addition of new article 61A to the Constitution.

"Gozo and the islands of the Maltese Archipelago other than the Island of Malta not to be divided.

61A.   (1)   The following provisions of this article shall apply if, when reviewing the boundaries of the electoral divisions in accordance with the provisions of article 61 of this Constitution, the Electoral Commission would, but for the provisions of the second proviso of sub-article (4) of the same article, have had to divide the Island of Gozo and the islands of the Maltese Archipelago other than the Island of Malta, or any part thereof, between two or more electoral divisions.

(2)   The Electoral Commission shall:

(a)   establish the Island of Gozo together with the islands of the Maltese Archipelago other than the Island of Malta as one electoral division< and

(b)   apply the provisions of sub-articles (4) and (5) of article 61 of this Constitution only with reference to the voters and divisions on the Island of Malta without including in its calculations the division consisting of Gozo and the other islands of the Maltese Archipelago or the voters therein.

(3)   For the purposes of paragraph (b) of sub-article (2) of this article, when calculating the number of voters in each electoral division on the Island of Malta the total number of electoral divisions shall be the number of electoral divisions established by article 17 of the General Elections Act minus one.".

Cap. 354.

4.   Article 52 of the Constitution shall be amended as follows:

"Amendment of Article 52 of the Constitution.

(a) the proviso to sub-article (1) thereof shall be substituted by the following:

"Provided that where -

(i)   at any general election, a political party (hereinafter referred to in this article as the "absolute majority party") obtains in the aggregate more than fifty per centum of all the valid votes cast at that election, as credited to its candidates by the Electoral Commission at the first count of all the votes; or

(ii)   at a general election which is contested by more than two political parties and in which only candidates of two of such parties are elected, a political party obtains a percentage of all the valid votes cast at such election, as credited to its candidates by the Electoral Commission at the first count of all the votes (hereinafter also referred to in this article as the "relative majority party"), which is greater than that obtained by any one other party (hereinafter referred to in this article as the "minority party"),

and the proportion which the number of the elected candidates credited to the absolute majority party or to the relative majority party (as the case may be) represents in relation to the total number of elected members of the House of Representatives is less than the proportion which the number of votes credited to such candidates at the first count of all the votes represents in relation to the total of the votes credited at the same first count of all the votes to all the candidates of all the parties electing candidates, the number of the elected candidates of such party shall be increased (as the case may be) by a number of additional candidates in the circumstances as determined by and in accordance with the provisions of Part IV of the General Elections (Sorting of Ballot Papers, Casual Elections and Co-opting) Regulations 1991 in the Thirteenth Schedule to the General Elections Act and the Annex to such Schedule (hereinafter referred to as "the relevant regulations") as in force on 30th September 2007 or as subsequently amended or substituted in the manner provided in sub-article (3):

Provided further that:

(i) in the eventuality of an election result as provided for in sub-paragraph (i) of the first proviso to this sub-article but provided there is only one minority party; or

(ii) in the eventuality of an election result as provided for in sub-paragraph (ii) of the first proviso to this sub-article

and the proportion which the number of elected candidates credited to the minority party represents in relation to the total number of elected members of the House of Representatives is less than the proportion which the number of votes credited to all its candidates at the first count of all the votes represents in relation to the total of the votes credited at the same first count of all the votes to all the candidates of all the parties electing candidates, the number of the elected candidates of the minority party shall be increased by a number of additional candidates as determined by the relevant regulations as in force on 30th September 2007 or as subsequently amended or substituted in the manner provided in sub-article (3).

