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Chuck Mahaleris, Secretary  
Maine State Republican Committee  
5 Spring Street  
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Pursuant to Rule 23 of the Rules of the Maine Republican Party, I am addressing the following appeal to the Maine State Republican Committee, in regards to a recent election of officers for the Penobscot County Republican Committee.

I am a registered Republican, and a member in good standing on the Penobscot County Republican Committee, representing the Millinocket Town Caucus on that committee.

Ken Anderson

A handwritten signature in black ink, appearing to be 'Ken Anderson', with a long horizontal stroke extending to the right.

On January 17, 2013, at a meeting of the Penobscot County Republican Committee, an election of officers was held. In the conduction of this election, many violations of the committee's bylaws were allowed to occur, some of which were unknown to other members of the committee at the time, and others which occurred despite objection.

These violations included an illegal vote to permit members who were not eligible voting members of the committee to nevertheless vote in the election of officers.

These violations also involved a mishandling of proxies, and a lack of transparency in the count of these votes, to the effect that it cannot be determined what the results of the election would have been had it been conducted in accordance with the bylaws.

I am asking that the results of this election be set aside.

The Rules of the Maine Republican Party provide guidance to its members concerning state, county and municipal party activities. The Rules are intended to define party organization and management, to assure that the Maine Republican Party is open and accessible to all enrolled Republicans and to encourage the broadest possible participation.

Pursuant to Rule 23, the resolution of a county committee controversy shall be in accordance with the following procedures: "any person so affected by the controversy may file within twenty-one (21) calendar days of the date such controversy arises a written appeal to the secretary of the Republican State Committee. Such appeals must be sent via certified mail. Upon receipt of such appeal, (1) the Secretary of the State Committee shall, within five calendar days, provide a copy of the appeal to the county committee from which the appeal is taken; and (2) the Chairman of the Republican State Committee shall, within thirty (30) calendar days, appoint a panel of five members of the state committee, who shall constitute a Board of Investigation. If the Board has not yet been appointed, the Executive Committee may issue a stay of further action by any party, the city committee or county committee which affects the subject matter or outcome of the controversy."

In Penobscot County, our Bylaws state in Article III what constitutes a Voting Member, more specifically section 5 defines Terms:

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 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.

On December 20th, 2012, the Penobscot County Republican Committee met and while no official roll call was taken or quorum announced, an 'affirmative' vote was taken to suspend the bylaws 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 January 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 January 17 meeting will entitle that member to be a voting member."

(This action has not yet been appealed because, despite the fact that a "draft" of the minutes has been distributed via email to some of the County Committee, those minutes have not yet been brought up for a vote to approve them.)

At that meeting, the minutes for which we have never seen (other than a draft) or voted on, I objected to the motion that was made to allow non-voting members to vote, since the bylaws cannot be overridden by a majority vote. I objected prior to the vote being taken, and I stated, after the motion passed, that it was illegal.

However, when I received the draft of the minutes in email, no mention was made of my objection or my statement as to the illegality of the vote afterward.

I replied to the secretary by email, stating, "Regarding the motion to permit person who are not voting members according to our bylaws to vote, you may recall that I objected to this at the time, stating my opinion, before and after the motion was voted on, that it was illegal. Voting to violate the bylaws does not make the subsequent actions legal."

I have received no comment on my correction, and due to the fact that we have never seen those minutes, I have no idea if that was reflected in the "final draft" of those minutes.

When the proposed minutes were distributed by the Penobscot County Republican Committee Secretary to the Counties Executive Committee, Bryan Daugherty, Penobscot State Committeeman sent a notice of objection citing:

"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."

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 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

Even with known objections to the actions of the December meeting, the January 17th Probate Nomination and Officers Election were held in opposition to the Maine Republican Party and the Penobscot County Republican Committees Bylaws. the Executive Committee still allowed non-voting members to vote in both elections.

Furthermore, during the January 17th meeting, illegal proxies and/or telephonic voting occurred. In one instance, the Town Chair of Dixmont, Scott Fish, who had not attended a county committee meeting in more than 6 months and who had not paid his dues as prescribed in the Penobscot County Bylaws.

Julie Morgan, who has since recently resigned her position as Penobscot County State Committeewoman, noted the following: "A woman comes in gives me her name, I tell her sorry your not on our list, she asks to be a proxy for Scott Fish. I explain that the proxy has to be in writing. [S]he then calls "Scott" and I say to Harrison (treasurer) it has to be in writing-I thought he was going to give email address and get something in writing, but Harrison takes the phone and took the proxy against my protest. I am not sure if he collected dues from woman or not. Scott was on the list as town chair of Dixmont."

He was not, however, a voting member per our bylaws in that he had not paid his dues in the time period proscribed and he had missed more than three consecutive meetings.

