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PARLIAMENTARY OPINION

December 18, 2021

Introduction

I have been asked to write a parliamentary opinion regarding the validity of the NC state election of officers on October 23, 2021.

Background Information Provided

- Article IX Complaint to the National Office October 27, 2021
- Letter from the NAACP President in response to Article IX letter from Pastor Cardes Brown, Jr. December 14, 2021
- Corrected Ballot-North Carolina State Conference Election October 23, 2021 at 1:00pm—October 23, 2021 at 5:00pm

Sources Consulted

- Constitution of the National Association For The Advancement Of Colored People
- Bylaws for Units National Association For The Advancement of Colored People
- Robert's Rules of Order Newly Revised (12th edition), the parliamentary authority for the NAACP
- Robert's Rules of Order Newly Revised (11th edition)
- 2020 Manual on Branch Election Procedures
- Corrected Ballot North Carolina State Conference Election

Opinion

The objectives of the NAACP are as follows: The principal objectives of the Association shall be to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate race prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state, and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof, and to

take any other lawful action in furtherance of these objectives, consistent with the NAACP's Articles of Incorporation and this Constitution.

Although the pandemic of COVID19 initially led many to make exceptions to rules—we must also keep in mind that democracy, dignity, and freedom must be upheld. Using the principles of the democratic processes to educate and take all lawful action to further these objectives includes appeal, reconsideration, and repeal of rulings against democratic principles. Those actions must be explained when the organization seems to counter its ideals. Per the objectives of the NAACP National and its goal to achieve equality of rights, the following points deserve consideration. The following statement about the NC elections supports the assertion that the decision to dismiss the complaint of the improper administration of the election did not yet receive the final vote of the appropriate body. The election complaint was presented to the entire Committee on Units and was dismissed for the following reasons (pending a final vote of the appropriate body): (Letter from the NAACP President December 14, 2021)

- 1. How are elections voted on at State conferences? *The election shall be by secret ballot of delegates, both youth, and adults at the Annual Convention of the State/State-Area Conference.* (Article IX, Section 1 (a) (2) NAACP Bylaws). The elections were held by electronic meeting virtually, and balloting was done by an accessory software ElectionBuddy. The number of delegates qualified was reported as 260. (Corrected Ballot-NC State Conference Election October 23, 2021)
- 2. What resolution allows the NAACP to have a duly constituted meeting electronically? "Except as authorized in the bylaws, the business of an organization or board can be validly transacted only at a regular or properly called meeting—that is as defined in 8:2 (1), a single official gathering in one room or area—of the assembly of its members at which a quorum is present." RONR (12th ed.) 9:30. There is no such resolution in the NAACP Constitution and Bylaws.
- 3. What provision does the NAACP's Constitution have for this amendment, and are there any other conditions that should be satisfied to have a duly constituted electronic meeting? In Article XVI Section 2. This Constitution may be amended through an amendment proposal approved by a majority vote of the members of a Unit in good standing and subsequently approved by a two-thirds (2/3) vote of the members of the Board of Directors present at a regular meeting where there is a quorum present. Notice of the proposed amendment(s) must have been sent out thirty (30) calendar days prior to such a regular meeting.
- 4. What does a properly authorized electronic meeting have included in the bylaws? A duly constituted electronic meeting will also provide for the following conditions: *Under such conditions, an electronic meeting that is properly authorized in the bylaws is treated as though it were a meeting at which all the members who are participating are actually present. RONR* (12th ed.)9:31
- 5. Are there any additional requirements to conducting electronic meetings? Yes. The following rules are necessary: Adopting of Additional Rules for the Conduct of Electronic Meetings; making additional provisions that the technology allows all participating members to see each other, as well as hear each other, at the same time; regardless of the technology used, the opportunity for simultaneous aural communications essential to the deliberative character of the meeting; the notice of