In any case as forseen in the first and second proviso to this sub-article, such persons shall be declared by the Electoral Commission to be elected to fill the additional seats created by the said provisos who, being candidates of the party which is to be credited with the additional seats, were credited by the Electoral Commission at the last count with the highest or next higher number of votes without being elected, irrespective of the division in which such highest or higher number of votes occurs.";

(b) immediately after sub-article (2) thereof there shall be inserted the following new sub-article:

"(3) The provisions of Part IV of the General Elections (Sorting of Ballot Papers, Casual Elections and Co-opting) Regulations, 1991 in the Thirteenth Schedule to the General Elections Act and the Annex to such Schedule, as in force on the coming into force of this sub-article may only be deleted, amended or substituted by a bill for an Act of Parliament passed in the manner specified in sub-article (2) of article 66 of this Constitution.".

5. In sub-paragraph (f) of sub-article (1) of article 54 of the Constitution for the words "imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;" there shall be substituted the words "imposed on him by such a court;". *Amendment of article 54 of the Constitution.*

6. Immediately after the proviso to paragraph (b) of sub-article (10) of article 56 there shall be inserted the following new proviso to the said sub-article (10): *Amendment of article 56 of the Constitution.*

"Provided that where a person is by reason of blindness unable to mark on his ballot paper, provision may be made by law requiring that at the request of any such person adequate and special means are to be provided which will enable that person to mark on his ballot paper independently and without the need of assistance.".

7. The General Elections Act shall be amended as follows: *Amendment of the General Elections Act.*

(a) Article 49 thereof shall be amended as follows:

(i) sub-article (1) thereof shall be substituted by the following:

"(1)   The Commission shall, not earlier than thirteen days but not later than ten days before the poll, print such number of ballot papers as may be necessary for the poll in such form and on such material as may be prescribed under this Act. Not later than five days from the printing of the ballot papers, the Commission shall produce a Braille template for use as a guide on the ballot paper as well as a playback listening device by which a blind person may recognize the political parties and their candidates in the same manner as they are printed. Such materials shall be available for reasonable scrutiny by the representatives of the political parties contesting the poll to ascertain the transparency of the procedure, which scrutiny shall be exercised not later than three days before the poll. Should no objection be raised the materials shall be deemed to have been approved by the Commission:

Provided that any objection raised by any political party representative shall be decided by the Commission within twenty four hours of it being raised and should the objection be accepted by the Commission any alteration or amendment to the material shall be made within twenty four hours of the decision of the Commission and communicated to the political party representatives.

(ii)   in sub-article (2) thereof for the words "may not be duplicated." there shall be substituted the words "may not be duplicated and not later than two days prior to the commencement of the voting, the Commission shall cause to be published in the Government Gazette the number of ballot papers printed for each electoral division and the number to be distributed to each individual polling booth.";

(b)   immediately after the proviso to sub-article (1) of article 72 thereof there shall be added the following new proviso:

"Provided further that a person who is unable to vote independently by reason of blindness may either request an

Assistant Commissioner to mark the ballot paper on his behalf indicating for which candidate or candidates he wishes to vote and the order in which he wishes to record his vote, or request the provision of a Braille template as well as a playback listening device as approved under the provisions of sub-article (1) of article 49.";

(c)   immediately after regulation 22 of the General Elections (Sorting of Ballot Papers, Casual Elections and Co-opting) Regulations, 1991 in the Thirteenth Schedule thereof there shall be added the following new Part, regulations and annex:

"PART IV
Article 52 of the Constitution

23.   For the purpose of electing the additional members, if any, required in terms of sub-paragraphs (i) and (ii) of the first proviso to sub-article (1) of article 52 of the Constitution and of sub-paragraphs (i) and (ii) of the second proviso to the same sub-article, the Commission shall:

(1)   establish the total valid votes credited at first count to each of the parties that has elected members to the House of Representatives;

(2)   establish the number of members elected to the House of Representatives by each of the parties;

(3)   for the purpose of sub-paragraph (i) of the first proviso to sub-article (1) of article 52 of the Constitution, when there is more than one party that has obtained less than fifty per centum of all the valid votes cast at first count at that election (hereinafter referred to as the "minority party") the Electoral Commission shall add together the totals of sub-regulations (1) and (2) of this regulation for all the minority parties so that, for the purposes of that sub-paragraph, there is effectively one minority party;

