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Chuck Mahaleris, Secretary
Maine State Republican Committee

5 Spring Street

Augusta, Maine 04330

Pursuant to Roberts Rules of Order and Rule 23 of the Rules of the Maine Republican Party, I am hereby submitting the following appeal to the Maine State Republican Committee in regard to a recent election of officers from the Penobscot County Republican Committee as well as the ongoing breach of bylaws stemming from the December Meeting to suspend the rules to allow non-members to participate in voting.

Contrary to the recent ruling by the Chairman of the Maine Republican Party, which states:

"It is the opinion of the Party that this appeal has no standing, and that the right and proper action of the Party is to take no further action on the appeal. The Party will take no further action on this appeal."

Roberts Rules of Order, Edition 11, page 251, Point of Order, says *"The only exceptions to the rule that a point of order must be made at the time of the breach arise in connection with breaches that are of a continuing nature, in which case a point of order can be made at any time during the continuance of the breach. Instances of this kind occur when...:*

A.) A main motion has been adopted that conflicts with the bylaws of the organization.

D.) Any action that has been taken in violation of a fundamental principle of parliamentary law.

E.) Any action has been taken in violation of a rule protecting absentees, a rule in the bylaws requiring a vote to be taken by ballot, or a rule protecting a basic right of an individual member.

It is a fundamental principle of parliamentary law that the right to vote is limited to the members of an organization who are actually present at the time the vote is taken in a regular or properly called meeting, the rules cannot be suspended so as to give the right to vote to a nonmember, or to authorize absentee voting.

I contend:

1. That there remains an ongoing bylaw breach that occurred during the December Penobscot meeting which continues to be in direct violation to our County Bylaws.
2. That Chairman Cebra ruled prematurely and without due diligence of the Maine Republican Party Executive Committee: Rule 23(a) clearly states that the Executive Committee has the power to exercise jurisdiction over such matters, "when such controversy affects the interests of the party as a whole or the rights of any member of the party to participate in its affairs."

Rule 23 states:

Resolution of any controversy shall be in accordance with the following procedures:

- a. The Republican State Party may, upon a decision of the Executive Committee, exercise jurisdiction over controversies between and among members of any county committee or municipal committee when such controversy affects the interests of the party as a whole or the rights of any member of the party to participate in its affairs.

Given that the Chair and Executive Committee are aware of this situation and the serious disunifying nature of this complaint, I am asking for the immediate creation of an investigative body as dictated in our state party rules as stated above.

I ask that this matter be handled in keeping with the Chairman's promise to ensure to the best of his ability that the Party operates within the Rules and By-laws set forth for it by our governing body, the legitimacy of this appeal will have an opportunity to receive thorough review and consideration.

I am a registered Republican, and a member in good standing on the Penobscot County Republican Committee, having abided by all rules and bylaws, and currently serve as the State Committeeman for the county and Chair of the Rules and Procedures Committee there.

Thank you for your urgent consideration of these matters,

Bryan Daugherty
State Committeeman, Penobscot County

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 ROR, p. 255

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

3^ ROR, 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 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 prescribed 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 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.

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.

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.

Given that her position on the State Committee is as the Chair of Penobscot County, I ask that the County Chair who was declared the winner of the disputed election be disallowed from voting on any State Committee votes until the mandatory investigative committee hears the evidence and an actual decision by the body responsible for deciding is handed down.

I further ask that absolutely no votes be taken in any matter whatsoever in the Penobscot County Committee 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.

Bryan Daugherty
State Committeeman, Penobscot County