

The Committee on Voting Procedures

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RESOLUTION OF AUTHORITY

Whereas, fundamental questions concerning the method of voting in the House of Deputies have been raised at the 64th General Convention,

Be it therefore resolved, that the President of the House of Deputies appoint a Committee of at least five persons, Lay and Clerical, to study in depth the history of the present voting process, and the effects upon the polity of the Episcopal Church of both the existing system and alternative methods.

Be it further resolved, that the Committee be directed to submit a written report of that study, including its recommendations for the future, to the President of the House of Deputies by February 1, 1976 for inclusion in the pre-Convention Publication of the 65th General Convention for action by that body.

COMMITTEE MEMBERS

The Rev. Canon Gordon E. Gillett
The Very Rev. J. Ogden Hoffman, Jr.
Mr. George R. Humrickhouse
The Honorable Hugh R. Jones
Dr. Charles J. Mock
The Rev. James R. Moodey
The Honorable Clay Myers
Dr. Charity Waymouth
Mr. James M. Winning

Ex Officios

President of the House of Deputies
Vice-President of the House of Deputies
Secretary-Treasurer of General Convention

REPORT AND RECOMMENDATIONS

I — Introduction

The Committee on Voting Procedures, at its initial meeting, organized and came to several significant conclusions regarding its deliberations. Some of those are:

1. The recommendations of the Committee should not seek to change the historical and constitutional polity of the General Convention. This polity, as reflected in a vote by Dioceses and Orders, was recognized by the Committee on Amendments of the House of Deputies at the Convention of 1928 as:

“... a vote by (Dioceses and) orders is a vote by representatives of the dioceses . . . who vote in their representative capacities and not in their individual capacities. . . .”

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“In so voting it is the dioceses. . . which vote. . . .”

(White and Dykman, Annotated Constitution and Canons, Vol. 1, p. 26)

2. The recommendations of the Committee should not involve the area of proportional representation or other structural or composition changes in the General Convention (i.e. unicameralism, reduction in size. . .).

3. The recommendations of the Committee should be in support of the objective of improving the prospect of an intelligent and trust building Convention process without making material changes of substance in the rights and directions provided the Convention by the Constitution and Canons.

The Committee's recommendation, in the light of the foregoing decisions, as hereinafter reflected, involves removal of any question of when an extraordinary majority may be required and, if so, under what circumstances when the vote is by Dioceses and Orders *by amendment of the Rules of Order and by amendment of Section 4 of Article I of the Constitution*. This recommendation has the effect of eliminating the concept of the “divided” vote as a negative vote and concurrently of establishing a clear opportunity to impose an extraordinary majority upon issues other than liturgical issues or amendments to the Constitution.

II – Historical Evaluation of the Concept of the Divided Vote and its Treatment in and by the General Convention of the Episcopal Church

The concept of the “divided vote” has been the occasion for frequent and repeated debate and argument at General Conventions of the Church, and the subject of frequent attempts to amend the Constitution of the Church. Much of the debate and nearly all the attempts to amend the Constitution to eliminate the effects of the concept of the divided vote resulted from a misunderstanding of either (1) the polity of General Convention or (2) the Constitutional Vote by Dioceses and Orders as it related to the polity of General Convention or (3) what the divided vote is. This evaluation will attempt to record the significant elements in the history of the divided vote concept in an effort to dissipate some of this misunderstanding.

GENERAL CONVENTION POLITY

Confederation of Dioceses The initial organizational plan for the National Church included a General Convention consisting of a unicameral legislative body composed of bishops, priests and laity. This was developed in 1785 and was patterned after the proposed national government conceived at that time by the draftsmen of the Articles of Confederation. Bishop Seabury, not enamored of this plan, held out for the elimination of the laity as a part of the legislative structure. A compromise bicameral Convention consisting of a House of Bishops and a House of Deputies resulted. However, an indispensable ingredient of this compromise was the concept of the House of Deputies as a confederation of Dioceses and not, as in the revised national government structure, a body of representatives of the Church constituencies in the Diocese (White and Dykman, Vol. I, p. 35). This concept of confederation has persisted and survived repeated efforts to substitute a body representative of and proportional to the Church membership. It is the present polity of the Church. In the House of Deputies, although on most occasions by license the majority vote of the Deputies prevails, the Constitutional voting unit is the Diocese, not the Deputy.