- meeting should include a description of how to participate in it, method of determining a quorum, method of seeking recognition, how to submit motions in writing, adopting methods for ensuring non-members cannot participate, and methods for taking and verifying votes. RONR (12th ed.)9:32, 33, 34, 35, 36 and Sample Rules for Electronic Meetings, pp. 635-649.
- 6. Are there any requirements for ballot voting that applies to electronic voting? Where such devices are used, preparations for the meeting should be made in consultation with the person in charge of installing the devices and overseeing their use, so that all adjustments required by the particular conditions of the meeting can be provided for. Persons who are to tend the devices during voting must be carefully instructed in their duties, and must be able to explain the use of the devices to voters. If there are likely to be many voters who have never used the devices, it may be advisable to have a device available for the voters' inspection on a day previous to the meeting or to conduct a practice vote at the start of the meeting. RONR(12th ed.) 45:44
- 7. Is there recommended timing for having an election proscribed by the parliamentary authority of the NAACP? <u>The elections should take place early in such a meeting</u>, to allow time for any necessary additional balloting for any office for which no candidate receives a vote sufficient for election. RONR (12th ed.) 46:31
- 8. Is a quorum necessary in a State/State-Area Conference Meeting? Quorum of State/State-Area Conference Meetings. The number of members necessary to constitute a quorum at all meetings shall be decided upon by a resolution adopted by the State/State-Area Conference which shall be incorporated in the approved State/State-Area Conference Bylaws. (Article IX Section 1 a. 5 NAACP Bylaws)
- 9. Are majority or plurality officers elected at the State/State-Area Conference meeting? Article IX Section 13 (a) an officer of the Board of Directors is elected by a simple majority. If the intent is to calculate votes on plurality, then it should be explained ahead of the election. Whenever it is desired that the basis for decision be other than majority vote or (where the normal rules of parliamentary law require it) a two-thirds vote or a vote of a majority of the entire membership, the desired basis should be precisely defined in the bylaws or in a special rule of order. Whatever voting basis is used, it is also possible to include a requirement of previous notice for specified types of action. RONR (12th ed.) 44:10

Let us review these nine items in the mindset of seeing how our organization could have performed more democratically while still following the Constitution and bylaws.

- 1. The first item showed that the results reported were the "corrected" election results without explaining how the results were adjusted. It is not clear when the votes were corrected and how. The charts indicated that the election results were done by plurality, not a simple majority. The Elections Supervisory Committee is directed to: During the voting period, the Committee should periodically audit the number of ballots distributed to voters, in order to keep an accurate count of ballots distributed and the total cast. Watchers should be present during the votes' tabulation and oversee if the stations were closed momentarily. (Voting Section A. 2, D. 7,8 in 2020 Manual on Branch Election Procedures)
- 2. There is no provision in the Constitution or Bylaws to authorize electronic meetings or elections; the guidelines exist in the Parliamentary Authority. RONR (12th ed.) 9:31, 45:18

- 3. If the board approved the proviso for electronic meetings or elections of Directors, and the Constitution or Bylaws were not amended, then Special Rules of Orders would have been recorded, properly approved, and distributed to the membership. RONR (12th ed.) 2:14-18.
- 4. Document- Corrected Ballot North Carolina State Conference Election. All the members participating in the elections should have supporting evidence as these meetings are recorded if done electronically. (186 ballots submitted of 260 eligible voters (12 opened) 72%. Forty-six ballots were added after the election started. 259 emails and 167 SMS sent 0 notices queued 33 notices undeliverable.) Why were 46 additional votes counted? Of the 260 delegates eligible to vote, only 186 did; the 74 who did not vote, the results of the elections could have changed for the President, 1st, 2nd, and 3rd Vice-President, Secretary, and Treasurer.
- 5. Simultaneous aural communications are an essential part of legitimate electronic meetings. This requirement for all deliberative bodies was not met. RONR (12th ed.) 1:1
- 6. All adjustments would have to be provided for the electronic device by the person in charge of installing the device. Was the use of the device explained to the users? Was the device available for inspection a day before? Was a practice vote done at the start of the meeting? RONR (12th ed.) 45:44. Candidates did not speak about their platform as is customary in elections.
- 7. Other bases for determining a voting result—regardless of the basis required, a decision can be validly made only when a quorum is present. RONR (12th ed.) 44:2. No mention of a quorum was made on the obtained reports.
- 8. (3)In a body of delegates, such as a convention, the quorum is a majority of the number who have been registered as attending, irrespective of whether some may have departed. This may differ greatly from the number elected or appointed. RONR (12th ed.) 40:2 (3) This report did not say that a quorum was present.
- **9.** From the results posted, plurality was used to elect the officers over a simple majority. To validate this would require a Special Rule of Order attesting to that fact, as it was not specified in the Constitution and Bylaws of the NAACP.

