

# AL GAGE, CPP-T, PRP, PAP

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## Parliamentary Opinion

June 18, 2023

### **Introduction**

While this opinion was commissioned by certain members of the Idaho Republican Party, the author has an ethical obligation to be impartial and protect the rights and privileges of all members of the Idaho Republican Party. The author is also the retained parliamentarian for the Republican National Committee (RNC) and while this opinion involves a member of said Committee, this work is neither on behalf of or endorsed by the RNC but is an independent parliamentary assessment of the rules of the Idaho Republican Party and associated documentation as well as actual witnessed activity at the meetings on of the Judicial Committee Meeting on January 6, 2023 and the special meeting of the State Committee on January 7, 2023.

While the author is aware that a professional parliamentarian was advising the chair, this document in no way reflects on that individual because the author is not privy to any advice actually given to the presiding officer at any point before or during this meeting. The author is well aware of the fact that the parliamentarian merely advises the chair on procedure and the same chair is allowed to accept or disregard that advice at will.

A formal Parliamentary Opinion, such as this document, is the parliamentary version of a legal brief. The questions asked were:

### **Questions related the calling and conduct of the Special Meeting on January 7, 2023**

1. Was the IDGOP Chairwoman required to call the meeting?
2. What should the chair/presiding officer's response to the petition have been?
3. Should the meeting have been held in executive session?
4. Were the rulings made about the ability to present evidence and or make allegations handled appropriately?
5. Were the National Committeeman's due process rights violated by the mere introduction of evidence?

### **Questions related to the Judicial Committee meeting on January 6, 2023**

6. Did the Judicial Committee arrive at the correct conclusion?

### **Questions related to the authority for removal from office**

7. Can the Idaho National Committeeman be removed from office by the state party and if so, how?
8. What is the procedure for removing the National Committeeman??

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9. Does the State Central Committee or the State Convention have the authority to remove an officer?
10. Is declaring a vacancy, creating a vacancy, recognizing a vacancy, or forcing a vacancy still considered removal from office if the National Committeeman has not resigned?
11. Can we just suspend the rules and do this in a different manner?

## **Questions related to the motion adopted at the Special Meeting on January 7, 2023**

12. What happens as a result of the resolution adopted at the Special Meeting?

## **Questions related to the minutes of the meeting**

13. Do the proposed minutes of the meeting reflect what occurred in the meeting and comply with the rules in RONR?

## **Background Information Provided**

- Rules of the Idaho Republican Party
- Letter from the Bonneville County Clerk dated December 1, 2022.
- 2023 Rules Committee Proposals

## **Sources Consulted**

In addition to the Background Information Provided, as noted above, the following documents were consulted:

- Rules of the Idaho Republican Party
- *Roberts Rules of Order Newly Revised*, 12<sup>th</sup> Edition (RONR), the parliamentary authority of the Idaho Republican Party as stated in Article X of the 2022 Idaho Republican Party Rules
- Parliamentary Opinions in PDF Format including Parliamentary Opinions I, II and Parliamentary Opinions Published in the Parliamentary Journal Vol. 33-49 1992-2008
- Parliamentary Opinions IV, 2020, American Institute of Parliamentarians Work in Progress
- This parliamentarian was present at both the January 6, 2023, Judicial Committee meeting and the Special Meeting on January 7, 2023
- Letter from the Bonneville County, Idaho, Clerk, Auditor and Recorder Penny Manning

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## **Opinion**

### **Questions related to the calling and conduct of the Special Meeting on January 7, 2023**

#### **Q1. Was the IDGOP Chairwoman required to call the meeting?**

The meeting was called to order by Chairwoman Moon and almost immediately the chair was handed over to Brent Regan. The responsibility of calling the meeting was handled by the Chairwoman in the role of an administrative chair rather than the presiding officer of the meeting.

