



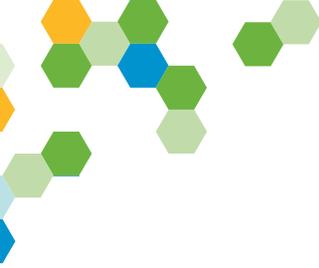
SPECIAL REPORT

Argentina: The National Congress under the gaze of a lame duck Kirchnerism?

Buenos Aires, April 2015

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I. INTRODUCTION

In 2015 we could witness the end of a political process called “Kirchnerism”, which has governed Argentine for 12 years in a row, and which was started by Nestor Kirchner in 2003 and then continued by his wife Cristina Fernández de Kirchner for two more terms.

This year will also be a period deeply influenced by electoral politics. The Argentinian Constitution prevents a new reelection of the current President. This means the President is living her last year in office and December the 10th 2015 it will be the last day of her term.

We could have a second round on the elections which are always formed by the primary elections and the first round: this second round is known as the *Ballotage* or second round¹. To this possible second round we need to add the provincial and municipal elections. In the most populated districts the elections will be divided (Federal capital, Cordoba, Mendoza and Santa Fe).

Apart from the new President, new seats for the National Congress will also be elected. So far, the governing party rules the legislative agenda and is in possession of a majority of one's own although with a lower number of parliamentarians.

The Constitution defines the legislative power as one of the three powers of the State and gives it different power like for example, financial and economic prerogatives like setting taxes, loans, pass the State's budget, arrange the payment of the external debt and legislate in the area of customs.

This Congress full of faculties according to the Constitution is set on a country with a strong presidential influence. Whenever the country goes through good times regarding the public opinion the executive power will always have primacy over the legislative power and will set its agenda.

This article analyzes the relationship and use of the National Congress since 2003 by the government. It includes key laws, big debates, the current scenario and the perspectives for 2016 with the appointment of a new President. para 2016, con la asunción de un nuevo presidente.

¹ As established in the Electoral Code (Art. 149) the President will be the one who obtains more than 45% of the valid votes cast or who obtains 40% of the votes and a difference of over 10% regarding the second most voted candidate.

“The Kirchnerism government has enjoyed eight years of legislative majority”

2. KIRCHNERISM AND LEGISLATIVE POWER

Since the Kirchnerism period started, the relationship with the legislative power has changed according to the number of legislators sided with the government's party, the Front for Victory (FPV). This variable relationship has existed all along the Kirchner government and has moved from pragmatism to idealism several times. We can identify three different periods of this variable relationship:

- **Beginning of the Kirchnerism (May 2003 - December 2005):** Due to the absence of a legislative majority the Front for Victory had to negotiate with several political forces in order to accomplish the necessary laws to start the government. Among these laws we can highlight the declaration of invalidity of the Due Obedience and Full Stop Acts, the delegation of legislative power and changes on the convertibility regime.

Moreover, the ruling party profited the political context of weakness regarding the opposing parties which were deeply affected by the 2001 crisis that took the Radical party (with more than 100 years of history) to a deep crisis.

- **Kirchnerism legislative majority (December 2005–December 2009 / December 2011– December 2015):** The Kirchnerism government has enjoyed eight years of legislative majority. During these periods the Congress has worked according to the President's government agenda. Thus, opposing parties have not had the opportunity to stop certain projects or proposing minimal reforms to others.

By holding with strength its majority and imposing a strict party discipline (avoiding internal fissures), the FPV managed to pass all the legislative proposals done by the Pink House (mansion and office of the President) and sometimes the proposals were passed without amendments; as they were presented to the Congress.

Several laws with high impact and importance in society have been passed along these years. Some examples are the nationalization of YPF and the Argentine Airlines; the same sex marriage Act, the reforms on the Civil and Commercial Code; the Memorandum of Understanding signed with Iran; the nationalization of pension funds (AFJP) and the Pension hike Bill.