Lack of attention to the parliamentary authority (rules of order) has led the administration of the election of officers for the State of North Carolina to take on the customs and inadvertently gone against the principles of democracy that the NAACP's objectives protect. This situation can be partially attributed to the stress of the pandemic and the inability of members to adjust to the changing environment. I think the lack of knowledge of the guidelines for simplifying the new processes of parliamentary procedures with the release of the 12th edition of the organization's parliamentary authority was not utilized.

The parliamentary authority of the NAACP addresses it this way: In some organizations, a particular practice may sometimes come to be followed as a matter of established custom so that it is treated practically as if it were prescribed by a rule...However, if a customary practice is or becomes in conflict with the parliamentary authority or any written rule, and a Point of Order (23) citing the conflict is raised at any time, the custom falls to the ground, and the conflicting provision in the parliamentary authority or written rule must thereafter be complied with. (RONR 12th ed.) 2:25

As a member of the NAACP (108679923-M) in good standing, currently serving as Parliamentarian at the Branch 5405-B in High Point, North Carolina, I intend to support the NAACP as it seeks to achieve its objectives. The most significant impact we should strive to achieve in dealing with parliamentary matters is positive goodwill, strengthening the organization, and making decisions according to the rules.

Examining the letter from our esteemed President and CEO Derrick Johnson on the joint letterhead with Leon W. Russell Chairman National Board of Directors directed to Pastor Cardes Brown, Jr. on December 14, 2021, concerning the Election Challenge, we can note the following:

This letter addresses Article IX, Section 2 (o) of the NAACP Bylaws for Units was presented to the entire Committee on Units and was dismissed. However, it also noted that the letter was pending a final vote of the appropriate body.

We should also look carefully at Article IX 1 (b) 2 (a), which gives ten days to make a complaint.

- 2. State/State-Area Conference Election Controversy
- (a) In the event of election controversy, all parties thereto shall submit complaints to the National Office. Said complaints must be postmarked not later than ten (10) days following the date of the election in question. The complaints must be signed by at least twenty-five (25) voting delegates who were in attendance at the Convention. Said delegates must represent at least five (5) units registered at the Convention.

Specific to the State/State-Area Conference Election Controversy, the Bylaws gives two options:

- (b) The National Office will institute an investigation into the matter, and should a determination be made that the complaint is frivolous or completely devoid of merit, or that the election result could not have been otherwise even if the allegations alleged are assumed to be true, then the National Office shall within thirty (30) days, or as soon thereafter as possible, dismiss the complaint and inform all parties forthwith that the installation of officers might be held.
- (c) Should the National Office be unable to dismiss the complaint because the charges appear to have merit and as such, the results of the election might have been otherwise had the alleged violations not occurred, then the matter will be referred to the Chairperson of the Committee on Membership and Units of the Board of Directors, who will designate a Hearing Panel.
- (d) Pending resolution of the dispute, the officers whose terms were to have expired with the new election, will continue to function.

The options for the National Office, as written in the Bylaws, are to a) institute an investigation. RONR (12th ed.) 63:1-37 unless Special Rules of Order available to the membership said otherwise. If we have no such rules, first, the rules in the Constitution and Bylaws take precedence, then the rules from the Parliamentary Authority. No Special Rules of Order were found. The election complaint was submitted to the entire Committee on Units (if it was done

electronically without a Special Rule of Order and guidelines, it is improper). The letter said the complaint was dismissed, and it could not be because the letter also said "pending a final vote of the appropriate body." Until the final vote of the appropriate body occurs, the complaint cannot be dismissed. The issue is further complicated as the Chairperson of the Committee of Units was involved in the alleged improper administration of the elections and had a voice in dismissing the complaint. RONR (12th ed.) 45:4.

