



Should Credit Union Board Chairs Vote on All Matters Coming Before the Board – Or Only to Break a Tie Vote?

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Part I – Introduction

At the recent CUES Board Chair Development Seminar on September 10-11, 2018, we casually asked the 54 attendees from all over the US and Canada to indicate whether their Board Chairs regularly vote on all matters that come before their Board. We were surprised to hear from a clear majority of the group¹ that their Board Chairs did not regularly vote – except to break a tie. In fact, one leader indicated that his credit union had placed this prohibition against voting by the Chair – except in the case of ties – explicitly into their policy framework.

Upon further discussion, we learned that there were a number of Board Chairs who were quite passionate about this practice, and it had become a long-standing custom in their Boardrooms. A core rationale many expressed for their Board Chair not voting – except to break ties – flowed from their understandable and ardent desire to ensure that their Chair not exert undue influence on the outcome of a matter requiring a Board vote. For others, the practice of the Chair not voting unless to break a tie was a conviction that the practice supported the Chair’s role as an impartial presider at the Board meeting and facilitator of fairness in deliberation of matters before the Board.

One attendee posited that an interpretation of Robert’s Rules of Order (“Robert’s Rules”) was the genesis of this practice and that supposition was echoed by others in the group. Upon a closer examination, we concurred that many credit unions have adopted a practice based on an understanding that such restraint by the Chair is required under Robert’s Rules.² There is no such requirement under the common law applying to Boards of Directors, so it is likely the misconception arose from a misapplication of standardized parliamentary rules, Robert’s Rules being a prime example.

Part II – May a Board Chair Vote on Regular Matters Coming Before Their Board?

Many credit union leaders believe that they know what is in Robert’s Rules, but few have genuinely studied them. That’s because Robert’s Rules are amazingly complex and are intended to be a reference book for “an answer to any question of parliamentary procedure

¹ A quick show of hands indicated about two-third of the participants were from credit unions where their Chairs did not vote unless there was a tie. To be fair, there were 42 separate credit unions represented, with nine of them sending two or more people to the seminar. Even so, a clear majority of the credit unions represented had Chairs that did not regularly vote at Board meetings.

² Henry Martyn Robert, (1837-1923) was a distinguished engineer who retired from the U.S. Army as a Brigadier General. He published his “pocket manual” while a major in 1876. Over the years, Robert’s Rules of Order became more and more voluminous, complex and challenging. The current version is *Robert’s Rules of Order Newly Revised, 11th edition*, (RONR, 11th ed.) and comprises 669 pages of procedural rules.



that may be met with.”³ Even the Robert’s Rules Association admits that this is overkill: ⁴ “At least 80 percent of the content will be needed less than 20 percent of the time.” In an effort to streamline the rules for the average person’s use, there are multiple versions that are available, making it challenging to ascertain that you are looking at the version most appropriate to your needs.

Many groups of varying sizes and complexity use a version of Robert’s Rules, but frankly, even the streamlined version is not ideally suited for use by credit union Boards. Robert’s Rules – by their own admission – were primarily designed for large assemblies or plenary bodies and were intended to promote fairness by helping to ensure minority voices were heard and to prevent the meetings of such assemblies from descending into chaos. While Board meetings should encourage varying opinions to be heard and discussed, the formality of Robert’s Rules may be more than is needed to have effective meetings.

Robert’s Rules has drawn a line – some might argue an arbitrary line – declaring that smaller deliberative assemblies, such as a Board of Directors, where the number of members is approximately 12-15, need not comport themselves with the formality of such rules that apply to larger assemblies:

“In a board meeting where there are not more than about a dozen present, for instance, it is not necessary to rise in order to make a motion, nor to wait for recognition by the chair before speaking or making a motion, nor for a motion to have a second; nor is there any limit to the number of speeches, nor does the chairman leave the chair when making a motion or discussing a question. The formalities necessary in order to transact business in a large assembly would hinder business in so small a body.”⁵

One Size Does Not Fit All

Robert’s Rules recognizes that a small Board of Directors (a “voting body” where “there are not more than about a dozen Board members present”) is not the same as a large assembly and should not be treated as such. As explained on the Official Robert’s Rules of Order website:

If the President⁶ is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak

³ Robert’s Rules of Order, Newly Revised in Brief, p. 6

⁴ *Ibid.*

⁵ Robert’s Rules Online, <http://www.rulesonline.com/rror-09.htm#50>, Article IX. Committees and Boards, 50. Boards of Managers or Directors, Boards of Trustees, Executive Committees, etc.