“Regarding the legislative activity, 2014 was a revitalizing year”

- **Opposition majority and block strategy (December 2009 – December 2011):**

The elections in 2009 reflected the social climate of protests during 2008 and the Kirchnerism lost its majority in the Chamber of Deputies². From this moment until 2011, the Kirchnerism blocked the activation of the Congress thanks to the lack of coordination of the opposition which was formed by different political parties with different ideologies.

The heterogeneous group A formed by all those legislators opposing Kirchnerism had to face a compact pro-government group in the Chamber of Deputies which stopped them from meeting their legislative agenda with no quorum in the debates.

As for the Senate, where it maintained its majority, the FPV tried to block the main initiatives that the opposition had managed to propose thanks to some unusual allies. Cristina Fernández de Kirchner vetoed all the opposition’s project that her party (FPV) had not managed to block, such as the

82% adjustable wage for retired people or the “*Ley Glaciares*”.

The main characteristics of the Congress since 2003 have been:

- » Passing bills with a high social impact although most of them were drafted and proposed by the executive branch and suffered few amendments during their legislative process.
- » Delegating economic faculties to the Executive power.
- » Having an agenda set by the executive power when the government’s party held the majority and almost a total block when the opposition held the majority.
- » Opposition –through action or omission– with few chances to act.

3. THE CONGRESS IN 2014

THE PERIOD 132 IN FIGURES

Regarding the legislative activity, 2014 was a revitalizing year: there were 42 sessions –20 in the Chamber of Deputies and 22 in the Senate–, which

² While it still held the majority in the Parliament and forecasting this possible scenario, between June and December 2009 the FPV passed all the laws the Government needed. Some of them were emblematic such as the nationalization of the pension funds and the Media Act. Other laws were part of the management of the country such as the Economic Emergency Act which was passed after the political and economic crisis in 2001 and which has been later extended along the years.

“Only 12% of the Acts passed where proposed by the opposition”

means an increase by 50% regarding the previous year.

According to the number of Acts passed –a total of 184 Acts– we can say that the revitalization of the Argentine Congress comes from the efforts of the FPV to give more power to the Legislative branch, which absorbed a great part of the political debate in 2014.

The opposition accused the Government of using the Congress as an “inkstand” without opportunities to debate. If we analyzed all the Acts passed we can observe that, in fact, 88% of the Acts passed (162) were proposed by the governing party as a whole (the Government and the FPV). On the other hand, according to the last review of the *Fundación Directorio Legislativo*³, only 12% of the Acts passed where proposed by the opposition and they did not mean great political, economic or social changes.

Among those Acts with a higher impact proposed by the Government we can highlight:

- **Supply Bill:** This project was firmly rejected by the business sector. It meant the update of an Act from 1974 which enables the Executive branch to set profit margins and reference prices at any stage of the economic process.

It also allows it to apply penalties to those who increase prices without the justification of a costs' increase or to those who control goods and refuse selling.

- **A jurisdiction for consumers:** Create a jurisdiction to manage consumers' claims.
- **Agreement with Repsol to nationalize YPF:** After the negotiations started by the *Pink House* in 2012, there was an agreement to pay a compensation of 5.000 million of dollars to the Spanish company. The opposition did not agree with the amount or the conditions of the agreement.
- **Legal digest:** This regulation reorganizes the Argentinean legal system. From the 30,000 existing laws only 10% were applicable after the reorganization.
- **State's responsibility in the concession of public services:** This regulation limits the responsibility of the State regarding the damage caused to the goods or rights of individuals by its activities.

Regarding the topics of the Acts passed in 2014, more than

³ The *Fundación Directorio Legislativo* is a foundation specialized in Parliamentary issues with more than 15 years of experience monitoring the National Congress's work, sessions, voting and activities.



a half belong to International Treaties and declarations by the Legislative branch.

THE POLITICAL PARTIES' SCENARIO AND SEATS DISTRIBUTION: WHAT HAPPENED TO THE MAIN POLITICAL GROUPS?

Although some rumors pointed its possible dismemberment due to the irruption of the Renewal Front (*Frente Renovador*) lead by Sergio Massa⁴, the FPV maintained a strong cohesion among its legislators and thanks to a strict discipline, during 2014, the FPV achieved most of the projects launched by the *Pink House*.