(4)   for each party, divide the number arrived at in pursuance of sub-paragraph (1) by the number arrived at in pursuance of sub-paragraph (2) obtaining the average vote per seat for each party, disregarding any remainders;

(5)   adopting the lowest average vote per seat obtained in terms of sub-paragraph (4) as the benchmark, hereinafter referred to as the "low average", divide the number of first count votes credited to the party with a higher average, hereinafter referred to as the "disadvantaged party" by the low average to obtain the total number of members of the House of Representatives that should be credited to the disadvantaged party;

(6)   the result obtained by subtracting the number of members elected to the House of Representatives by the disadvantaged party from the number of total members obtained by that party at sub-paragraph (5) above shall be the additional number of members of the House of Representatives that are to be declared elected in terms of the Constitution;

(7)   the total composition of the House of Representatives shall be such number of seats as is established in sub-paragraph (6) of this paragraph provided that if the total number of seats includes a remainder that remainder shall be eliminated by increasing or decreasing the number of seats to the nearest odd number.

Annex to the Thirteenth Schedule

Art.52 of the Constitution
Regulation 23 of the
General Elections (Sorting of Ballot Papers,
Casual Elections and Co-Opting) Regulations 1991

Examples for calculating additional Members of Parliament in terms of article 52 of the Constitution

1.   Examples in terms of sub-paragraph (i) of the first proviso to sub-article (1) of article 52 of the Constitution

Example A – when only two parties elect members and the party with an absolute majority of votes elects a minority of members

Party A is credited with 150,000 valid first count votes and elects 30 members

Party B is credited with 140,000 valid first count votes and elects 35 members
Party C is credited with 5,000 valid first count votes and elects no members

1.   Once all counts have been terminated in terms of these regulations and all 65 members have been declared elected, the Electoral Commission establishes that Party A has more than 50% of all valid first count votes (150,000 versus 145,000) BUT has a minority of elected members (30 versus 35 of Party B);

2.   Since Party C has not elected candidates, the first count votes credited to its candidates are eliminated from all subsequent calculations;
3.   Party A has a right to increase the number of its candidates to be declared elected so that, in percentage terms, the same proportion used for Party B when electing its own members is also used for Party A;

4.   To establish that proportion, the Commission proceeds to determine the average number of votes used by each of the parties to elect each of its candidates and it does so by dividing the total number of votes credited at first count to all the candidates of each party that has elected candidates, by the number of candidates declared elected on behalf of that party, disregarding any remainders, so in this example:

• Party A   –   150,000/30   = 5,000
• Party B   –   140,000/35   = 4,000

5.   The Commission adopts the lowest number so obtained (4000) as the average votes per seat to be applied for determining the final number of elected candidates to be credited to Party A and arrives at the total number by dividing the total first count votes credited to all its candidates (150,000) by the resultant lowest average votes per seat (4000), which result will represent the total number of candidates that are to be elected by the Party A:

• Party A   –   150,000/4000   = 37.5

6.   From the result so obtained, representing the total number of candidates that are to be declared elected for Party A (37.5), the Commission deducts the number of candidates

of that Party already declared elected (30) and the result thereof (7.5) represents the additional number of members that are to be declared elected on behalf of Party A

7.   The total number of seats credited to Party A (37.5 seats) plus the total number of seats credited to Party B (35 seats) gives a total of 72.5 seats and since the total number of seats according to the Constitution has to be odd the total number of seats becomes 73 which is the nearest odd number to the total seats (72.5 seats) and the last seat assigned to the Party with the highest remainder, which in this case is Party A (Party A = 37.5 seats, Party B = 35 seats).