Many of the points of order and appeals at the beginning of the January 7, 2023, meeting question the Chairwoman's action in calling the meeting in the first place,

The Rules of the Idaho Republican Party state the following in Article I Sections 3:

**Section 3:** Upon written petition of fifteen (15) or more members of the Republican State Central Committee, representing not less than five (5) counties asking for a special meeting of the Republican State Central Committee, it shall be the duty of the State Chairman, within ten (10) days from receipt of said petition, to issue a call for a special meeting of the Republican State Central Committee.

It is very clear from this text that the Chairwoman was required to call the meeting. The Chairwoman had no discretionary authority not to call the meeting once a petition was received. It should be noted that the text requires the call for the special meeting to be issued within 10 days, and not that the meeting must be held within 10 days.

#### **Q2. What should the chair/presiding officer's response to the petition have been?**

RONR is very clear on this point and the correct actions were not followed. Since the National Committeeman (NC), who was the subject of the petition was present and clearly not in agreement with either the sentiment or the letter of the petition, the allegations in the petition that the NC had moved to another state and therefore was ineligible to serve merely represent allegations. Under the provisions of RONR, an investigating committee must investigate these charges and report their findings.

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The petition asks for the State Committee to consider “State Central Committee to consider declaring the National Committeeman position vacant or, alternatively, removal of National Committeeman Damond Watkins.”

A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If thus accused, he has the right to due process—that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated. RONR (12<sup>th</sup> ed) 63:5

RONR states:

For the protection of parties who may be innocent, the first resolution should avoid details as much as possible. An individual member may not prefer charges, even if that member has proof of an officer’s or member’s wrongdoing. If a member introduces a resolution preferring charges unsupported by an investigating committee’s recommendation, the chair must rule the resolution out of order, informing the member that it would instead be in order to move the appointment of such a committee (by a resolution, as in the example above). A resolution is improper if it implies the truth of specific rumors or contains insinuations unfavorable to an officer or member, even one who is to be accused. It is out of order, for example, for a resolution to begin, “Whereas, It seems probable that the treasurer has engaged in graft, ...” At the first mention of the word “graft” in such a case, the chair must instantly call to order the member attempting to move the resolution. RONR (12th ed) 63:11

Because there was no prior investigating committee to support the charges, the actions to remove NC Watkins were not in order, and violated the National Committeeman’s rights. The chair/presiding officer should have immediately ruled the petition out of order once the meeting began. Despite numerous points of order and appeals to the contrary, the proponents of this measure were allowed to present evidence on the matter in open session. This again violates the member’s rights to due process because he was not afforded an exact copy of any charges and allowed to adequately prepare a defense. My specific recollections of the evidence presented were a Facebook post by the member’s spouse.

63:2 A society has the right to investigate the character of its members and officers as may be necessary to the enforcement of its own standards. But neither the society nor any member has the right to make public any information obtained through such investigation; if it becomes common knowledge within the society, it may not be revealed to any persons outside the society. Consequently, a trial must always be held in executive session, as must the introduction and consideration of all resolutions leading up to the trial.

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This portion of the meeting should have been held in Executive Session but was not. This is a direct violation of this rule. While the meeting chairman said this was not a trial, it appeared to be a trial in every way. That is not to say that a properly noticed and fair trial has already occurred because nothing could be further from the truth. The proponents were given time to present evidence that the National Committeeman had moved and was thus either ineligible or had vacated the office.

The National Committeeman was next given time to present his evidence that he had not moved. The member then refuted the charges and presented evidence that the charges were false in addition to the letters from the Secretary of State and the Bonneville County Clerk that had been emailed to the State Committee members prior to the meeting.

Robert's Rules of Order takes allegations such as this very seriously and requires intervention from the presiding officer in every instance. None of the above steps from the introduction of the motion to remove or declare the position vacant until the committee was appointed to investigate the allegations should have been allowed.

