



## **Opinion – Adopting Rules at SD14 Convention**

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May 18, 2012

This parliamentary opinion addresses the vote required to adopt supplemental convention rules at the Republican SD14 convention, held in Austin on April 21, 2012. I served as the convention parliamentarian and advised the chair accordingly.

### **Sources:**

[Republican Party of Texas General Rules for all Conventions and Meetings](http://s3.amazonaws.com/texasgop_pre/assets/original/2011RPTRules.pdf) (RPT Rules) ([http://s3.amazonaws.com/texasgop\\_pre/assets/original/2011RPTRules.pdf](http://s3.amazonaws.com/texasgop_pre/assets/original/2011RPTRules.pdf)).

*Robert's Rules of Order Newly Revised*, 11th edition (RONR).

This opinion is based on general principles of parliamentary law and *Robert's Rules of Order Newly Revised*; nothing in this opinion should be construed as interpretation of statutory law, except for those statutes that relate to parliamentary law.

### **Facts:**

On April 21, 2012 at the Republican SD14 convention, five rules were proposed by the temporary rules committee. An amendment in the form of a substitute was moved from the floor to replace Rule 4. The chair put the vote on the adoption of Rules 1, 2, 3, and 5, and this was adopted on a voice vote with only one or two voices in the negative out of 539 delegates attending (easily covering any requirement for 2/3 adoption).

The substitute for Rule 4 was debated and on a roll call vote with 1,233 in the affirmative and 1,011 in the negative,<sup>1</sup> the amendment, requiring only a majority vote, was adopted. The chair, acting on the advice of the parliamentarian, then ruled that the adoption of Rule 4 as substituted would require a two-thirds vote. A delegate appealed from the ruling of the chair, and after debate the convention overturned the decision of the chair on a roll call vote with 983 in favor of sustaining the chair's decision and 1,241 opposed.

The vote was then taken to adopt Rule 4 which was adopted nearly unanimously.

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<sup>1</sup> Given as the full voting strength of the 137 precincts present.

## **Relevant Provisions in the Rules:**

### Robert's Rules of Order Newly Revised

- When convention rules are voted on as a package, “a two-thirds vote is required for their adoption, because, if they are to fulfill the needs of the convention, they nearly always include provisions which can be imposed only by a two-thirds vote.” (RONR, p. 619, l. 23).
- When convention rules are voted on individually, “the vote necessary for its adoption is in some cases two-thirds and in others a majority, depending upon the nature of the rule” (RONR, pp. 619-620).
- A majority vote is required for any rule which is “related to the details of administration . . . rather than to parliamentary procedure” (RONR, p. 18, l. 4).
- A two-thirds vote is required when the rule imposes “certain steps or procedures that impinge on the normal rights of the minority, of absentees, or of some group within the assembly’s membership” (RONR, p. 4, l. 15).

### Republican Party of Texas General Rules for all Conventions and Meetings

- Rule 17d. Limiting Debate – Any Convention, by majority vote, may limit or extend equally the time and the number of speakers for each side of a debatable motion.
- Rule 31. Report of Nominations Committee . . . All delegates and alternates may be elected at-large, or some or all may be allocated to precincts, at the discretion of the Convention.

## **Analysis:**

After the Republican SD14 convention, questions were raised about the chair’s ruling for a two-thirds vote for final adoption of Rule 4, the precinct caucusing rule. All five of the supplemental convention rules will be taken up and the reasoning for determining the vote requirement for each rule will be explained.

### SD14 Convention Rule 1

“1. Limit on the number of speakers. The number of speaker who participate in a debate on any one motion or resolution shall be limited to three (3) delegates for and three (3) delegates against that motion or resolution.”

Normally, the adoption of Rule 1 would require a two-thirds vote, because it impinges upon the normal rights of the minority. This is essentially a motion to Limit or Extend Limits of Debate which “takes away the basic rights of all members to full discussion and may restrict a minority’s right to present its case” (RONR, p. 193, l. 5). RPT Rule 17d, however, takes precedence over RONR. Rule 17d allows a convention to limit the number of speakers by majority vote. Thus, the vote required to adopt Rule 1 was a majority.

### SD14 Convention Rule 2

“2. Time Limit on speakers. Delegates speaking for or against any one motion or resolution shall be limited to three (3) minutes.”