VOTE BY DIOCESES AND ORDERS

In addition to the confederation polity, also built into the structure of the House of Deputies in the initial 1789 Constitution was a practicable process of veto of legislation either by the clerical or a lay deputation from any Diocese a vote on an issue had to be taken by Dioceses and Orders and a concurrent majority of

Dioceses represented in each order was necessary for a proposition to prevail. The emphasis upon the concept of veto inherent in this process has tended to cloud the fact that it also is a vote by Dioceses and not a vote by Deputies. The remembrance of this single fact is indispensable to an understanding of the voting process of General Convention.

THE DIVIDED VOTE

Simply stated, the "divided vote" (which occurs when a vote is taken by Orders) obtains when the Deputies within an Order are evenly divided upon a proposition. If within the Order the Deputies are 4 to 0 or 3 to 1 in favor of or against a proposition, the vote is not divided but is either affirmative or negative, as the case may be. It is only when there is an equal division of the Deputies within the Order that the vote of that Order is divided. Under these circumstances the divided Order has been treated as having voted in the negative.

The language in the initial Constitution of 1789 which established the confederation polity and the vote by Dioceses (States) and Orders read as follows: "The Church in each State (Diocese) shall be entitled to a representation of both the clergy and the laity, which representation shall consist of one or more Deputies, not exceeding four of each Order chosen by the Convention of the State (Diocese) and in all questions, when required by the clerical or lay representation from any State (Diocese) each Order shall have one vote; and the majority of suffrages by States (Dioceses) shall be conclusive in each Order, provided such majority comprehend a majority of the States (Dioceses) represented in that Order. The concurrence of both Orders shall be necessary to constitute a vote of the Convention. . . ."

To be noted is the absence of any reference to or recognition of a divided vote—especially a divided vote within an Order. The distribution of the vote of the State (Diocese) in terms of one vote in each Order raised the question and permitted the conclusion that the vote of a State (Diocese) could be divided as between the Orders but did not appear to justify the conclusion that a vote within an Order could be divided.

The construction that a divided vote *between* Orders was constitutionally permissible was first given recognition in the General Convention of 1808, where for the first time the Lay Order and the Clerical Order of the State of Pennsylvania disagreed. The vote of that State (Diocese) was recorded as divided as between its Orders.

The General Convention of 1814 contains the first record of the counting of a divided vote *within* an Order. The Journal is silent with regard to any question being raised with respect to this process even though the 1789 Constitution was still in effect. In this instance the concept of treating a divided vote *within* an Order as a negative vote did not affect the outcome. Possibly this explains the absence of at least exploratory debate. Thereafter, the practice of recording divided votes prevailed without incident until the Convention of 1844, at which the recording of a "divided vote" within an Order was decisive. Thereafter, occasionally a vote by Orders would occur, in connection with which the so-called "divided vote" being counted as a negative vote, would be treated as material. The basic constitutional philosophy, requiring as it did as to each Order a majority of the States *represented* in that Order, would seem to dictate the same result regardless of whether the creation of the fictional concept of a divided vote within an Order had occurred.

Beginning with the Convention of 1925 an unsound attack upon the divided vote concept and its effect upon Convention voting procedures was initiated. A Deputy identified as Professor Beale offered a resolution providing that a divided vote within an Order be counted as one-half in the affirmative and one-half in the

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negative. This resolution apparently was based upon one or more of the following misconceptions:

1. Were it not for the existence of the divided vote concept a proposition would prevail if supported by a majority of those voting in each Order. This was contrary to the Constitutional requirement of a majority of those present in each Order which existed at that time.
2. The vote by Orders is not a vote by Dioceses in which a Diocese has one vote in each Order, but is a vote by deputies to which individual recognition should be given.
3. The specter of the divided vote within an Order which had received non-material recognition had a Constitutional eminence.
4. Surgical treatment of the divided vote concept would solve the problem of the Constitutional requirement of an extraordinary majority.