A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If thus accused, he has the right to due process—that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated. RONR (12<sup>th</sup> ed) 63:5

The proper steps that should have been taken would have been for the chair to announce at the beginning of the meeting that:

1. The State Committee does not have the authority to remove the National Committeeman from office. (This will be addressed in later questions.)
2. The petition on its face is not in order because it contains allegations against a member.
3. The State Committee then could have adopted a motion to appoint a committee to investigate the allegations and if charges warranted, report those to the convention of the State Party.

## **Q3 Should the meeting have been held in executive session?**

This may not have been officially called a trial but it had all the makings of one. In any case, the entire proceeding should have been in executive session but no consideration was given to this prospect and in the defense of the presiding officer, the point was never raised.

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A society has the right to investigate the character of its members and officers as may be necessary to the enforcement of its own standards. But neither the society nor any member has the right to make public any information obtained through such investigation; if it becomes common knowledge within the society, it may not be revealed to any persons outside the society. Consequently, a trial must always be held in executive session, as must the introduction and consideration of all resolutions leading up to the trial. .RONR 63:2

## **Q4. Were the rulings made about the ability to present evidence and or make allegations handled appropriately?**

The answer to this question is no. The body should not have been allowed to make an interpretation about an unambiguous bylaw. The bylaw in question in no way references removing a member from office. The bylaw is simply not ambiguous and therefore not subject to interpretation at all.

1) *Each society decides for itself the meaning of its bylaws.* When the meaning is clear, however, the society, even by a unanimous vote, cannot change that meaning except by amending its bylaws. An ambiguity must exist before there is any occasion for interpretation. .RONR 56:68

## **Q5. Were the National Committeeman's due process rights violated by the mere introduction of evidence?**

Yes, his rights as a member were violated. A member is entitled to due process as a member and also as part of our democratic society. The member was not presented with charges brought on reasonable grounds. In fact, no charges were brought at all prior to the meeting. He was openly accused of moving and being deceptive about that practice in an open session of the State Committee. He certainly was not given time to prepare a defense because there were no charges brought against him in advance. He was never informed of the charges other than the petition which by every interpretation of the rules should have been ruled out of order.

A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If thus accused, he has the right to due process—that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated. RONR 63:5

Eventually realizing the error and referring the motion to an investigatory committee was better than simply proceeding to a vote on (an improper) removal, but the bell cannot be unrung and the damage to the member's reputation is already done. RONR does not provide a remedy for what to do in the case of such a violation; the remedy for this action does not lie in parliamentary law.

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## Questions related to the Judicial Committee meeting on January 6, 2023

### **Q6. Did the Judicial Committee arrive at the correct conclusion?**

Yes, the Judicial Committee arrived at the conclusion that the State Central Committee did not have the authority to remove the member from office. The Judicial Committee also noted that even if the State Central Committee had that authority, the National Committeeman must be given due process. They also reached the conclusion that the position could not simply be declared vacant. Each of these are correct conclusions.

## Questions related to the authority for removal from office

### **Q7. Can the Idaho National Committeeman be removed from office by the state party?**

Yes, by the Convention.

There is no provision for removal of an officer from office in the rules of the Idaho Republican Party. Neither is there a prohibition against removal. In the absence of specific direction in the Party Rules, the parliamentary authority prevails. Party Rules state in Article X that:

***Section 1:** The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Idaho Republican Party in all cases to which they are applicable and in which they are not inconsistent with state law, State Party rules, or any special rules of order the Party may adopt.*

This means that absent a provision in the governing documents, *Roberts Rules of Order, Newly Revised* (RONR) (12<sup>th</sup> Ed) dictates whether the party can remove an officer and if so, what procedure is to be used. RONR has several clauses that are relevant to this discussion. The first is:

A society has the right to investigate the character of its members and officers as may be necessary to the enforcement of its own standards. But neither the society nor any member has the right to make public any information obtained through such investigation; if it becomes common knowledge within the society, it may not be revealed to any persons outside the society. RONR (12<sup>th</sup> ed) 63:16