The issue was further complicated when the National Office chose option (c), meaning they could not dismiss the complaint because the charges seemed to have merit. Since this option was exercised, the Election Challenge was not rejected, but the directive was not followed as written in the law. The Committee on Membership and Units did not designate a Hearing Panel as instructed.

Item d) still applies as the resolution is still pending completion by the Committee on Membership and Units and the Board of Directors. Therefore the officers whose terms expired with the new election will continue to function.

The good news is the NAACP-National has entrusted the organization's administration to the Board of Directors with the expectation and trust that democratic principles would be upheld. This example showed that when the Board of Directors chose to do (c) without mention of the Hearing Panel and used Article IX Section 2(o) without consideration for Article IX 1 (b) 2 (a), it came at the deficit to the impartiality of the Board and questioning of the intent of leadership from some members. (Letter from the NAACP President)

NAACP-National Management gets a redo. RONR (12th ed.) 22:1-20 and 9:17-19. Proactive leadership could have considered Fix the Time at Which to Adjourn and call an adjourned meeting where all the delegates selected for the State Conference had an opportunity to exercise their right to vote. Since this was not done, there is still an opportunity to call a Special Meeting to complete the election and provide the incoming administration with a mandate to lead. RONR (12th ed.) 9:13-16.

"The election complaint was presented to the entire Committee on Units and was dismissed for the following reasons (pending a final vote of the appropriate body): (Letter from the NAACP)

The sentence conveys inherent bias in that the complainant was not allowed by electronic meeting to present the complaint to the Hearing Panel designated by the Chairperson of the Committee on Membership and Units of the Board of Directors, as directed by Article IX 1 (b) 2 (c) of the Bylaws. The sentence further states that the complaint was dismissed as a fact. The bracketed phrase indicated that the final vote by an appropriate body was not achieved. Therefore the complaint is not rejected, and Section (d) is applicable.

"Article to remove State Administrator Gloria Sweet-Love for actions pertaining to the NC election.

In October 2020, the National Board of Directors voted to approve Ms. Gloria Sweet-Love along with Ms. Hazel Dukes as Co Administrators of the North Carolina State Conference. By that vote, the Administrator has the authority to determine the timelines for elections and make other decisions for the state conference." (Letter from the NAACP)

The NAACP National gets a redo. If there were an Article X Section 3 complaint to remove State Administrator Gloria Sweet-Love—also cc: 'd at the end of the letter—as Chair, Committee on Membership and Units, it should not be addressed on the Election complaint. Bylaws Article X Section 3. A complaint against an officer or member of a Branch of the NAACP may be initiated by any 20 members of the affected Branch and must be signed by such members and forwarded to the National Office and to the attention of the President and CEO as well as State/State-Area Conference. The purpose of this opinion is to address the Election complaint, not to complicate it with a personnel issue. The other problem for a redo is (Article X against one of the Co-Administrators). Having Co-Administrators goes against fundamental democratic principles. The NAACP's parliamentary authority advises the following: If the Committee's task is heavy and will require some time to complete, it often is advisable to appoint a vice-chairman. The anomalous title "co-chairman" should be avoided, as it causes impossible dilemmas in attempts to share the functions of a single position. RONR (12th ed.)13:17

The NAACP-National gets a redo on the vote that gives the same title to two individuals and the accountability that goes with it. The National Board selected the Administrator under the title of Co-Administrator, so Ms. Sweet-Love should not be blamed for violating parliamentary principles. If she received inadequate training, it is the responsibility of the National Board to provide adequate training. The NAACP National deserves a redo on that count. Violating fundamental parliamentary procedures often leads to negative consequences, as in this case. Which Administrator's determination of timelines led to the "corrected" election results? Who is truly accountable for the proper administration of the election? Is one Co-Administrator liable for the actions of the other Co-Administrator? Going against proven principles created more problems for the NAACP National. The organization should bear full accountability for this strategy. The election has to be redone.