⁶ Robert’s Rules also explicitly recognizes “Chairs” to be the same as “Presidents” Robert’s Rules Online, <http://www.rulesonline.com/rror-10.htm>, Art. X. The Officers and the Minutes. 58. Chairman or President. “The presiding



in debate, and to vote on all questions. So, in meetings of a small Board (where there are not more than a dozen Board members present), and in meetings of a committee, the presiding officer may exercise these rights and privileges as fully as any other member.⁷

Since Board Chairs (aka “presidents”) are members of the “assembly,” they can vote – on all questions, not just ones that would require a vote to change the result.

The website response continues to explicitly differentiate such situations from ones where someone is the presiding officer of other types of assemblies. In this quote we see the reference to “impartiality” as a required trait for the presiding officer of other types of assemblies:

However, the impartiality required of the presiding officer of any other type of assembly (especially a large one) precludes exercising the rights to make motions or speak in debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result.⁸

One can easily appreciate the confusion⁹ caused by Robert’s Rules’ two different approaches for when a Presiding Officer should vote, with one approach that pertains to large assemblies and another that pertains to smaller Boards of Directors and committees.

Ultimately, Robert’s Rules are very clear on this question when it pertains to small bodies such as a Board of Directors or a committee. They state that “the Chair can make, debate and vote on motions.” and they even remove the ability of custom to trump this rule.¹⁰

Other Authorities

Of course, there are other parliamentary procedure authorities used by Boards to govern their meetings. The Standard Code of Parliamentary Procedure, (Standard Code) by Alice Sturgis, was written in recognition that Robert’s Rules is highly complex, overly formal for smaller groups, hard to use and in many ways, outdated.

In one chief way the Standard Code is similar to the Rules: Sturgis is writing chiefly for larger groups, with competing interests (often recognized minority and majority sectors) where there

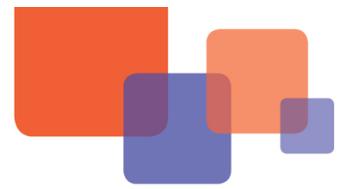
officer, when no special title has been assigned him, is ordinarily called the Chairman, or the President... [T]he chair,”... means the presiding officer of the assembly, regardless of whether his position is permanent or temporary.”

⁷ RONR (11th ed.), pp. 405-6; See also Table A, p. 190 of *RONR In Brief*.

⁸ See, <http://www.Robert'srules.com/faq.html#1>

⁹ Indeed, this issue of whether the presiding officer should vote in regular matters is such a common question that the “Official Robert’s Rules of Order Website lists it as the very first question in the “Frequently Asked Questions” section of their website

¹⁰ The two most recent written versions of Robert’s Rules of Order Newly Revised (RONR) eliminate any ambiguity on the question. (See RONR 10th ed., p. 471, ll. 7-11; p. 483, ll. 16-19 and RONR 11th ed., p. 488, ll. 18-20.) (Emphasis added.)



is a premium on using a set of rules that enables the assembly to work in an organized way, so they may transact their business.

Sturgis also recognizes that “the procedure in [smaller] groups is usually more informal than it is in a large convention.”¹¹ However, whether applied to a large or small group, parliamentary procedure has certain principles at its heart, one of which is the equality of rights:

“Every member has an equal right to propose motions, speak, ask questions, nominate, be a candidate for office, vote or exercise any other privilege of a member. Every member also has equal obligations.”¹²

We agree wholeheartedly. But in the very next paragraph, Sturgis clouds things up for Boards by introducing “impartiality” into the mix:

“The presiding officer should be strictly impartial and should act promptly to protect the equality of members in the exercise of their rights and privileges.”

How to reconcile these two paragraphs? If the presiding officer of a Board – the Chair – is also a member of the group, then the Chair has the same rights as everyone else in the group, including the right to engage in the debate and cast a vote. It would be easy to argue that casting a vote and engaging in the meeting is not being strictly impartial. We can only make sense of these two paragraphs if we read the second one as a reminder that the Chair should not abuse the role as the presider of the meeting to impair the ability of the participants to have a full and fair discussion of the issues before them and to sway the results to conform to the Chair’s favored outcome,¹³ but of course, the Chair may participate fully in the meeting as any other member of the group.

Bottom-line, there appears to be a popular – but incorrect – belief that a credit union Board Chair can only vote to break a tie. The Chair of a Board is a presiding officer of a smaller assembly, where impartiality is not a requirement of the position, less formality is better and most importantly, they may make motions, fully participate in the debate, and vote on all matters coming before the Board, just as any other Board Member.