It also says that:



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62:16 Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be removed from office **by the society's assembly** as follows:

- If the bylaws provide that officers shall serve “for \_\_ years *or* until their successors are elected,” the officer in question can be removed from office by adoption of a motion to do so. The vote required for adoption of this incidental main motion is (a) a two-thirds vote, (b) a majority vote when previous notice (as defined in 10:44) has been given, or (c) a vote of a majority of the entire membership—any one of which will suffice. A motion to remove an officer from office is a question of privilege (19) affecting the organization of the assembly, and so also is the filling of any vacancy created by the adoption of such a motion.<sup>6</sup>

- If, however, the bylaws provide that officers shall serve **only a fixed term**, such as “for two years” (which is not a recommended wording; see 56:28), or if they provide that officers shall serve “for \_\_ years *and* until their successors are elected,” an officer can be **removed from office only for cause**—that is, neglect of duty in office or misconduct—in accordance with the procedures described in 63; that is, **an investigating committee must be appointed, charges must be preferred, and a formal trial must be held**. RONR (12<sup>th</sup> ed) 62:16 [Emphasis added]

The combination of these two provisions means that an officer may be removed from office, however, “an investigating committee must be appointed, charges must be preferred, and a formal trial must be held.” It is very important to note that the preamble to paragraph 62:16 provides that removal from office is “by the society's assembly,” which refers to the assembly that elected the officer. (See Q9.)

## **Q8. What is the procedure for removing the National Committeeman?**

The next step in this question is to consult the Party Rules with regard to the term of office for the National Committeeman and see which of the two choices above applies. The rules state in Article I Section 16:

**Section 16:** The two-year term of office of the State Chairman shall begin immediately upon election by the Republican State Convention. The four (4) year term of office of the National Committeewoman and National Committeeman shall commence the day after the close of the Republican National Convention. The two (2) year term of office for the First Vice Chairman, Second Vice Chairman, Secretary and Treasurer shall commence immediately following the Republican State Convention.

The term of office stated in the Rules is a fixed term – from one presidential electing convention to the next. Because the language lists only a fixed term, as shown in Q3, the National Committeeman can only be removed from office for cause, such as neglect of duty in office or misconduct. In this case there is an allegation of a violation of the residency requirement.



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Pursuing this option requires that a confidential investigating committee must be appointed, formal charges must be preferred and a trial must be held in executive session. This is a fundamental right of the member in question and no other interpretation is available.

## **Q9. Does the State Central Committee or the State Convention have the authority to remove an officer?**

Only the State Convention has this authority under the current rules. This is a very interesting question which is complicated by the unique structure of the Idaho Republican Party. In most organizations, the convention is the ultimate authority and delegates some of its authority to the Board (a smaller elected group) and possibly some of that authority to the executive committee of the board (an even smaller group). In this case the exact opposite is the structure of the Idaho Republican Party. The state Central Committee is the ultimate authority per the rule but it delegates some of that authority to the convention. It is very important to note that the State Central Committee retains the ability to modify the rules of the State Party and all of this opinion is based on the current iteration of the rules. The rules establish this as follows in Article I Section 1:

**Section 1:** The Republican State Central Committee shall be the governing body of the Idaho Republican Party. It shall establish all policy and functions of the Idaho Republican Party on the State level, and may employ a staff to carry out such policy and functions. No person may hold more than one voting position on the State Central Committee.

Many would conclude that this is the ultimate answer and research no further. However, the rules go on to delegate the responsibility of electing the State Chairman, National Committeeman and National Committeewoman to the State Convention assembled. In Article I, Section 9, the Rules state:

**Section 9:** The National Committeeman and National Committeewoman shall be elected by the delegates to the Republican State Convention in the same year as presidential elections. The National Committeeman and National Committeewoman shall represent the Idaho Republican Party on the National Committee, shall speak for Idaho to the National Committee, shall convey National Party Policy to the State Party, and shall carry out all other duties and responsibilities as they may see fit to properly represent the Idaho Republican Party.