Normally, the adoption of Rule 2 would require a two-thirds vote, for the same reasons stated above. RPT Rule 17d allows a convention to limit the time for speakers by majority vote. Thus, the vote required to adopt Rule 2 was a majority.

### SD14 Convention Rule 3

“3. Noise Control. Except as authorized by the Convention Chairman, no voice amplifiers or noisemakers, electronic or otherwise, shall be allowed on the convention floor or gallery. Cell phones must be silenced.”

Nothing in this rule related to the basic rights of members (i.e., to be notified, to attend, to make motions, to speak in debate, and to vote). This rule clearly involved details of administration and not procedure. Thus, the vote required to adopt Rule 3 was a majority.

### SD14 Convention Rule 5

“5. Resolutions. Resolutions to be considered by the convention shall be either:

- a. by reports of the Permanent Resolutions Committee; or
- b. by a motion from the floor when demanded in writing by at least one-fifth (1/5) of the delegations from the precincts represented.

Separate consideration of a resolution in the report of the Permanent Resolutions Committee requires a majority vote of the convention.”

Part 5b prevented an individual or any minority of less than one-fifth from proposing an independent resolution from the floor. Normally, a resolution which expresses the opinion of the body can be proposed by an individual member, seconded by another, and adopted by a majority vote. Rule 5, however, required all resolutions to be proposed by the committee, unless one-fifth of the delegations demand in writing that a resolution be introduced. This rule clearly imposed a limitation on procedure. It impinged upon the right of members to introduce business in the form of a main motion/resolution. Thus, the vote required to adopt Rule 5 was two-thirds.

### Adoption of Rules 1, 2, 3, and 5 with a Single Vote

Since Rule 5 required a two-thirds vote, the vote *en masse* for Rules 1, 2, 3, and 5 also required a two-thirds vote. On the taking of the vote by voice, there were only one or two voices heard in the negative. Thus, there was overwhelmingly in excess of two-thirds in the affirmative. Normally, the procedure for taking a two-thirds vote is by rising, but since it was apparent that there would be no opposition to the adoption of Rules 1, 2, 3, and 5, the expeditious procedure of a voice vote was used and the necessary result was achieved.

#### SD14 Convention Rule 4

“4. The Permanent Nominations Committee shall report the nomination of delegates and alternates to the state convention on an “at large” basis.”

This was the wording of Rule 4 as proposed by the Temporary Rules Committee. The substitute amendment for Rule 4 was lengthy and will not be quoted in its entirety. Several elements of the substitute contained provisions that required a two-thirds vote. Each of these elements will be taken up.

“C. Only precincts identified on the approved report of the Credentials Committee as having at least one delegate and at least 230 gubernatorial votes shall be allowed to caucus.”

This provision gave preferred status to 103 precincts to be able to caucus and automatically elect state delegates and alternates. It barred 116 precincts from the caucus procedure. Attendees in the preferred precincts had two pathways to become a state delegate or alternate: election within their precinct caucus; and nomination by the Nominations Committee. Attendees in the barred precincts had only one means of becoming a state delegate or alternate: nomination by the Nominations Committee, where they also had to compete with those attendees from the preferred precincts who were not elected within their precinct caucus. A rule giving unique status or privilege to certain members, based solely upon the address on their voter registration certificate, impinged upon the normal rights of those excluded by this provision. Thus, adoption of this provision required a two-thirds vote.

“H. Pursuant to the list of delegates and alternates, the Nominations Committee shall: . . .

3. Include in its report (and the convention shall ratify without amendment, except to correct clerical errors) the list of delegates and alternates elected by the precinct caucuses, and
4. Include in its report the list of at-large nominations (open to amendment pursuant to RPT Rule 31), and
5. List consecutively all alternates elected by the precinct caucuses on its report in the same order as described in Rule A followed by the at-large alternates. (Alternates elected from the same precinct shall be listed in the same order as shown on the precinct’s delegate election form).”

A. “. . . The precincts will be listed in descending order by the number of votes for the Republican Party’s last Gubernatorial election (November 2010). For those precincts having equal number of gubernatorial votes, the precincts will be listed in ascending numerical order by precinct number.”