At the beginning of the 131 legislative year the quorum was not a problem. However, over the months it became more complicated and by the end of the year the FPV needed to turn to unusual allies.

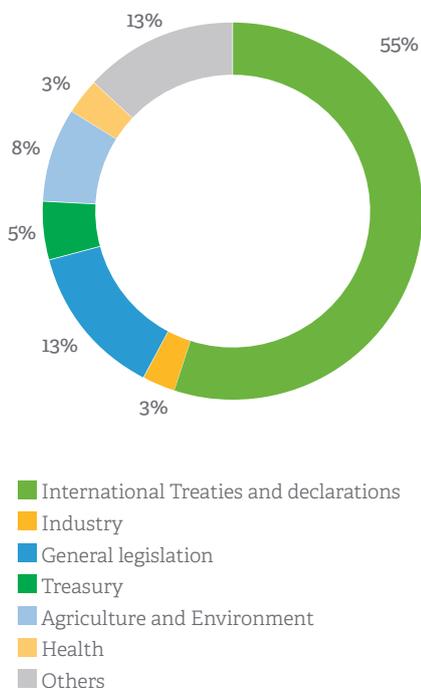
On the other hand, the opposition managed to gather a great part of its most important personalities around Sergio Massa (Renewal Front), Hermes Binner (Socialist party) and Elisa Carrió and Gabriela Michetti (PRO) among others. They all unified a great part of their speeches and worked mainly as a whole against the Government political forces. Some leaders imposed themselves against

the initiatives proposed by the Government. As to examples we can mention Sergio Massa against the Criminal Code and Ernesto Sanz (UCR) against the Supply Bill.

TWELVE EMBLEMATIC ACTS OF THE KIRCHNERISM:

- Media Law.
- Nationalization of the Pensions regime (AFJPs).
- Argentinian Airlines nationalization.
- The nationalization of YPF.
- Same sex marriage.
- Political and electoral reform.
- Package of laws to protect consumers (supplies).
- Judicial reform or "Judicial democratization" (declared unconstitutional in Court).
- Reform of the Civil and Commercial Code.
- Invalidity of the Due Obedience and Full Stop Acts.
- Memorandum of Understanding signed with Iran.
- Money laundering.

Topics of the Acts passed



Source: Legislative Directory- Financial Panorama

⁴ The Renewal Front (FR) comes from the Peronism and was created in 2013 and lead by Sergio Massa. Mr. Massa was in that time mayor of Tigre and former Chief of the Nation's Cabinet in 2009. This party (FR) gathers mayors from the north of Buenos Aires.



4. EXPECTATIONS FOR 2015

The Government's forces still hold a small majority to support its model. They have their own seats in the Parliament and faithful allies. Together with a party discipline and a correct assistance, it will enable them to continue passing new legislative initiatives. However, we need to take into account the electoral agenda which will take most of the attention of those legislators who want to be reelected. If we look back into the recent history of Argentina, in such periods, the **Congress oscillated between periods of hibernation and periods of hyperactivity.**

Regarding the possible topics of management and taken into account the government's opacity to reveal political strategies, it is important that we analyze the opening of the ordinary sessions of the Parliament that are held every first of March. In these opening sessions President Fernández de Kirchner explains the situation of the country and gives the agenda of important issues for the government.

According to data provided by *Fundación Directorio Legislativo*, in the opening sessions held between 2008 and 2014, the President announced 26 different projects. Twenty of them became laws. These

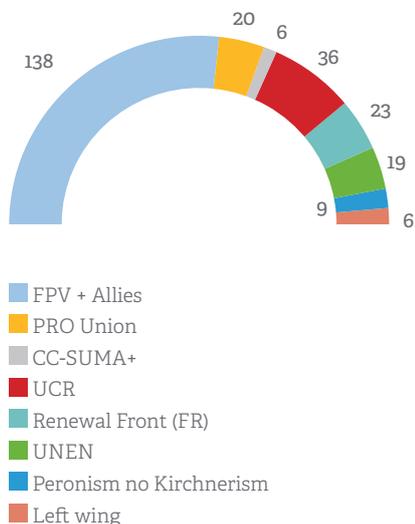
projects are a great part of the Government's annual agenda, which can help us to know which will be the important issues for 2015.