8.   The final result would therefore be: Party A 38 seats and Party B 35 for a House of Representatives with 73 seats

Example B - when only two parties elect members and the party with an absolute majority of votes elects an absolute majority of members which is not proportionate to the share of the votes obtained by that party

Party A is credited with 160,000 valid first count votes and elects 33 members
Party B is credited with 140,000 valid first count votes and elects 32 members

Party C is credited with 5,000 valid first count votes and elects no members

1.   Once all counts have been terminated in terms of these regulations and all 65 members have been declared elected, the Electoral Commission establishes that Party A has more than 50% of all valid first count votes (160,000 versus 145,000);

2.   Since Party C has not elected candidates, the first count votes credited to its candidates are eliminated from all subsequent calculations;

3.   Party A has a right to increase the number of its candidates to be declared elected so that, in percentage terms, the same proportion used for Party B when electing its own members is also used for Party A;

4.　To establish that proportion, the Commission proceeds to determine the average number of votes used by each of the parties to elect each of its candidates and it does so by dividing the total number of votes credited at first count to all the candidates of each party that has elected candidates, by the number of candidates declared elected on behalf of that party, disregarding any remainders, so in this example:

- Party A　–　160,000/33　= 4,848
- Party B　–　140,000/32　= 4,375

5.　The Commission adopts the lowest number so obtained (4375) as the average votes per seat to be applied for determining the final number of elected candidates to be credited to Party A and arrives at the total number by dividing the total first count votes credited to all its candidates (160,000) by the resultant lowest average votes per seat (4375), which result will represent the total number of candidates that are to be elected by the Party A:

- Party A　–　160,000/4375　= 36.57

6.　From the result so obtained, representing the total number of candidates that are to be declared elected for Party A (36.57), the Commission deducts the number of candidates of that Party already declared elected (33) and the result thereof (4.75) represents the additional number of members that are to be declared elected on behalf of Party A.

7.　The total number of seats credited to Party A (36.57 seats) plus the total number of seats credited to Party B (32 seats) gives a total of 68.57 seats and since the total number of seats according to the Constitution has to be odd the total number of seats becomes 69 which is the nearest odd number to the total seats (68.57 seats) and the last seat assigned to the Party with the highest remainder, which in this case is Party A (Party A = 36.57 seats, Party B = 32 seats).

8.　The final result would therefore be: Party A 37 seats and Party B 32 for a House of Representatives with 69 seats.

Example C – when three (or more) parties elect members

Party A is credited with 150,000 valid first count votes and elects 29 members
Party B is credited with 140,000 valid first count votes and elects 35 members
Party C is credited with 5,000 valid first count votes and elects 1 member

1. Once all counts have been terminated in terms of these regulations and all 65 members have been declared elected, the Electoral Commission establishes that Party A has more than 50% of all valid first count votes (150,000 versus 140,000) BUT has a minority of elected members (29 versus 36 of Party B + Party C);

2. Party A has a right to increase the number of its candidates to be declared elected and, in doing so, the same proportion of votes used to elect members is to be used for all parties;

3. Since there are more than one minority parties, the Commission adds together the total first count votes of both minority parties (140,000 + 5,000 = 145,000) as well as the seats obtained by both of them (35 + 1 = 36) and considers them as one minority party.

4. To establish the proportion provided for in sub-regulation 2, the Commission proceeds to determine the average number of votes used by each of the parties to elect each of its candidates and it does so by dividing the total number of votes credited at first count to all the candidates of each party that has elected candidates, by the number of candidates declared elected on behalf of that party, disregarding any remainders, so in this example:

• Party A   –   150,000/29   = 5172
• Party B + C   –   145,000/36   = 4027

5. The Commission adopts the lowest number so obtained (4027) as the average votes per seat to be applied to determine the final number of elected candidates to be credited to Party A and arrives at the total number by dividing the total first count votes credited to all the candidates of Party A (150,000) by the resultant lowest average votes per seat

(4027), which result will represent the total number of candidates that are to be elected by the Party A:

   • Party A   –   150,000/4027   = 37.2

6.   From the result so obtained, representing the total number of candidates that are to be declared elected for Party A (37.2), the Commission deducts the number of candidates of Party A already declared elected (29) and the result thereof (8.2) represents the additional number of members that are to be declared elected on behalf of Party A.