Additionally, not only was the process of conducting all state election via "Election Buddy" authorized by the Board of Directors in May 2021 for State Conferences across the Association, it was also determined that the National Staff would oversee the election process. (Letter from the NAACP)

With the introduction of electronic meetings and elections, some continuing education instructors in the National Association of Parliamentarians have introduced this software. One of the problems they outline is the interfacing Election Buddy with Zoom and other electronic meeting programs. It does require some training; the NAACP must provide programs for its personnel that use this program on the national level. One critical point needed to operate it successfully is understanding the principles of electronic meetings and how they are affected by the Constitution and Bylaws of the organization. The software must function under the rules of the organization. No section explains "corrected" election results when the NAACP sets up guidelines. Corrected sounds like a strategy for data manipulation. The NAACP National gets a redo.

In 2019, the Board of Directors made the following ruling regarding elections conducted by national staff.

Elections conducted by the National Office cannot be appealed.

If the National office is requested or has to intervene in a local or state election process, the Unit shall be charged for the travel and/or hotel expenses for staff and/or appointed persons who have been selected by the National office to conduct the election in question and the election cannot be appealed.

In 2013-2020 the 11th edition was the parliamentary authority; it included Electronic Meetings.

"EXTENSION OF PARLIAMENTARY LAW TO ELECTRONIC MEETINGS. Except as authorized in the bylaws, the business of an organization or board can be validly transacted only at a regular or properly called meeting—that is, as defined in pages 81-82, a single official gathering in one room or area—of the assembly of its members at which a quorum is present...If electronic meetings are to be authorized, it is advisable to adopt additional rules pertaining to their conduct (see Additional Rules for the Conduct of Electronic Meetings, below)." RONR (11th ed.), p.97, ll 7-14, 31-33.

The ruling by the National Office is not clear about Elections; in the interpretation, did they mean "improperly conducted elections that did not follow the National Offices guidelines cannot be appealed?" Since there are no Special Rules for this precedent, we may assume that the 2019 precedent statement (custom?) was meant in a properly administrated election. The NAACP-National has carefully archived procedures that need to be followed to avoid the disenfranchisement of their members and need an updated version for electronic elections. Under Section A.Voting: *During the voting period, the Committee should periodically audit the number of ballots distributed to voters, in order to keep an accurate count of ballots distributed and the total cast.*

Section D. Challenges: Watchers, Observers have a right to be present during all phases of the voting procedure, as well as during the preparation of the voting areas.

Section 3. f. Tabulating ballots: The chairman of the Election Supervisory Committee shall retain custody of the results pending final disposition of any appeals by the Board of Directors. If there are no appeals, these records shall be given to the Branch Secretary as soon after January 1 as possible. (2020 Election Procedure Manual NAACP)

The research did not turn up guidelines for electronic voting. The 2019 Ruling by the Board of Directors sets precedence by decision. It should be followed by enacting Special Rules of Order that span all times and administrations and can be updated as technology changes. In 2019 we did not anticipate an international pandemic, and many organizations currently need to update to include electronic meetings and elections.

The 2020 manual does not address Election Buddy or electronic voting. However, all could agree that the three principles from the 2020 Election Procedure Manual of the NAACP outlined principles that should be followed in an election, especially one conducted and supervised by members of the National Office. The first two of three were violated in the NC State Election based on the Election Complaint. Following the principle of elections supported by the National Office, the properly administered election should be upheld. The NAACP deserves a redo of the election.

Conclusion

Democracy is a system of government by the whole population or all the eligible members of a state; typically, through elected representatives, it provides for control of an organization or group by the majority of its members. An autocracy is a system of government by one person with absolute power; it is also an authoritative rule or control. (Definitions from Oxford Languages). The opinion expressed comes from a position that forgiveness can heal and strengthen the NAACP National and its members who support their ideals. The NAACP National aims to achieve equality of rights through democratic processes in its objectives. The Board of Directors' intent is to manage and expeditiously provide administration. This review revealed practical actions that seem to deviate from the democratic processes. Although it could be attributed to customs, some could be attributed to a partial lack of knowledge among the general membership and leadership of the NAACP organization when it comes to parliamentary procedure. This organization is not the only one struggling with it, but a pandemic aggravates it. One writer said, "for lack of knowledge, the people perish." Preserving a system of voting supported by the majority requires rules, and respect for the opinion of the minority is critical to the proper functioning of a democratic institution. The examination of different voting systems will clarify the reconsideration of an election that "cast no shadows" on the ultimate victors, and it might not change the results. Still, it will affect how effectively the leaders in NC will lead the NAACP to promote its message and its brand.