Part H3 prohibited the right of members to amend a large portion of the report of the Nominations Committee. Only the at-large portion of the list was left open to amendment. This was clearly a procedural rule, limiting the introduction and usage of basic parliamentary motions. Adoption of this provision required a two-thirds vote.

Part H5 partially designated the manner in which alternates shall replace absent delegates at the state convention. It gave preferred status to those alternates elected in the precinct caucuses as enumerated in Part A. It relegated to the bottom of the list those alternates enumerated at-large by the Nominations Committee. Thus, at the very top of the state alternate list were those from the precinct with the largest number of gubernatorial votes, in the order they were elected in the caucus. In other words, the most Republican precinct received preferred status for its alternates to be able to replace absent delegates. Adoption of this provision required a two-thirds vote.

### The Discretion of the Convention

The argument has been put forward that RPT Rule 31 allows the allocation of state delegates to precincts at the “discretion of the Convention”, and therefore by a majority vote a precinct caucusing rule can be adopted. The term ‘discretion’ is not a term of art in parliamentary procedure, nor does it appear to have any standard definition that implies majority rule. Merriam-Webster online gives the following definitions:<sup>2</sup>

1. The quality of having or showing discernment or good judgment
2. Ability to make responsible decisions
3. a. Individual choice or judgment  
b. Power of free decision or latitude of choice within certain legal bounds
4. The result of separating or distinguishing

Nothing in these definitions suggests a mere majority vote for group decision-making. On the contrary, the phrases ‘good judgment’, ‘responsible decisions’, and ‘a latitude of choice within certain legal bounds’ all suggest that the decision-making requirement may vary depending upon the decision to be made. Good judgment for a deliberative body would be to refer to the applicable parliamentary authority, where the legal bounds to make a responsible decision would be explained. When a rule does not specifically describe the vote required for its usage, the determination of the voting requirement defers to the interpretation in *Robert’s Rules of Order Newly Revised*.

Rule 31 does not specify the voting requirement to adopt a precinct caucusing rule, and for good reason. A variety of procedures and techniques could be adopted under the provisions of Rule 31. For example, a rule could be adopted that allocates state delegates to all the attendees from the largest precinct, followed by the next largest precincts in order of size of attendance, until all slots are filled. In such a case, the allocation could be done by reference to the permanent roll and there would be no need at all to hold caucuses. Or, a rule could be adopted that allocates one delegate to each precinct in attendance. The procedures could range from very simple to very complex. The question as to the vote required to adopt a supplementary convention rule boils down to whether it alters parliamentary procedure or impinges upon the rights of others. If so, it requires a two-thirds vote for adoption.

### Adoption of the Precinct Caucusing Rule at Previous Conventions

A precinct caucusing rule was adopted by the SD14 Convention in 2006, 2008, and 2010, on recommendation of the Temporary Rules Committee. In 2006 and 2010, no

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<sup>2</sup><http://www.merriam-webster.com/dictionary/discretion>

debate was heard and no amendments considered. The rules were adopted *en masse* with a single voice vote, and few, if any, votes were cast in the negative. Thus, a two-thirds vote was achieved in the adoption of the supplemental convention rules in 2006 and 2010. In 2008, an amendment to the precinct caucusing rule was considered and debated. The amendment, requiring a majority vote, was lost. The rules were then adopted *en masse* with a single voice vote, and few, if any, votes were cast in the negative. Thus, a two-thirds vote was achieved in the final adoption of the supplemental convention rules in 2008.

I did not serve as parliamentarian at those conventions, but did attend as a delegate. I recall that I privately conferred with the convention temporary chairman to explain my opinion that the rules and especially the precinct caucusing rule would require a two-thirds vote for adoption. When the final vote was taken, I did not raise a point of order on the manner of using a voice vote, nor did I demand a division, because it was clear that the rules were adopted overwhelmingly. In my opinion, a two-thirds vote was obtained in 2006, 2008, and 2010 to adopt the supplemental convention rules.

### Conclusion

At the 2012 Republican SD14 convention, the precinct caucusing rule was adopted by less than a two-thirds vote, based on the successful appeal of the ruling of the chair. In my professional opinion, this was in violation of acceptable parliamentary procedure as laid out in *Robert's Rules of Order Newly Revised* and as properly applied to the RPT Rules.



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