During her last speech in the Legislative Assembly (March 2015), President Cristina Fernández de Kirchner was strongly critical regarding the Argentinian Justice: she accused the Justice of delaying in the case of covering up the attack against the AMIA (Argentine Israelite Mutual Association) in 1994; she criticized the opposition's behavior regarding the commercial agreements with China and gave an overview of the "management achievements" over the past 12 years of the Kirchnerism government.

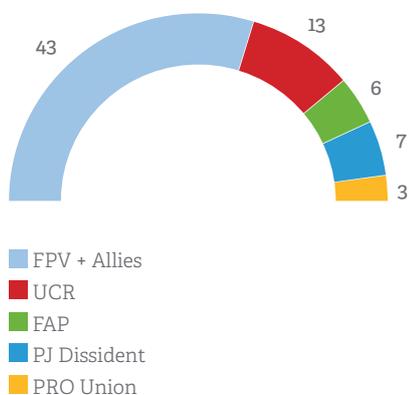
"We have finally paid the Argentinian debt. We will never again, take debt to pay debt. If we need to take debt that will be for developing", said Cristina Fernández de Kirchner. She also mentioned other achievements such as the construction of the satellite ARSAT-1 (the first satellite managed and made in Argentina; the nationalization of the Argentinian Airlines, the new Media Law and the State for rural workers (amongst others).

Along her speech the President mentioned four different legislative initiatives to be sent to the Congress.

Distribution of seats in the Chamber of Deputies



Distribution of seats in the Senate



- Nationalization of all rail way lines in the country.
- Made a law of the 915/10 Decree passed during her government to promote industrial parks. *“We want to have 1000 parks for us and future generations”*, she said.
- Initiative regarding the stock market. She announced some reforms to the 5965/63 Decree-Law about bills of exchange and promissory notes in order to *“accelerate the financing of companies and human capital”*⁵.
- Models and designs for the Argentinian patents. The current valid Decree is the 6673 Decree passed on the 9th of August 1963.

OPENING ORDINAR SESIONES	ANNOUNCED PROJECTS	APPROVED PROJECTS
2008	4 Higher education Greater rewards for drug offenses Crimes against humanity Orality tolos regarding justice	2 Greater rewards for drug offenses Crimes against humanity
2009	1 Media Law	1 Media Law
2010	0	0
2011	7 Tax law Adoption Laundering Statute of the rural worker Promotion of Software and IT services Land denationalization Domestic work	7 Tax law adoption Laundering Statute of the rural worker Promotion of Software and IT services Land denationalization Domestic work
2012	3 Civil and Commercial Code Charter of the Central Bank Compulsory multi-risk insurance for the agricultural and livestock sector	2 Civil and Commercial Code Charter of the Central Bank
2013	3 Justice reform	3 Justices
2014	8 Regulation of social protests Users and consumers Criminal Code Administrative legal action code Compulsory education for 4 years-old Alternative proposal to the Memorandum of Understanding with	5 Users and consumers Administrative legal action code Compulsory education for 4 years-old

5. ¿AND WHAT ABOUT 2016?

According to most polls, since the beginning of 2015 there is a three way tie (around 25% of the voting intention) among the three main candidates: Mauricio Macri (mayor of Buenos Aires city - PRO), Daniel Scioli (governor of the province of Buenos Aires - FPV) and Sergio Massa (mayor of Tigre – Renewal Front–FR).

All the three candidates to the presidency have a similar political profile, which is clearly seen by the public opinion. The ideas they are showing before their electoral campaigns officially start to overcome the Argentinian economic situation are quite similar. An important fact to take into account is that over the past years the economic initiatives have

⁵ In 2015 the Government focuses its attention on the financial system and Banks in the country as some of the social partners that could create facts regarding the public opinion (concrete facts with real impact in society or more discursive and symbolic facts).

