

My Testimony

First and foremost let me be clear: There is still an ongoing breach of the Penobscot County Bylaws that has not yet been resolved, and any of the business that has occurred since at least December 2012 cannot be deemed valid as per the Penobscot County Republican Committee Bylaws.

As I understand that the depth and scope of this special investigative panel is to make non-binding recommendations to the Chairman of the Party, I encourage them to make the recommendation in favor of not me, the appellant, but of the Penobscot County Republican Committee Bylaws.

The only applicable action that can be taken to correct the underlying issues which plague the resolve of any business it conducts is to hold a County Caucus to allow for the election of county voting members and officers.

This issue has already cost the state party six pro-active State Committee members, several County Committee members, and countless others among the Penobscot County Republicans.

To ignore the basic plea of accountability for the gross mishandling of the committee's business.

I would like it to be part of the record that I requested assistance prior to the election from the party Chair, to no avail. I have attempted to resolve this issue within the party structure, again to no avail.

During the December 20th Meeting of the Penobscot County Republican Committee, a motion was raised and seconded to suspend the bylaws which was highlighted in my appeal:

"On December 20th, the Penobscot County Republican Committee held their monthly meeting at Jeff's Catering. No roll call or attendance was taken, and the quorum requirement could not have possibly been met, as no one ever ascertained who were voting members and who were simply attendees.

During the course of the meeting, a motion was made to suspend the rules to waive the dues requirement until January 17th, the day of the next meeting and election of officers.

There was much discussion, including objections from members on the floor. The Committee's parliamentarian, Larry Willey, and former District 16 Representative Doug Damon suggested that this was legal and allowed under Robert's Rules of Order. Mr. Willey asserted that "bylaws are just guidelines," and that they could be overridden by a majority vote.

The discussion among the attendees of the meeting deteriorated, and it seemed from my perspective that there would be no means to stop a vote from occurring. I motioned to end discussion, and it was seconded. A vote then took place from which both Committeewoman Julie Morgan and I abstained. Although they were never distributed to the membership or brought up at any meeting for acceptance, a draft of the (unapproved) minutes of the night show that the motion voted upon was worded as:

MOTION: *Jeff Ellis moved to notify all those who attended the GOP State Convention that names can be submitted for consideration for Judge of Probate by Governor LePage at the Jan. 17 meeting of Penobscot County GOP Committee; dues will be accepted as per "custom and practice" and any dues paid up to and including at the Jan. 17 meeting will entitle that member to be a voting member, Larry Willey seconded the motion.*

According to the unofficial and never-voted on draft of the minutes provided by the secretary, 21 voting in the affirmative, 3 in the negative the motion was recorded as 'passed.'

However, as stated above, there was no roll call or attendance taken, and no steps were taken to ensure that only voting members, as defined by our bylaws, were among those voting.

Once the draft of the proposed minutes was received from the committee's secretary Wanda Lincoln, I sent my objection to the entire county executive committee which stated:

"Regarding the minutes, I am hereby notifying the committee of my opposition of the minutes as proposed. By reading this it leads me to believe that any person who attended state gop convention will be entitled to becoming a member if they pay dues. This is in stark contrast to our bylaws."

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According to Robert's Rules of Order, bylaws define the primary characteristics of an organization, prescribe how it should function, and include rules that are so important that they may not be changed without prior notice to members and formal vote and agreement by a majority of members.

Rules which embody fundamental principles of parliamentary law and rules

protecting absentees or a basic right of the individual cannot be suspended, even by unanimous vote.[1][2] Thus, it would be illegal to suspend the rules to allow non-members to vote; to authorize absentee or cumulative voting; to waive the requirement of a quorum; or to waive the requirement for previous notice for a bylaws amendment. Moreover, the rules cannot be suspended to take away a particular member's right to attend meetings, make motions, speak in debate, and vote; these can only be curtailed through disciplinary procedures.[1]

Three of the major parliamentary authorities - Robert's Rules of Order Newly Revised, The Standard Code of Parliamentary Procedure, and Demeter's Manual - agree that provisions in the bylaws that do not relate to parliamentary procedure may not be suspended.[3][4] Demeter notes how this plays into the reality of parliamentary situations:[5]

"Bylaws cannot be suspended even by unanimous vote. But sometimes circumstances, expediency or strong assembly determination in behalf of a cause or proposition make violations necessary. In all such cases of violations, the action taken is illegal per se; but if no one objects at the time, or never challenges it at any time thereafter, a violation never challenged is never a violation."