¹¹ Sturgis, Alice. *The Standard Code of Parliamentary Procedure: Fourth Edition*. 2001, p. 4.

¹² *Ibid.* p. 8.

¹³ The stricture is most appropriate to groups that have real competing interests, such as shareholder meetings or Board meetings of for-profit corporations, or political bodies, such as a Board of Education. Credit union Boards generally have of their interests in common (with some rare exceptions) and are usually trying to get all members to participate, not to discourage them.



Part III – Should a Board Chair Vote on Regular Matters Coming Before Their Board?

We have established that a Chair may vote, just as any other Board Member. There are times, surely, when a Chair should not vote, such as issues with a personal conflict of interest or when there is insufficient information to make an informed decision, but these are the same for any other Board Member.

So, the question at issue is “Even if a Board Chair has the right to (that is, may) vote on regular matters coming before their Board – should they?” Despite the clear guidance of Robert’s Rules and the Standard Code, one could still argue that just because someone can or may do something does not necessarily mean that they should. Some might say that it is still important for Chairs to be as impartial as possible, and therefore, they should refrain from exercising their right to vote.

What is a “Tie Vote”?

First, allow us to discuss the threshold notion of whether as a regular course of conduct a Chair should not vote, except to change the outcome of a vote of the Board. We use “change the outcome” rather than “break a tie” since it is more accurate, as will be discussed below.

We have established that Board Chairs have the same right to vote as any other member of the Board. So where does this notion of casting a tie-breaking vote come from? We look no further than Robert’s Rules. The remainder of the quote from the website answering the question of whether the Chair (presiding officer) can vote only to break a tie refers to refraining from voting in the interests of impartiality.

“However, the impartiality required of the presiding officer of any other type of assembly (especially a large one) precludes exercising the rights to make motions or speak in debate while presiding, and also requires refraining from voting except (i) when the vote is by ballot, or (ii) whenever his or her vote will affect the result.”¹⁴

Note – the “any other type of assembly” refers to assemblies that are NOT a “small Board (where there are not more than a dozen members present).” Let us be clear: Robert’s Rules excludes “assemblies” such as credit union Boards from the requirements in this paragraph.

The Standard Code contains similar but less restrictive language, noting that the Chair’s vote is “customarily” exercised as noted above:

Vote of the Presiding Officer. No officer relinquishes the rights of membership by accepting office, except that the presiding officer of an assembly cannot propose motions or nominate candidates. The presiding officer does have the

¹⁴ See, <http://www.Robert'srules.com/faq.html#1>, RONR In Brief, p. 112. (Emphasis added.)



right to cast a vote—but in an assembly the chair customarily exercises that right only when the vote is by ballot or when one more vote could alter the outcome. This preserves the chair’s aura of impartiality and objectivity. As is the case with any other member, the presiding officer cannot be required to cast a vote.¹⁵

But let us explore the notion embedded in the common misunderstanding that a Chair may not vote except to break a tie. That is not what either Robert’s Rules or the Standard Code provides. Robert’s Rules do not speak of “breaking a tie,” but of “affecting the result.” Sturgis refers to “altering the outcome.” This is a subtle but an important distinction.

When will the Chair’s vote affect the result? What many may not realize is that there is really no such thing as a “tie vote” which must be resolved in parliamentary procedure.¹⁶ Motions either pass or fail, usually by a simple majority, in special cases by a super majority of two-thirds. A “tie” vote on a motion means that the motion failed. As Sturgis explains,

In case of a tie vote the chair may vote with either side, thereby establishing a majority, provided that the chair has not already voted. Or the chair may choose to not vote, in which case, lacking a majority, the motion is lost.

If a motion is about to be carried by a single vote, the chair may choose to vote against it, thereby creating a tie, in which case, lacking a majority, the motion is lost.¹⁷

It should be kept in mind that this conversation around not voting is all relative to Chairs of larger assemblies, not Boards of Directors of credit unions.

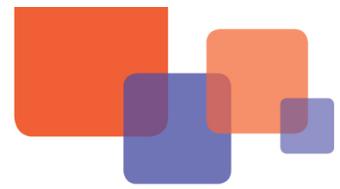
Other Considerations

When we first learned that many credit union Chairs were refraining from voting – and in one case, even prohibited by Board policy – except to “break ties,” we were surprised, and wondered what the rationale for that was. The main reason cited, the desire for impartiality, only puzzled us more, since we believe that each director, regardless of whether they are a Chair, has the right to exercise his or her powers of influence and persuasion to achieve the best outcome for the credit union.