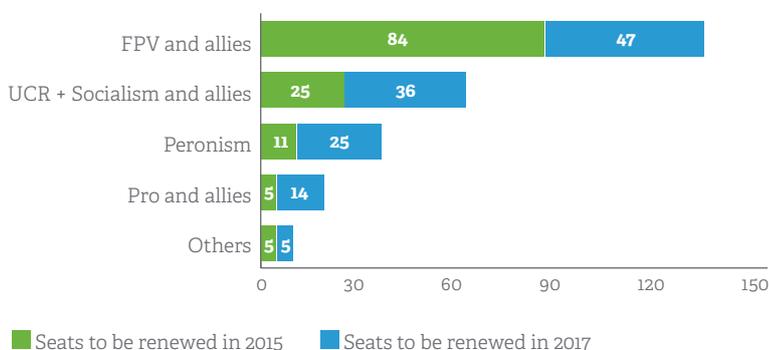
Which of the following candidates would you vote in the first round of the presidential elections in Argentina?



been key to decide the voting. If we looked back at the last elections, we can see that the President obtained 54% of the votes. Although the insecurity index was high (as the public opinion pointed), the economic indicators were favorable.

Regarding the seats in the chambers, the FPV will be the first minority force in the Congress in 2016 even if the party had a bad performance in the 2015 elections.

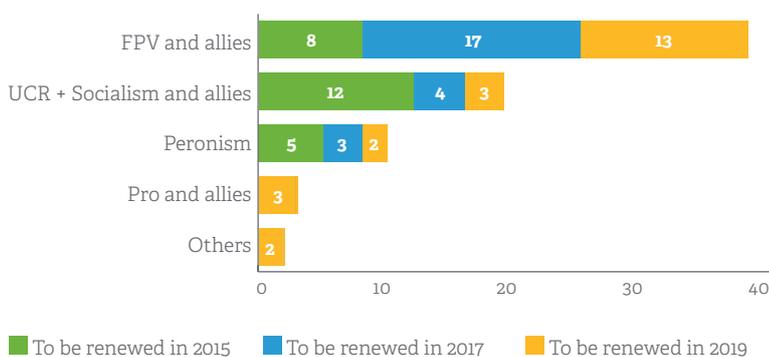
Deputies – Seats to be renewed by party



The government forces and its allies will only renew 8 out of the 40 seats they already hold in the Upper Chamber. Regarding the Deputies Chamber, there will be 84 new seats out of the 133. According to the Argentinean system, half of the seats of each chamber are renewed every two years.

IF THE RESULTS GO ACCORDING TO THE SURVEYS IN MARCH 2015, HOW WILL THE MAP OF THE CONGRESS IN 2016 BE?

Senate – seats to be renewed by party



According to the results provided by Ipsos and Carlos Fara & Asociados the new president taking up office in December (10th) will have to face a Senate with a majority of Peronism and a divided Chamber of Deputies without a main legislative force. The results also forecast Peronist governments in 14 or 16 provincial districts; the other main forces in the remaining districts are the PRO party and the UCR which agreed on competing with

“Will the Congress be the counterweight to the Executive power”

Mauricio Macri in the primary elections (resulting in just one presidential candidate).

To all this information we should act the facts provided by the consulting agency Management &Fit which says that 77.4% of the population thinks that some laws passed under the Kirchner’s government should be reviewed. This will obliged the new president to change at least some of the milestones of the past 12 years in order to meet the will of different social sectors.

Beyond this map pictured by the surveys what we should actually take into account are tendencies. When the majority is asking for a change, the electoral results always go in the same direction. The same happens when there is a general approval of a government’s management. The candidate that manages to get the perfect equation between “change + continuity” will probably become the new President of the country.

6. UNANSWERED QUESTIONS

The 2015 elections open a new opportunity for the Parliament which could have have a more important role in the coming years. This report shows that there is a big question regarding the government change: Will the Congress be the counterweight to the Executive power and will it

change the history of the past 32 years of the Argentinian democracy?

The answer will be determined by the different movements and electoral strategies that might also include the possible candidacy of Cristina Fernández de Kirchner. In case she headed the list of national deputies for the Province of Buenos Aires, the electing map could change (as well as the Congress role). Another option for Cristina Fernández de Kirchner to be a candidate is to appear on the lists as legislator of the Parliament of Mercosur (PARLASUR). In such a way, she would manage to appear in all the national lists and would motivate and influencing votes all over the country.

