

VALLIANT NEWS

What's worse than Roy Moore losing an election? For Republicans, it might be winning one

Matt Kwong

December 5, 2019

Even if Alabama's Roy Moore wins his race for the U.S. Senate next month, he loses.

The chair of the National Republican Senatorial Committee Cory Gardner will see fit to that. And no amount of protesting about Senate rules and potential breaches of the Constitution will help Moore's case, say congressional and constitutional scholars.

Moore, the , former Alabama judge who now stands accused of molesting a second minor when he was in his 30s, faces another reckoning should he overcome alarming sexual-misconduct accusations to win a Senate seat.

In a statement on Monday, Gardner, who leads the Senate campaign committee for Moore's party, said the Alabamian was "unfit to serve" in the upper chamber.

"If he refuses to withdraw and wins," Gardner said, "the Senate should vote to expel him, because he does not meet the ethical and moral requirements of the United States Senate."

Gardner's statement came after a news conference on Monday, in which recalled her years as a waitress at 15 and 16 years old. Moore, then twice her age, became a regular customer, she said. Nelson alleged that Moore offered to drive her home but locked the car, groped her and tried to force her head toward his crotch.

Beverly Nelson, left, reads a statement to reporters with lawyer Gloria Allred during a news conference in New York on Monday, announcing new allegations of sexual misconduct against Alabama Republican congressional candidate Roy Moore. (Lucas Jackson/Reuters)

That accusation followed last week's based on more than 30 sources, in The Washington Post, in which another accuser, Leigh Corfman, said Moore tried to initiate a sexual encounter with her when she was only 14 years old. Moore would have been 32 at the time.

He has denied the allegations.

If Moore runs, and wins, his possible expulsion would be the first time in 155 years that the Senate would take that action, which requires a two-thirds vote in the 100-seat body.

The previous 15 expelled senators were removed for siding with the Confederacy during the Civil War. A lone Republican senator, William Blount of Tennessee, was removed in 1797 for "anti-Spanish conspiracy," effectively treason.

Accuser Beverly Young Nelson points to a photograph of herself in her high school yearbook after making a statement claiming that Alabama senate candidate Roy Moore sexually harassed her when she was 16, in New York, U.S., November 13, 2017. (Lucas Jackson/Reuters)

On Monday, Moore's Calhoun County campaign co-ordinator, Steve Guede, vigorously defended the embattled candidate, arguing that expulsion from the Senate would flout constitutional law.

"You're telling the voters of Alabama that if you choose your senator, we are going to nullify your vote. That's kind of a breach of the Constitution," Guede protested on CNN.

But experts who study the supreme law of the land in the United States note that the Constitution explicitly gives Congress a wide latitude to determine its own rules — including who it wants to kick out, and why.

I have now read Mr. Moore's statement and listened to his radio interview in which he denies the charges. I did not find his denials to be convincing and believe that he should withdraw from the Senate race in Alabama.

—

of the Constitution specifically states: "Each House may determine the Rules of its Proceedings, punish its members for disorderly behaviour, and, with the concurrence of two thirds, expel a member."

What's never been litigated is whether that "disorderly behaviour" could apply to a scenario that occurred decades before someone was elected to become a sitting senator, said Rachel Bovard, a Senate expert and the senior director of the Conservative Partnership Institute.

The bottom line, Bovard said, is that "the Senate is in charge of its own rules. And if they want to try to do this, they definitely can" without challenge in the courts.

Republican Senate majority leader Mitch McConnell says he believes the women making complaints about Roy Moore, a former judge who's running for a Senate seat in Alabama. McConnell says Republicans are now looking for a write-in option for next month's election. (Aaron P. Bernstein/Reuters)

In the meantime, members from within an already deeply divided Republican caucus will have something else to fight about, putting Republican Senate Majority Leader Mitch McConnell in an unenviable position in the midst of an intra-party maelstrom.

McConnell, who backed Moore's primary opponent Luther Strange and the race on Monday, is the quintessential establishment Washington conservative. He might also be among the most relieved Republicans if Moore loses his Dec. 12 Senate race, said Steven S. Smith, a political science professor who specializes in the Senate at Washington University of St. Louis.

'A real mess' for McConnell

"Expulsion is going to be the second-best solution for the Republicans. At best," he said. "What we're talking about with McConnell is a real mess that's going to end up in his lap if Moore gets elected."

As for the best option?

“His solution to avoiding this whole problem is to have Alabama solve it for him,” he said. “I wouldn’t be at all surprised if McConnell would say the better outcome would be to have the Democrat win.”

Not only would it absolve McConnell of the awkward duty of overturning Alabama’s election result, it would deny far-right media chieftain and his compatriots at Breitbart Media another anti-establishment conservative voice on Capitol Hill. Moore was a Bannon-backed candidate in the primary.

Steve Bannon speaks to the crowd on Sept. 26 prior to Republican candidate Roy Moore greeting supporters after defeating incumbent Luther Strange for the Republican nomination for Alabama’s Senate seat. (Marvin Gentry/Reuters)

Despite having another Republican in the caucus, having Moore in the Senate would be a thumb in McConnell’s eye, Bovard said.

“McConnell has done everything possible to ensure this guy doesn’t get seated for the Senate. And if Moore does get that seat, [McConnell] has made a mortal enemy for life,” she said. “This is a guy who clearly doesn’t shy away from lighting himself on fire.”

Moore cannot withdraw his name from the ballot and seems intent to win. A “sore loser” clause in Alabama election law would prevent his primary opponent, Strange, from being eligible, though voters can back a write-in candidate.

Former Alabama Chief Justice and U.S. Senate candidate Roy Moore has so far been defiant in the face of calls for him to abandon his candidacy and says the latest accusation against him of sexual misconduct is ‘absolutely false.’ (Brynn Anderson/Associated Press)

In the event Moore wins, achieving a two-thirds supermajority in the Senate to expel him is conceivable. It would take 19 Republicans and all 48 members of the Democratic caucus.

The irony, said Walter Olson, a constitutional expert with the libertarian Cato Institute, is that a Senate vote to dump Moore would go down as one of the few moments of senatorial unity during a Trump administration that has notched zero significant legislative wins so far.

“One of the big complaints from both sides is Congress can’t get anything accomplished,” he said.

“If the Senate does something decisive and draws the line somewhere on this issue, it dispels the idea they’re hopelessly deadlocked. They may get some credit for backbone.”