7.   The total number of seats credited to Party A (37.2) seats plus the total number of seats credited to Party B (35) and those credited to Party C (1) gives a total of 73.2 seats and since the total number of seats has, according to the Constitution, to be odd the total number of seats is reduced to 73 which is the nearest odd number to the total seats (73.2 seats).

8.   The final result would therefore be: Party A 37 seats, Party B 35 and Party C 1 seat for a House of Representatives with 73 seats

Example D - When three or more parties elect members and the party with an absolute majority of votes elects an absolute majority of members which is not proportionate to the share of the votes obtained by that party

Party A is credited with 160,000 valid first count votes and elects 33 members
Party B is credited with 140,000 valid first count votes and elects 31 members
Party C is credited with 5,000 valid first count votes and elects 1 member

1.   Once all counts have been terminated in terms of these regulations and all 65 members have been declared elected, the Electoral Commission establishes that Party A has more than 50% of all valid first count votes (160,000 versus 145,000);

2.   Party A has a right to increase the number of its candidates to be declared elected and, in doing so, the same

proportion of votes used to elect members is to be used for all parties;

3. Since there are more than one minority parties, the Commission adds together the total first count votes of both minority parties (140,000 + 5,000 = 145,000) as well as the seats obtained by both of them (31 + 1 = 32) and considers them as one minority party.

4. To establish the proportion provided for in sub-regulation 2, the Commission proceeds to determine the average number of votes used by each of the parties to elect each of its candidates and it does so by dividing the total number of votes credited at first count to all the candidates of each party that has elected candidates, by the number of candidates declared elected on behalf of that party, disregarding any remainders, so in this example:

- Party A   –   160,000/33   = 4848
- Party B + C   –   145,000/32   = 4531

5. The Commission adopts the lowest number so obtained (4531) as the average votes per seat to be applied to determine the final number of elected candidates to be credited to Party A and arrives at the total number by dividing the total first count votes credited to all the candidates of Party A (160,000) by the resultant lowest average votes per seat (4531), which result will represent the total number of candidates that are to be elected by Party A:

- Party A   –   160,000/4531   = 35.31

6. From the result so obtained, representing the total number of candidates that are to be declared elected for Party A (35.3), the Commission deducts the number of candidates of Party A already declared elected (33) and the result thereof (2.3) represents the additional number of members that are to be declared elected on behalf of Party A

7. The total number of seats credited to Party A (35.31) seats plus the total number of seats credited to Party B (31) and those credited to Party C (1) gives a total of 67.31 seats and since the total number of seats has, according to the

Constitution, to be odd the total number of seats is reduced to 67 which is the nearest odd number to the total seats (67.31seats).

8.   The final result would therefore be: Party A 35 seats, Party B 31 and Party C 1 seat for a House of Representatives with 67 seats

2.   Example in terms of sub-paragraph (ii) of the first proviso to sub-article (1) of article 52 of the Constitution

Example 1A above will apply but the votes of Party C at first count would be taken at 15,000 and it would still not elect any candidate.

3.   Example in terms of sub-paragraph (i) of the second proviso to sub-article (1) of article 52 of the Constitution

Party A is credited with 150,000 valid first count votes and elects 35 members
Party B is credited with 140,000 valid first count votes and elects 30 members
Party C is credited with   5,000 valid first count votes and elects no members

1.   Once all counts have been terminated in terms of these regulations and all 65 members have been declared elected, the Electoral Commission establishes that Party A has more than 50% of all valid first count votes (150,000 versus 145,000);

2.   Since Party C has not elected candidates, the first count votes credited to its candidates are eliminated from all consequent calculations;