Along all these years, the path of the kirchnerism has been determined by a “more concentrated idealism”. Those pragmatics steps back in 2003 are long gone. That 22% of the votes that enabled Néstor Kirchner to become president forced him to walk a different path were the national and plural project did not have a main role. Although President Cristina was reticent to follow old recipes, at the beginning of her government the famous words of a union leader were remembered: “in politics, you sometimes need to swallow a toad” (to grow and gain power).

This thought leads us to another important question regarding the elections: Could Cristina

“In case Cristina Fernández de Kirchner becomes a candidate, will she manage to change the fact that the Congress always imposes itself to individualities?”

Fernández de Kirchner (the FPV) win the elections and continue her government’s model (even if it was in a more moderate way)? Or, will she have to swallow some toads so she does not lose all the power and holds an important role in politics?

Another political feature of these years of strong presidentialism (except in the interval of Fernando De la Rúa who arrived in office as leader of an “Aliance” was the legislative work, or mainly the role that different national referents had. We saw a Congress left aside its central role and some resounding national and provincial executive figures.

The number of former presidents who joined the national Congress

once their governments finished is as wide as low productive in the Parliamentary sphere. In case Cristina Fernández de Kirchner becomes a candidate, will she manage to change the fact that the Congress always imposes itself to individualities? In her favor we must remember that she already broke one of the big myths of the Argentinian politics that saw women as too weak to hold the country’s power.

Flicking through this list of former authorities we can see a clear ostracism, what the Congress offers to those who arrive to “pasos perdidos”⁶ of their political careers. According to the information provided regarding the electoral results, we can picture a new political scenario where the kirchnerism would be the first minority group who will need to be legitimized during the first 100 days.

As a prediction, on her last speech in the opening sessions, Cristina Fernández de Kirchner said: “my successor will face a difficult country”. If we also add the possible hypothesis of her being leader of the opposition in the Congress (heading the kirchnerism Deputies group), the scenario for the new President looks really complex. It becomes even worse if we take into account

FORMER EXECUTIVE AUTHORITIES (NATIONAL AND PROVINCIAL) OF THE CHAMBER OF DEPUTIES	
NÉSTOR KIRCHNER	President (2003 – 2007), Governor of de Santa Cruz (1991-2003) and member of parliament (2009-2010).
HERMES BINNER	Governor of Santa Fe (2007 – 2011) and member of the parliament since 2013.
JUAN SCHIARETTI	Governor of Cordoba (2007 – 2011) and member of the parliament since 2013.
EDUARDO FELLNER	Governor of Jujuy (1998 – 2007) and member of the parliament between 2007 and 2011.
MARIO DAS NEVES	Governor of Chubut (2003-2011) and member of the parliament since 2013.
FELIPE SOLÁ	Governor of Buenos Aires (2002 – 2007) and member of the parliament since 2013.
JULIO COBOS	Governor of Mendoza (2003 – 2007) and Vice-president (2007-2011). Member of the parliament since 2013.
ARTURO LAFALLA	Governor of Mendoza (1995-1999) and member of the parliament between 1999 and 2003.
ROBERTO IGLESIAS	Governor of Mendoza (1999 – 2003) and member of the parliament between 2003 and 2007.
CARLOS RUCKAUF	Governor of Buenos Aires (1999-2003), Minister of Foreign Affairs (2002-2003) and he was then member of the parliament between 2003 and 2007.

⁶ Name of the antechamber of the National Deputy Chamber where legislators walk before, during and after every session.

the complaints of the public opinion and other social actors that demand quick decisions and specific results.