This clause clearly reserves to the Republican State Convention the role and power to elect these positions. In this instance, the State Central Committee has delegated the authority of electing the National Committeeman, National Committeewoman and the State Chairman to the delegates of the Republican State Convention. RONR contemplates this exact situation but in reverse, so the rules must still apply. It states:

In any event, no action of the board can alter or conflict with any decision made by the assembly of the society, and any such action of the board is null and void (see 56:41 and 23:9).

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Except in matters placed by the bylaws exclusively under the control of the board, the society's assembly can give the board instructions which it must carry out, and can rescind or amend any action of the board if it is not too late. RONR \*(12<sup>th</sup> ed) 49:7

The gist of this rule is that if the bylaws (or Party Rules) give specific authority to the Convention, no other body, even a body with greater authority, can dictate how the Convention carries out that duty.

The State Central Committee could direct the State Convention on all matters EXCEPT for matters exclusively under the control of the State Convention which includes the election of the National Committeeman, National Committeewoman and State Chairman. There is absolutely no question that the State Central Committee is not allowed to hold an election for these three positions in the regular cycle. These elections are reserved exclusively for the State Convention with exception of filling a vacancy.

Since the bylaws are silent on removal from office an interpretation must be made about which body has the power to remove an officer from office. One of the principals of interpretation that apply in this instance is as follows:

In preparing bylaws and interpreting them, the following principles of interpretation—which have equal application to other rules and documents adopted by an organization—may be of assistance.

- 1) *Each society decides for itself the meaning of its bylaws.* When the meaning is clear, however, the society, even by a unanimous vote, cannot change that meaning except by amending its bylaws. An ambiguity must exist before there is any occasion for interpretation. If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws. The interpretation should be in accordance with the intention of the society at the time the bylaw was adopted, as far as this can be determined. Again, intent plays no role unless the meaning is unclear or uncertain, but where an ambiguity exists, a majority vote is all that is required to decide the question. The ambiguous or doubtful expression should be amended as soon as practicable. RONR \*(12<sup>th</sup> ed) 56:68

The importance of this interpretation principle is that an organization is not simply allowed to interpret their rules to say whatever they want. There must be an actual ambiguity or lack of clarity for an interpretation to occur. Nothing discussed thus far has risen to the level of interpretation but the question of who has the authority to remove this officer is a least worthy of consideration of this process.

Additionally, under principles of interpretation RONR states the following:

When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning. RONR \*(12<sup>th</sup> ed) 56:68

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The contemplated interpretation that the State Central Committee has the power to remove and replace an officer 1 day after the State Convention has elected them seems to be an absurd interpretation of the rules. The State Central Committee is not allowed to remove an officer without changing the rules. The only body authorized to so is the State Convention.

The interpretation that the power to elect carries with it the power to remove is a common tenant of not just Robert's Rules of Order but the common parliamentary law as well. Multiple citations from parliamentary authorities and collections of peer reviewed and published opinions are included as an appendix to this document. There is likely also case law to back this up but that exceeds the scope of my expertise. Following is what the current edition of RONR says about the power to appoint or elect:

Unless the bylaws or other governing rules provide otherwise (see 50:14, 62:16), the appointing authority has the power to remove or replace members of the committee: If a single person, such as the president, has the power of appointment, he has the power to remove or replace a member so appointed; but if the assembly has the power of selection, removal or replacement can take place only under rules applicable to the motions to *Rescind* or *Amend Something Previously Adopted* (see 50:14). Committee members are presumed to serve until their successors are appointed. Part of RONR \*(12<sup>th</sup> ed) 13:23

## **Q10. Is declaring a vacancy, creating a vacancy, recognizing a vacancy or forcing a vacancy still considered removal from office if the National Committeeman has not resigned?**

All of these potential avenues are thinly disguised attempts at the real action which is being contemplated, to remove the National Committeeman and replace him. Unless the National Committeeman has resigned or been removed from office by action of the State Convention, he remains in office. There is nothing to support that a vacancy can be forced or created or declared that is anything other than a simple removal from office. The rules for removing an officer from office must be followed.