¹⁵ Sturgis, Alice. *The Standard Code of Parliamentary Procedure: Fourth Edition*. 2001, p. 137. (Emphasis added.)

¹⁶ When many people think of breaking a tie vote, they are imagining the Vice President of the United States, the ex-officio President of the Senate, casting a tie-breaking vote in the Senate. This is not an analogous situation, as the Vice-President is not a member of the assembly and so has no right to vote other than to break a tie, and, more importantly, the Senate has its own parliamentary rules and has explicitly provided for a tie-breaker.

¹⁷ Sturgis, Alice. *The Standard Code of Parliamentary Procedure: Fourth Edition*. 2001, p. 137. (Emphasis added.) See also, RONR (11th ed.), pp. 405-6; RONR In Brief, p. 113 and Table A, p. 190.



Beyond this, we think that every director should vote on every motion (except as noted, in cases of personal conflict of interest, or where they feel they need further information) because it is their fiduciary duty to do so.

Credit union members elect the Board to act on their behalf and in their best interests. Board directors are fiduciaries, persons bound by the highest standard of duty under the common law, required to act at all times in the best interests of the credit union regardless of their personal interest.

It is only through the individual Board directors, acting as a collective body, that a Board can act. Intentionally blunting the ability of one of those directors to exercise his or her fiduciary duty seems not only wasteful, but contrary to the spirit of the requirement that a director act in the best interests of the credit union.

We can conceive of a situation in which a Board Chair, bound by a policy or practice not to vote unless it is to affect the outcome of a vote, does not cast a dissenting vote. In the admittedly unlikely event in which there is liability flowing from that decisions, that dissenting vote would have protected the Chair from personal liability. But unlikely is not inconceivable.

Black's Law Dictionary states, that impartial is "something unbiased, fair and unprejudiced."¹⁸

As noted by Merriam Webster, to be "partial to" or "partial toward" someone or something is to be somewhat biased or prejudiced, which means that a person who is partial really only sees part of the whole picture. To be impartial is the opposite. The United Nations sends impartial observers to monitor elections in troubled countries. We hope judges and juries will be impartial when they hand down verdicts.¹⁹

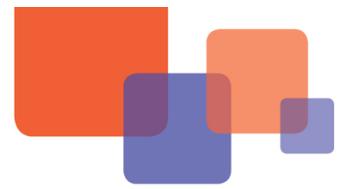
Of course, we want impartial juries. But Jurors have opinions, and they vote; even the foreperson of a jury votes. Most Board votes do not end up evenly distributed. So, as long as the Chair conducts the meeting fairly – impartially if you will – by ensuring that all voices that wish to be heard on an issue are heard in a complete manner, by making sure the rules are enforced fairly so as not to disadvantage any one person or group, by making sure that others are allowed to contribute to the agenda and discussions, "the desire for impartiality" is not, to our minds, a persuasive reason for the Chair to routinely not vote. The Chair can be impartial and still have an opinion – and a vote.

A note on the difference between a large assembly and a Board of Directors

Credit union Boards are different from large assemblies. Board members are elected fiduciaries who are the ultimate legally authority of a credit union, responsible to the credit union and its members. Large assemblies, the bodies that Robert's Rules and the Standard

¹⁸ See, <https://thelawdictionary.org/impartial/>

¹⁹ See, <https://www.merriam-webster.com/dictionary/impartial>, "not partial or biased: treating or affecting all equally"



Code are really for, are not comprised of fiduciaries. They may be members of the credit unions (such as at the annual meeting), members of an organization, stockholders of a corporation, voting constituencies or legislative bodies, comprised of representatives to the assembly, elected by a voting constituency. In a large assembly, the role of the “president” is largely that of a “presider” over the meeting – making it run smoothly and ensuring all voices are heard.²⁰ They need not be an actual member of the assembly in the same way that the participants are.

Credit union Board members are legal fiduciaries, while representatives or members of large plenary bodies are not. Representatives to large assemblies have duties to their particular constituents, which may be in competition with those of the other representatives. Board members do not have the competing interests that large representative body members must balance: They each represent all the members of the credit union, or the stakeholders of the non-profit, as the case may be.

We respectfully suggest that an informal prohibition against the Chair voting – and particularly the formal provision mentioned above – is overly cautious, even inappropriate. For a small Board, each Board member’s voice is important, and that voice is counted through means of a vote. Chairs should vote on all matters coming before the credit union’s Board. Indeed, voting is one of a Board member’s primary fiduciary – and most sacred – duties and the Chair has the right to vote as does every other governing Board member.

²⁰ It’s not a coincidence that the words are based on the same root.