The idea of the current president as a candidate not only enforces “the story” but also helps the candidacies in some provinces with strong leaders with the same ideas regarding ideology (more than pragmatism). If we give a look at the political activities during the first months of

this year we can clearly see a unified block:

- Juan Carlos Mazzón “El chueco”, one of the most traditional personalities of the Peronism has moved away from the “pink house”. This distance happen once the candidates’ lists in Mendoza were defined. The young group of “La Cámpora”, important part of the Kirchner’s group, was not in these lists.
- Eduardo “Wado” de Pedro was appointed Secretary-General of the Presidency. He is part of “La Cámpora” one of the main backers of the President’s son, Maximo Kirchner. Pedro is also in charge of guaranteeing loyalty in the Peronism lists in the country.
- We can also observe the doubts about the legislators’ lists in Rio Negro between the traditional Peronism, led by the national senator and governor candidate Miguel Ángel Pichetto and the “kirchnerist youth” who wants to include their candidates in the lists.

Another actor in this hypothetical scenario is the opposition as a block against the Government’s initiatives. Trying to guess how will be the behavior of both groups in 2016 is almost impossible.

Taking into account the agreements between the Radical

FORMER EXECUTIVE AUTHORITIES (NATIONAL AND PROVINCIAL) OF THE SENATE	
RAÚL ALFONSÍN	President (1983 – 1989) and national Senator (2001-2002).
CARLOS MENEM	President (1989 – 1999) and national Senator since 2005.
OSCAR CASTILLO	Governor of Catamarca (1999-2003) and current national Senator.
EDUARDO DUHALDE	Governor of Buenos Aires (1991 – 1999), national Senator (2001 – 2002) and President (2002 – 2003).
JUAN CARLOS ROMERO	Gobernador de Salta (1995 – 2007) y es Senador desde el año 2007 –fue reelecto en 2013–.
CARLOS REUTEMANN	Gobernador de Santa Fe (1991-1995 y 1999-2003), es Senador Nacional desde el año 2003 –fue reelecto en 2009–.
GERARDO ZAMORA	Governor of Santiago del Estero (2005-2013) current national Senator.
ADOLFO RODRÍGUEZ SAÁ	Governor of San Luis (1983-2001), President of Argentina in 2001 and national Senator since 2005 –reelected in 2011–.
CARLOS VERNA	Governor of La Pampa (2003-2007) and national Senator since 2009.
RUBÉN MARÍN	Governor of la Pampa (1983 – 1987 and 1991-2003) and national Senator between 2003 and 2009.
JOSÉ OCTAVIO BORDÓN	Governor of Mendoza (1987 – 1991) and national Senator between 1992 and 1996.
RAMÓN PUERTA	Governor of Misiones (1991 – 1999) and Senator (2001 – 2005).
ÁNGEL ROZAS	Governor of Chaco (1995 - 2003), member of the parliament (2005-2009) and national Senator since 2013.
WALTER BARRIONUEVO	Governor of Jujuy (2007 – 2011) and national Senator since 2011.

party and the PRO, we could say that under the Kirchnerist government there have been more legislative agreements than disagreements. All the emblematic proposals of the government usually received a similar acceptance by both groups.

As we mentioned before, another emerging opposing group is the Renewal Front (FR) led by Sergio Massa. According to the last public surveys Massa is positioned after Macri and Scioli. His parliamentary group has less legislators and his fate will depend on the agreements with those who do not belong to the Pro/Radical group (provincial parties etc.) in order to show the “fair change”.

If the candidacy of Cristina Fernández de Kirchner is strong enough and the alliance between the PRO and the Radical party works, the Congress will probably hold the main role in 2016, in a risky and changeable scenario. The Congress will choose one or another to guide the country’s fate until 2019.

To sum up, it is clear that again, the electoral atmosphere in Argentina will provide us with great debates and all the attention will be focused on the electoral fight and on who will meet the public opinion’s needs: **a president in favor of dialoguing, who manages to achieve consensus and with the exact proportion of change with continuity.**

LAWS	UCR	PRO
Resolution 125	Against	Against
Airlines nationalization	Against	Against
AFJP nationalization	Against	Against
Media bill	Absent	Absent
Same sex marriage	Majority against	Majority against
Land bill	Majority against	Abstention of the majority
Charter of the central bank	Against	Against
Prepaid medicine	In favor	Abstention or absence
YPF nationalization	In favor	Against
Assisted reproductive medicine	In favor	Abstention of the majority

Source: La Nacion newspaper

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