At the meeting on January 7, it appeared that the interpretation was that the following clause could be interpreted to mean that the state committee could determine that a vacancy exists. The clause was from Article I Section 10:

**Section 10:** If the office of the National Committeeman or National Committeewoman becomes vacant, by reason or resignation, death or otherwise, the State Chairman shall, within thirty (30) days of the event, call a Republican State Central Committee meeting for the purpose of making an appointment to fill the vacancy.

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It can be assumed that the clause “by reason or resignation” actually reads “by reason of resignation” and this typographical error does not affect the interpretation. In fact, in nine locations in the Party Rules, when talking about vacancies, the language is “by reason of resignation.” In only one location, the paragraph related to a vacancy in the office of National Committeeman or National Committeewoman, does it read “by reason or resignation.”

The interpretation that this clause because of the words “or otherwise” means that the State Committee can forcibly remove someone without disciplinary proceedings is erroneous.

For the purposes of argument, let’s say that an allegation was made complete with photographic evidence that the member had changed political parties, which would make them ineligible to serve, and that the evidence is a photo of a ‘Vote for Joe Biden’ sign in their yard. The body cannot vote to remove that person simply because of this evidence and declare that this falls under the category of that the position has become vacant because of “resignation, death or otherwise.” There are many factors that could account for the sign such as a prank or an error by a family member. The member must be afforded due process.

Even if the member was incapacitated, they must still be afforded their due process rights. The action contemplated in this proceeding would be the same as declaring the position vacant because the member was deceased all while the member was standing in the back of the room-clearly still alive.

The more egregious part of the argument is that this clause clearly anticipates that the position naturally becomes vacant and then the State Committee fills the vacancy. The argument that this wording gives the state committee the power to, in effect, remove someone violates one of the fundamental principles of interpretation.

5) A provision granting certain privileges carries with it a right to a part of the privileges, but prohibits a greater privilege. The Sample Bylaws, in Article VI, Section 2 (56:64) provide that the executive board may “fix the hour and place of meetings” of the society. The board may, therefore, change the time or the place, or both, of a society’s meeting. But it may not change the day for which the meeting is scheduled. RONR 56:68

The State Committee is granted the privilege of filling a vacancy in the event one occurs. That is the privilege. It is not granted the greater privilege of creating a vacancy by removing an officer by simply declaring the position vacant. If this was allowable and a proper path forward, there would never be any occasion to grant a member due process or a trial and that entire section of RONR would be rendered moot.

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## **Q11. Can we just suspend the rules and do this in a different manner?**

In Article X Section 4 it states that:

**Section 4:** The Rules of the Idaho Republican Party can only be amended or suspended by the Idaho Republican State Central Committee.

This rule is a clarification of who has the authority to amend or suspend the rules of the party. This, therefore, leaves all of the requirements and protections afforded to members as to suspending the rules to those rules cited in Robert's Rules of Order, Newly Revised. There are several applicable rules that apply. They are:

Rules protecting a *basic right of the individual member* cannot be suspended. Thus, while generally applicable limits on debate and the making of motions may be imposed by motions such as the *Previous Question*, the rules may not be suspended so as to deny any particular member the right to attend meetings, make motions or nominations, speak in debate, give previous notice, or vote. These basic rights may be curtailed only through disciplinary proceedings. RONR (12<sup>th</sup> ed) 25:11