Similarly, Mason states:[6]

"It has been held that public bodies can adopt rules, even by majority vote, that cannot be suspended or amended without a two-thirds vote, but it is also held by the courts that actions, taken in violation of procedural rules of parliamentary law and of adopted rules, are valid nevertheless, since failure to conform to the rules of this class suspended them by implication."

The action is still illegal if it violated a mandatory constitutional provision, since a legislature cannot suspend the constitution.[7]

1^ a b RONR, p. 255

2^ a b Sturgis, Alice (2001). The Standard Code of Parliamentary Procedure, 4th ed., p. 85 (TSC)

3^ RONR, p. 86

4^ Demeter, George (1969). Demeter's Manual of Parliamentary Law and Procedure, Blue Book, p. 133

5^ Mason, p. 213

6^ Mason, pp. 212,215

My objection was never addressed or discussed, nor were the December Meeting Proposed Minutes ever voted upon by the County Committee Members.

Even with known objections to the actions of the Executive Committee still allowed non-voting members to vote in both elections.

It is important to note that before the conclusion of the December 20th meeting, Chair Traci Gauthier commissioned a County 'Rules and Bylaws' committee to address the issues that arose at the meeting.

This committee was made up of myself, Ken Anderson, Lois Bloomer, Julie Morgan, Kyle Killip, Wally Modery, Beth Wallinga and Larry Willey who served as parliamentarian / ex officio. During our meeting that took place before the January election, we discussed the issue as to why we had certain bylaws that other counties did not such as the dues payment and requirement of not missing three (3) meetings in a row. Lois Bloomer, one of the original crafters of the 1995 Penobscot County Bylaws which are still used explained to the group that the reason of having those two requirements stemmed from outside groups stealing control of the committee. It was decided that even our State committee requires that a member does not miss three (3) meetings in a row and the dues piece allowed our committee to have funds to operate so the group unanimously chose to leave them in the suggested bylaws to be presented to the County Committee for vote. I do not believe that has occurred.

Regarding the January Election:

As noted in the December Draft minutes prepared by Secretary Wanda Lincoln, "Re. to election of officers: by laws say senior state committee man/woman to call election meeting; Bryan Daugherty, state committee man, confirmed Jan. 17 as the meeting for election of officers . . . Traci Gauthier still chair until new one is elected"

As Senior Committeeman and Committeewoman, Julie and I oversaw the call to election of officers. In the weeks leading up to the election, Julie and I organized the election using the same identification system used on the state committee level. We would identify county voting members, make sure that the Treasurer Harrison said they paid their dues and although we needed to and then hand them an envelope with four election ballots.

Julie had tried since may to get a copy of the county membership in order to organize get out the vote drives and other fundraising efforts. These documents were not made available to her until the Chair provided us a copy of the caucus sheets five days before the election that she received from Michelle Dale.

After hours of sorting out the county wide caucus slips, she created a list of elected

county voting members from the 2012 Caucus sheets. This list was obviously not represent of those who had paid or not paid dues, nor did it include attendance of the county meetings.

It is important to note that the Penobscot County Republican Committee Secretary and Treasure failed to keep accurate records. After a Request was made by then Committeewoman at-large Michelle Anderson for the voting members list, the treasurer Harrison Clark, produced and emailed Ms. Anderson a list of the people who had paid between the May state convention and November 29. He claimed not to know when anyone paid their dues, only that they were paid between that time period. Given the bylaws dictate that dues must be paid within 60 days of the convention at the very latest in order for a member to retain their right to vote, this was making it near impossible to determine who were and were not eligible to vote.

The email message sent by Mr. Clark with the list indicated that he had decided, counter to the bylaws, that anyone who paid dues could vote. Here is that message:

"This is the list that I have of people who have paid dues in 2012 since the caucus. In some cases dues have been paid for only one member of a couple. Any duly elected or appointed member of the PCRC can choose to pay their dues prior to an issue being voted on."

There were 55 people listed as having paid their dues, some in time to be voting members, some not.

Of those 55 people, only 37 had been recorded as having been elected at their municipal caucuses to be members of the Penobscot County Committee or were ex-officio members.

So, it can be correctly and incontrovertibly deduced that there were no more than 37 voting members, that is, people who had both paid their dues and have been elected or were ex-officio members, per the bylaws.