3.   The Commission proceeds to establish whether Party B has a disproportionately lower share of seats by establishing the average number of votes used by each of the parties to elect each of its candidates and it does so by dividing the total number of votes credited at first count to all the candidates of each party that has elected candidates, by the number of

candidates declared elected on behalf of that party, disregarding any remainders, so that in this example:

- Party A   –   150,000/35   = 4,285
- Party B   –   140,000/30   = 4,666

4.   Party B has a right to increase the number of its candidates to be declared elected so that, in percentage terms, the same proportion is used for Party B when electing its own members as is also used for Party A;

5.   The Commission adopts the lowest number so obtained (4285) as the average votes per seat to be applied for determining the final number of elected candidates to be credited to Party B and arrives at the total number by dividing the total first count votes credited to all its candidates (140,000) by the resultant lowest average votes per seat (4285), which result will represent the total number of candidates that are to be elected by the Party A:

- Party A   –   140,000/4285   = 32.6

6.   From the result so obtained, representing the total number of candidates that are to be declared elected for Party B (32.6), the Commission deducts the number of its candidates already declared elected (30) and the result thereof (2.6) represents the additional number of members that are to be declared elected on behalf of Party B.

7.   The total number of seats credited to Party A (35) seats plus the total number of seats credited to Party B (32.6) gives a total of 67.6 seats and since the total number of seats has, according to the Constitution, to be odd the total number of seats is reduced to 67 which is the nearest odd number to the total seats (67.6).

8.   The final result would therefore be: Party A 35 seats and Party B 32 for a House of Representatives with 67 seats.

4.   Example in terms of sub-paragraph (ii) of the second proviso to sub-article (1) of article 52 of the Constitution

Example 3 above will apply but the votes of Party C at first count would be taken at 15,000 and it would still not elect any candidate.

8.   The Local Councils (Elections) Regulations, 1993 in the Third Schedule to the Local Councils Act shall be amended as follows:

(a)   Regulation 20 thereof shall be amended as follows:

(i)   immediately after sub-paragraph (1) thereof there shall be added the following new sub-paragraph:

"(1A) The Commission shall not earlier than thirteen days but not later than ten days before the poll print such number of ballot papers as may be necessary for the poll in such form and on such material as may be provided for in this Act. Not later than five days from the printing of the ballot papers, the Commission shall produce a Braille template for use as a guide on the ballot paper as well as a playback listening device, by which a blind person may recognize the political parties and their candidates in the same manner as they are printed, and such documents and materials shall be available for reasonable scrutiny by the representatives of the political parties contesting the poll to ascertain the transparency of the procedure, which scrutiny shall be exercised not later than three days before the poll. Should no objection be raised the materials shall be deemed to have been approved by the Commission:

Provided that any objection raised by the political party representatives shall be decided upon by the Commission within twenty four hours of it being raised and should the objection be accepted by the Commission any alteration or amendment to the materials shall be made within twenty four hours of the decision of the Commission and communicated to the political party representatives.";

(ii)   in sub-paragraph (2) thereof for the words "that they may not be duplicated", there shall be substituted the words "that they may not be duplicated, and not later than two days prior to the commencement of the voting, the Commission shall cause to be published in the Government Gazette the number of ballot papers printed for each electoral division and the number to be distributed to each individual polling booth";

(b)   immediately after the first proviso to sub-paragraph (i) of Regulation 41 thereof there shall be added the following new proviso:

"Provided further that a person who is unable to vote independently by reason of blindness may either request an Assistant Commissioner to mark the paper on his behalf indicating for which candidate or candidates he wishes to vote and the order in which he wishes to record his vote or request the provision of a Braille template as well as a playback listening device as approved under the provision of Regulation 20 (1A).".

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Passed by the House of Representatives at Sitting No. 556 of 26th September, 2007.

ANTON TABONE
Speaker

RICHARD J. CAUCHI
Clerk to the House of Representatives