One of those basic rights of a member is to seek and hold office within the organization. That right, according to this rule, cannot be infringed upon by vote or suspension of the rules but only by disciplinary procedures unless the rules provided otherwise, which they do not. RONR also says with regard to the voting requirement to suspend the rule that it:

7. Usually requires a two-thirds vote (see below, however). In any case, no rule protecting a minority of a particular size can be suspended in the face of a negative vote as large as the minority protected by the rule. RONR (12<sup>th</sup> ed) 25:2

What this means is that to suspend the rules and remove the national committeeman, it could not be suspended in the face of a negative vote as large as the minority protected by the rule. The rule requiring the National Committeeman be removed by formal disciplinary procedures or by the State Central Committee protects a minority of ONE! Thus, if this action is contemplated, even a single negative vote would defeat the motion to suspend the rules.

## **Questions related to the motion adopted at the Special Meeting on January 7, 2023**

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## **Q12. What happens as a result of the resolution adopted at the Special Meeting?**

At the Special Meeting, a motion was made to adopt a resolution directing Chairwoman Moon to appoint a Roberts Rules Section 63 Committee to investigate the motion and submit a report at the Summer 2023 State Central Committee Meeting. This resolution is in order as the first step in the disciplinary proceedings.

A committee whose members are selected for known integrity and good judgment conducts a confidential investigation (including a reasonable attempt to interview the accused) to determine whether to recommend that further action, including the preferring of charges if necessary, is warranted. [RONR 63:8]

The report of such a committee must be provided, as noted previously, in executive session. The National Committeeman should be informed of the charges and have an opportunity to provide a defense, and to have counsel available. While the State Central Committee can hear the report of the investigating committee in executive session, they do not, as noted previously, have the authority to remove the National Committeeman, and such action may only be taken by the State Republican Convention.

## **Questions related to the minutes of the meeting.**

### **Q13 Do the proposed minutes of the meeting reflect what occurred in the meeting and comply with the rules in RONR?**

There were several points of order raised that are not captured in the minutes of the meeting. These points of order and appeals in regard to the due process of the member, the authority of the State Committee to declare the position vacant and the general conduct of the meeting must be included in the minutes. See RONR 48:5, (5) 2<sup>nd</sup> occurrence: The body of the minutes should contain a *separate paragraph for each subject matter*, and should show:

- 5) all points of order and appeals, whether sustained or lost, together with the reasons given by the chair for his or her ruling; and;

## **Conclusions**

1. The Idaho Chairwoman was required to hold the meeting.
2. Either by the Chairwoman or the invited presiding officer, the motion in the petition should have been immediately ruled out of order.
3. The meeting should have been held in executive session for the protection of the accused.
4. The body should not have been allowed to hear evidence of guilt on a charge because no charges were properly levied against the National Committeeman.
5. The National Committeeman's rights to due process were unequivocally violated by the entire body of the Idaho State Central Committee.



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6. The Judicial Committee arrived at the correct conclusion that the State Party did not have the authority to remove the National Committeeman from office without disciplinary processes and that they could not be removed by simply declaring the position vacant.
7. The National Committeeman can be removed from office after a trial where all of his due process rights are protected, but only by the State Convention of Delegates.
8. Because of the term of office clauses within the bylaws, the National Committeeman can only be removed from office as a result of disciplinary procedures or resignation.
9. Only the State Convention of Delegates assembled has the authority to remove an officer because they are specifically granted the power to elect that office. The power to elect carries with it the power to remove absent a specific clause to the contrary.
10. There is no method of declaring or causing a vacancy available to the State Central Committee under the current rules. Doing so is tantamount to removal from office and those procedures should be followed.
11. The rules cannot be suspended to violate the rights of an individual member and if they could it would take a unanimous vote because the size of the minority being protected is only one person.
12. The report of the investigative committee should be received in executive session but the state committee may not take action on it because the member has not had an opportunity to prepare a defense or been informed of the charges. The State Committee may hear the report but is only allowed to report the recommendations to the State Convention.
13. The minutes of the meeting do not accurately reflect the conduct or content of the meeting, particularly as it related to the various points of order and the rulings on them.