Plurality vote is defined as "A plurality vote is the largest number of votes to be given any candidate or proposition when three or more choices are possible; the candidate or proposition receiving the largest number of votes has a plurality. A plurality that is not a majority never chooses a proposition or elects anyone to office except by virtue of a special rule previously adopted. If such a rule is to apply to the election of officers, it must be prescribed in the bylaws. A rule that a plurality shall elect is unlikely to be in the best interest of the average organization." RONR (12th ed.) 44:11

The Constitution and Bylaws do not state plurality vote or the 2020 Manual on Branch Elections. The term plurality was used in the "Corrected" Elections results. It is an expeditious way of handling an election when three or more choices are possible. In a simple majority, even a single candidate must receive more than 50% of the vote to be elected to an office. The ballot for President provided a good accounting for the 186 votes conducted. There were 3 abstentions, and 183 voted, with 99 votes for one candidate, 21 for the second, and 63 for the third. Forty-six ballots were added, 259 emails and 167 SMS were sent to get all the delegates to vote. Was this attempt made after the first set of votes were thrown out, or were they corrected and added to the balance? In the NC State Elections for members at large, the voters were instructed, "If you vote for one, you must vote for all of these candidates for your votes to count!" All of these candidates were running against each other. In plurality, all the candidates running for the same position are ranked by the number of votes, and the top seven are chosen. The procedure was wrong and did not support the principle of justice. Candidates received 107, 132, 113, 111, 110, 104, 117 votes, respectively and only 18 abstentions. If 183 people voted seven times each, there would have been 1281 votes.

When 794 votes are counted for one office where only 183 ballots were submitted, this is an illegal vote for the description. The plurality would give everyone one vote. The candidate receiving the highest votes is elected to the position, followed by the next highest until all

the available positions are filled. Plurality is simply the largest number wins, and majority means at least one vote over 50%; this difference differentiates plurality from the simple majority.

Voting multiple times on the same ballot is not plurality. Voting in this manner is preferential voting. Preferential voting is not found in the NAACP's Constitution and Bylaws. It is only used on special occasions for mail-in ballots in certain states to prevent run-off elections—it is often used with a ranking system for all the candidates. When delegates vote for more than one candidate, preferential voting is called. RONR (12th ed.) 45:62-69.

When voting was stopped, then started again, were 259 delegates contacted because some of the votes were lost? The interruption could have been dealt with by allowing the assembly to help with the decision.

"When a vote is being taken, no interruption is permitted from the time that any member has actually voted until all have presumably voted, unless as sometimes occurs in ballot voting, other business is being transacted during voting." RONR (12th ed.)45:6

"The assembly itself is the judge of all questions arising that are incidental to the voting or the counting of votes. In an election by ballot, for example, the tellers should refer to the assembly for decision all questions on which there is any uncertainty (see 45:33). RONR (12th ed.)45:6

The Rules Committee could help with an update. Too many rules were broken in this election, and if only one can be corroborated, there must be a redo, which would be a show of good faith. The delegates of NC State Elections deserve a redo, the incoming administration of NC deserves a redo, and the NAACP National deserves a redo and an upgrade in their election supervision and training. One should not conclude the administrators are not competent, just that the training programs are inadequate. The Co-Administrator, Ms. Gloria Sweet-Love, deserves a redo as far as the election goes because NAACP National appointed her as a Co-Chair, which goes against democratic parliamentary rules. The NAACP National placed her in an untenable position.

As a doctor, pastor, author, student, parent, and member of the NAACP, my recommendation is our organization deserves a redo. We also ask our government, other organizations, and agencies to follow proper democratic principles as part of our objectives. We ask our judicial system to do the same, and we sometimes understand them for following customs. Still, when the principles of democracy are brought to their attention, they must also let custom fall to the ground in the face of justice.

The NAACP National deserves a redo in the Election Challenge, and North Carolina State Conference 2021 deserves their election. Let us practice justice in this domain the way justice is administered in the kingdom we hope to create and inherit in the future.

Sincerely

Bertrand Bonnick DDS, MAGD High Point Branch 5405-B Parliamentarian