

# JONATHAN M. JACOBS, PRP-R, CPP

*Parliamentary Consultant*

Mailing Address  
630 North 63<sup>rd</sup> Street,  
Apartment 3 Floor Rear  
Philadelphia, PA 19151  
Telephone: (215) 229-1185  
E-mail: [jjparlia@yahoo.com](mailto:jjparlia@yahoo.com)

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## Parliamentary Opinion

On April 1, 2022, Michael Heise, a delegate to the 2022 Libertarian National Convention from the Commonwealth of Pennsylvania, and the chair of the Libertarian Party's Mises Caucus, contacted the parliamentarian regarding a proposed voting method suggested on the server list for conducting business in the Libertarian National Committee. This proposal<sup>1</sup> was an e-mail dated March 31, 2022, at 2:59:41 AM, by Tim "TJ" Ferreira, the Region 4 Alternate Representative.

The e-mail, which was not stated in the form of the motion, included these parts.

- 2) to describe the interpretation of our rules that make this possible with the expectation that there will be disagreement and discussion around that interpretation; and
- 3) identify some additional voting concepts which may come up at our convention when using electronic voting and offer my opinion on how to handle them based on our Convention Special Rules and RONR.

Mr. Heise asked the parliamentarian to review the proposal to determine if it would violate any applicable rules and if it would create procedural problem.

### Works Cited

The Libertarian Party has a singular document including the Bylaws and Convention Standing Rules<sup>2</sup>, among other things. These will be cited as Article or Rule as appropriate.

The parliamentary authority is the current or 12<sup>th</sup> edition Robert's Rules of Order Newly Revised (RONR)<sup>3</sup>, as established in the Bylaws (Art. 16). It will be cited section/paragraph number.

The proposal made by Mr. Ferreira shall be cited as "email." Anything else shall be referenced in the end notes.

### Commentary

The parliamentarian is aware that Mr. Ferreira's proposal has created controversy. This opinion is not an attempt to address those. It is limited to determining if this proposition violates the bylaws and rules as they now stand. In other words, it answers the question of if it would be in order to use the method described in the e-mail.

As correctly noted in the e-mail, RONR states, "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, although it should be noted that a member need not be present when the question is put. Exceptions to this rule must be expressly stated in the bylaws. (45:56)." What the e-mail proposes violates this principle without express bylaw authorization.

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The email states, "As currently planned, if a delegate has physically checked in with the credentials desk, then their ability to vote will be enabled. Unless the delegation chair (or they themselves) pauses that ability, the delegate will be able to vote from wherever they reside when a question is put." Any method that permit casting of a vote from a remote area, an area not specifically authorized by the convention<sup>4</sup>, violates this stated fundamental principle of parliamentary law.

A stated "fundamental principle of parliamentary law" is a very important classification in RONR. The violation of it creates a breach of a continuing nature that is always subject to a point of order; the action taken in violation of it becomes "null and void (23:6, specifically d.)." If someone were elected using this method, there election could be challenged at any point while the person remained in office. If some bylaw or platform plank were adopted using this method, its adoption could be legitimately challenged as long as it is in effect, even decades later.

The challenge would consist of raising a point of order and if necessary appealing the decision of the chair. Even if the point found not well taken, it could be raised continuously at future meetings until reversed. In other words, using the method described in the email, even for one vote, has the potential to create a decades long problem for the Libertarian Party. The parliamentarian, *obviously*, recommends against using this method because of a very real problem of a continuing breach.


RONR requires tellers to make sure that only legitimate voters cast votes and that no one tried to cast more votes that he is entitled to cast (45:29). Under Rule 3 the state chair (or member selected by the state delegation) effectively serves as the teller. Rule 3.3 requires that, in some cases, ballots be signed.

The email proposed, "After a vote is electronically cast, the system can provide a short (6 character) code which the voter would then write on a slip of paper and turn in like a ballot. The state chairs and tellers would then validate only the votes associated with the codes provided on the slips of paper." A receipt is not a ballot. The method suggested in the email violates Rule 3.3. The parliamentarian will note, however that Rule 3.3 could be suspended by a two thirds vote; the rule could also be repealed or amended by a two thirds vote with notice or by a vote of a majority of the registered delegates (RONR, 35:2 7.).

While not discussed in the email, there is the very important question of write-in votes in elections. RONR creates a "right" for members to cast write-in votes in ballot election unless the bylaws remove that right (46:35). 23:6, e. states that any action taken in violation of "a rule protecting a basic right of an individual member," is null and void. Any balloting method that did not permit write-in votes is sufficient to void an election using that method. This should be a consideration with any voting method used.

### Opinion

- 1. The use of the voting system described Mr. Ferreira's email violates a fundamental principle of parliamentary law by permitting absentee voting. The use of this system would cause any vote taken under it to be null and void.**
- 2. The use of this system violates Rule 3.3 regarding signed ballots.**
- 3. Any electronic voting system to be used by the Libertarian National Convention for elections must include the ability to handle write-in votes.**

 Signed:  
Jonathan M. Jacobs, PRP-R, CPP

Date: April 1, 2022

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## End Notes

<sup>1</sup> <https://groups.google.com/a/lp.org/g/lnc-business/c/SD8ljaAS-N8>

<sup>2</sup> In the Libertarian Party, Convention Standing Rules are permanently adopted and are special rules of order. They are not adopted at each convention.

<sup>3</sup> Robert, Henry M., *Robert's Rules of Order Newly Revised*, 12th Edition. Eds. Sarah Corbin Robert, Henry M. Robert, III, William J. Evans, Daniel H. Honemann, Thomas J. Balch, Daniel E. Seabold, Shmuel Gerber, New York: Public Affairs, 2020.

<sup>4</sup> RONR (46:31 1) does permit votes to be cast at a "polling place' apart from the convention meeting," even without bylaw authorization.

The parliamentarian has noted that, even in this case, "the vote casting must be personal and direct," and that "a vote that is not a personal or direct vote is prohibited by the fundamental principle that prohibits absentee voting." See "Extra Cameral Voting and Absentee Voting, a Definition of Terms," *Parliamentary Journal*, April 2006, pp. 62-7. The proposed voting method does not meet this "personal and direct" standard, which is arguably a slightly less restrictive standard.

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