The Idaho Republican Party should proceed with caution if they continue to pursue this avenue.

**Disclaimer: The author presents this opinion as a parliamentary opinion only. The opinion is based solely on the information provided and additional or erroneous information may alter the opinion. No attempt is made to address the legal, statutory or tax ramifications of these or any other action by the parties as the author is not professionally trained in legal or accounting matters.**

Sincerely,



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## Appendix of Opinions

### Parliamentary Opinions :

144 Immediate past president as ex-officio member of board

Question According to the bylaws of a society, “the immediate past president shall serve as an ex-officio member of the board of directors.” The bylaws further provide for the filling of all vacancies by the board. A committee is investigating charges against the current president for malfeasance in office. If removed from office, will the president become the immediate past president? If the president is removed from office or expelled from membership, will he be eligible to serve on the board of directors? Under this bylaw, could the immediate past president be removed from the board? Could a resignation from the directorship be accepted? If the ex-officio membership should become vacant by death, or for any other reason, could the board fill the vacancy?

Opinion Yes, the president will become the immediate past president, even if removed from office. Nothing can erase the fact that he held the office of president. Since the bylaws state without qualification that “the immediate past president shall serve ... [on] the board of directors,” the current president will be eligible to serve on that body. Only a specific rule in the bylaws or higher authority can prevent it.

Removal from the board would also be difficult, even for malfeasance. **Removal is by the electing or appointing power.** In as much as the immediate past president is placed on the board by a provision in the bylaws, a change in the bylaws would be necessary to remove him from the directorship.

Yes, a resignation from the directorship could be accepted; an individual cannot be forced to hold an office. (See Demeter, page 207; Sturgis, page 227; Sturgis 3rd. page 216.) Since no one else is eligible under the bylaws, the vacancies could not be filled until another president becomes the immediate past president. Parliamentary Opinions I p.265

283 Removal of committee member

Question If a committee member proves to be uncooperative or obstructive, who has the authority to remove him?

Opinion The appointing body has this authority. (PL , Questions 120 and 121, pages 457, 458.)

No citation (see RONR, 10th Ed., p. 169-70, l. 28-7) Parliamentary Opinions II, p 141

2001-463 Appoint with Approval; Remove Without? Volume 42 No 2 April 2001

Question The bylaws give the president authority to “appoint the chairmen of committees with the approval of the Board of Directors”. A recently appointed committee chairman has turned out to be a less than satisfactory choice; the president wishes to remove him from the chairmanship of the committee and replace him with another person. (The chairman has declined to resign.) For political reasons, the board wishes to keep the chairman in place and has asserted that, just as the president needed board approval to appoint the chairman, so too, the president needs board approval to remove him. The bylaws are silent on removal. Is the board’s assertion correct?

The parliamentary authority is Robert’s Rules of Order Newly Revised, 10th Edition (RONR).

Opinion No. The president is free to remove the current chairman from the committee at will although, of course, he will have to obtain board approval of the replacement appointment. In this connection it is important to make clear the steps in the approval/appointment process that the president and the board go through in order to, eventually, place a person on the committee as chairman. The initial step is that the president offers (“nominates”) a name (or names) to the board for their approval. All that the board can then do, as the second step, is approve or reject (veto) the president’s (nominated) candidate.

Once the board has approved a person, then the president is free to actually make the appointment of the person in question. The president is also free, at this point, to change his mind and not appoint the previously approved person. The approval of the person by the board does not require that the appointment be made - that choice or

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power remains with the president exclusively. Since “the power of appointment [carries with it] the power to remove ... a member” (RONR, p. 170), and the bylaws are silent about any required board “approvals” relative to removal, the president has a free hand to remove the chairman. Parliamentary Opinions III p. 309