According to our Penobscot County Bylaws, Article V, Section 3: "Each member of the County Committee shall be entitled to one vote on all questions or elections at any regular or special meeting if present in person or represented by a proxy WHO IS A REGISTERED REPUBLICAN. A proxy must be appointed in writing by the member and be a resident of the same municipality as the appointing member."

Important facts to consider:

More than two-thirds of the people who were present the night of the election had not been to a single meeting since May, and perhaps longer.

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 Treasurer has so far refused to find out, by examining bank records or any other method, who had paid their dues within 60 days by mail, so literally no effort has been made to ascertain who is and is not a legal voting member.

The Chair, Traci Gauthier, appointed two individuals to count the ballots. Neither of those two people were established as legal voting members. Aside from those two people and the Chair, no other witness was allowed to witness the count. When Maria Hodge, who is a legal voting member per the bylaws, attempted to witness the count, she was sent back to her seat.

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 can-

didate, 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.

Those who were allowed to pay their dues a full 8 months after the Convention are not legally allowed to vote as they are not members, per our bylaws. All votes cast by these ex-members are illegal and illegitimate.

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.

According to Rule 23c, the resolution of a county committee controversy shall be in accordance with the following procedures: "any person so affected by the controversy may file within twenty-one (21) calendar days of the date such controversy arises a written appeal to the secretary of the Republican State Committee. Such appeals must be sent via certified mail. Upon receipt of such appeal, (1) the Secretary of the State Committee shall, within five calendar days, provide a copy of the appeal to the county committee from which the appeal is taken; and (2) the Chairman of the Republican State Committee shall, within thirty (30) calendar days, appoint a panel of five members of the state committee, who shall constitute a Board of Investigation. If the Board has not yet been appointed, the Executive Committee may issue a stay of further action by any party, the city committee or county committee which affects the subject matter or outcome of the controversy."

As to the actions, which I believe would restore fairness to the process, I am of the opinion that there is nothing that anyone could do that would fully correct the situation. Some of those who were legal voting members of the Penobscot County Committee have left the Republican Party in disgust, specifically due to the manner in which the election was conducted, and would no longer be available to cast a vote in a new election. Furthermore, I don't know that the same candidates would be willing to stand for a new election.

Nevertheless, it is clear to me that the election of officers for the Penobscot County Republican Party was not conducted according to our bylaws, and cannot be considered valid, and that ignoring the obvious corruption of that election would further alienate those who took part legitimately in that process and would undermine confidence in the Party.

I ask that the results of the election be set aside, and that a new election be called, in which only those who were eligible to vote, according to our bylaws, at the time of the original election be permitted to nominate candidates or to cast a vote.

Further, I ask that the election be conducted in accordance with the bylaws which were in effect on that date, particularly those bylaws regarding the eligibility to vote, the designation of proxies, and the manner in which votes are taken.

I would also ask that votes be counted by persons who are voting members of the committee, that candidates be permitted to have someone observe the counting of the votes, and that the results of any votes taken be announced.

In the interest of bringing this about, I would ask that the treasurer, Harrison Clark, be compelled to supply a list of those members who have paid their dues, and the dates in which the dues were collected. He has stated that he does not have this information, yet he was the person responsible for collecting the money and making the deposits, entering these deposits into his computer, and depositing the money into the the committee's bank account, so I would argue that a reasonably responsible treasurer would indeed have this information available. If so, I ask that he be compelled to make this information known to other members of the committee and, if not, that he be compelled to account for his negligence in these matters.

As Harrison Clark was personally complicit in known violations of our bylaws relating to the election of officers, I would further ask that he not be involved, in any manner, in the conduction of this new election, other than making available the records, as discussed above.

Until a new election can be brought about, I would ask that no business be conducted by an executive committee consisting of members who were not duly elected as officers of the committee. If a matter should come up that requires action by the committee, I would ask that a neutral party be appointed to preside over whatever meetings or business might be necessary.

I further ask that absolutely no votes be taken in any matter whatsoever until it is determined exactly which members are indeed legitimately allowed to vote, per the bylaws.

Lastly, I would ask that the Penobscot County Republican Committee be compelled to adhere to its bylaws in the conduction of business in the future, so that a similar situation does not reoccur.

This would include the taking of minutes of its official meetings, a distribution of these minutes to all voting members, and the calling for a vote on the acceptance of these minutes. This would include minutes dating back to the May 2012 Penobscot County Republican Committee meeting up until the present minutes.

Thank you for your consideration of these matters.



Ken Anderson,

Member, Penobscot County Republican Committee

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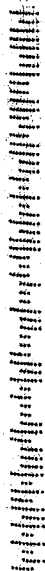
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