Since the Secretary of the Penobscot County Republican Committee refused at every turn to call the roll at any meeting after the May 2012 convention, it is impossible to tell which of those 37 people missed three consecutive meetings.

The first requirement, according to the County Committee's own bylaws, was that all members must be elected at their municipal caucuses, be elected officials, or be members of the Maine State Republican Committee, or be ex-officio members as set forth in the County Committee bylaws, Article III: Members, which states:

Section 2. Ex-officio Members: "The Chairman of each Municipal Republican Committee in Penobscot County is a voting member ex-officio of the Penobscot County Republican Committee. Officers of the Penobscot County Republican Committee are voting members ex-officio of the Committee. State Republican

House and Senate members who represent citizens of Penobscot County are voting members ex-officio of the Penobscot Republican Committee.”

The second requirement and third requirements, according to the County Committee's own bylaws, are in Section 4 and Section 5:

Section 4: Dues: “Dues are payable at the first County Committee Meeting after the State Convention or may be submitted by mail for sixty (60) days thereafter.”

Section 5: Terms: “In order to assure an active membership, positions on the Committee will be deemed to have been vacated if a member fails to attend three (3) consecutive meetings or to pay dues within sixty (60) days of the due date. In either event, the member will not be entitled to notice of meetings and will forfeit his or her right to vote.”

Due to the failure of our Secretary and Treasurer to maintain the data required to keep an accurate account of who were valid voting members per our bylaws, we knew that the integrity of the election would be at question to any participating party. I personally shared these concerns with Chair Traci Gauthier, Chair Rich Cebra and Executive Director Jason Savage on the phone and/or messages prior to the election occurring to no avail.

During the night of the election, we set up a table to direct the flow of members to make sure we had an accurate accounting of participants.

It was easily recognizable by a number of county members including myself, who had attended every meeting since May 2012, that there were a substantial amount of participants who had never attended a single meeting prior to the election. Even long time County member and candidate for Vice-Chair Roger Ek noted:

"I've been involved in Maine Republican politics for almost a half a century, and I didn't recognize most of those people."

There was even an illegal phone proxy I witnessed taken by the treasurer while trying to verify voting members. A woman, who still remains unidentified, walked up to the table and wanted to be a proxy for the Dixmont Town Chairman Scott Fish. Even though the Bylaws are quite specific requiring that proxies must be in writing, she wanted to have his proxy conveyed to her over the phone.

I heard Julie explain to both her and the Treasurer that they could not do that but the Treasurer allowed the phone proxy by telling her that he 'vouched for Scott Fish'. It was known that Scott Fish had not made the attendance requirements nor had he paid his dues and was therefor no longer a valid County voting member.

I was also personally attacked by the Vice Chair Dave Lincoln who physically invaded my personal space by screaming in my face and making a huge scene. At that time,

realizing that there was no integrity in the election that was to occur, and realizing the volatile nature of many of the members, it was realized that there was nothing more that we could do to ensure a valid election.

Even during my speech, there were questions that arose from county members questioning why there were so many irregularities in municipal committee lists such as Hampden, Hermon, and others.

This can be seen in video <http://youtu.be/CzEMeQIwed0>

I would like to include, within my written testimony many of the facts that I have provided via my appeal.

Although the Treasurer indicates that he has not kept track of who did and did not pay their dues in a timely fashion, he did have a list of members who had paid as of December 2012, which was four months after the cutoff date. The total number of people on that list is 55.

The night of the election, no numbers were announced. The membership did not know how many people voted, how many proxies there were, or how many people voted for each candidate, so no objection could be made based on the facts of the election, as there were no official "facts" released until after that night. According to information garnered after January 17th, 2012, the number of votes counted on the night of the election was reportedly 71.

According to our Penobscot County Bylaws, Article III, Section 5, "...positions on the Committee will be deemed to have been vacated if a member fails to attend three (3) consecutive meetings or to pay dues within sixty (60) days of the due date." In either event, the member will not be entitled to notice of meetings and will forfeit his or her right to vote.

No written record is available as to which voting members and/or legitimate proxies participated in any legal business actions from May 2012 up to the recent January 17th meeting. Nor has any vote been made to accept the minutes of prior meetings, going back to May of 2012.

No written record has been made available to members as to who voted as a proxy or for whom, so it is difficult to ascertain how many illegal votes were made.