At the next Convention, 1928, a concurrent resolution, introduced by Professor Beale, was adopted proposing an amendment of the fourth paragraph of Section 4 of Article I of the Constitution as follows:

In all cases of a vote by Orders, the two Orders shall vote separately, each Diocese having one vote in the Clerical and one vote in the Lay Orders, and each Missionary District within the boundaries of the United States of America having a one-fourth vote in the Clerical Order and a one-fourth vote in the Lay Order; and the concurrence of the votes of the two Orders shall be necessary to constitute a vote of the House. No action of either Order shall pass in the affirmative unless it receives the majority of all votes cast, and unless the sum of all the affirmative votes shall exceed the sum of other votes by at least one whole vote.

This amendment removed the language of the 1789 Constitution requiring a majority of States (Dioceses) *represented* and substituted a majority of votes cast. It also, in providing for representation of Missionary Districts and giving them an express one-fourth vote in each Order, added some equivocal language at the end requiring that the affirmative vote must exceed the sum of other votes by at least one whole vote. Thus, if the "divided diocese" were to be treated as voting under this equivocal language, the old standard of a majority of those represented could be implied even though in apparent conflict with the express requirement of a majority of votes cast.

At the same Convention, Professor Beale proposed another effort to eliminate the frustration caused by the "divided vote" concept by adding the following language to Section 4 of Article I:

"If the vote of a Diocese in either Order is divided, it shall be counted as one-half vote in the affirmative and one-half vote in the negative."

On this proposal the Committee on Amendments of the House of Deputies reported as follows:

The Committee deems this proposal inexpedient because a vote by Orders is a vote by representatives of the Dioceses and Missionary Districts who vote in their representative capacity and not in their individual capacity. In so voting it is the Dioceses and Districts which vote and from the establishment of the General Convention down to the present date it has always been the requirement that there must be an affirmative majority to carry a measure. Not only is this the case because the action is that of Dioceses and Districts and not of individuals but also because it is desirable on important matters that something more than a mere majority of voices should be necessary for the adoption of the matter in hand.

The record fails to show the position of the Convention with reference to the second Beale amendment other than the implicit fact of non-acceptance of it. It was not acted upon by the Convention.

Confusion concerning the use of the “divided vote” concept as an indispensable element of the polity of the Convention as an assembly of Dioceses and not of Deputies continued. Neither then, before or since has the “divided vote” concept made any contribution to the preservation of the confederation polity. As a matter of fact, to the extent that it recognizes the votes of individual Deputies in order to conclude the existence of a divided vote, it is inconsistent with the polity.

Following the Convention of 1931 repeated efforts have been made to modify the requirement of a majority of those Dioceses voting Aye, Nay or Divided (rather than a majority of those voting) by the specious method of modifying the construction contained in present Rule 41 of a divided vote as a negative (or non-affirmative) vote, at the same time continuing to give the concept the status of a vote (White and Dykeman, Vol. I, pp. 27-30). Likewise, this erroneous attribution of vote status to the divided concept by means of Rule 41 has indirectly resulted in the requirement of an extraordinary majority in all cases of votes by Dioceses and Orders within the constitutional language of “a majority of all votes cast.”

General Conventions 1958-61-64-67-69-70-73

Total number of Votes by Orders:	91
Items passed by both Orders:	52
Items defeated by both Orders	22
Items defeated by Clerical Order*	1
Items defeated by Lay Order*	7
Items defeated by Clerical Order by divided vote:	1
Items defeated by Lay Order by divided vote:	6
Items defeated by both Orders by divided vote	2

The divided vote concept should not be used as the whipping boy for an issue over whether an extraordinary majority should be required in votes by Orders. The divided vote concept, since it makes no contribution to the polity of General Convention but, on the contrary, merely generates frustrating confusion far beyond its tangible effect at every General Convention, should be put to final rest.

III – Recommendation No. 1.

The current concept of the “Divided” vote finds its source in Rule 41 of the Rules of Order of the House of Deputies which, in substance, requires, in the event of a vote by Dioceses and Orders, a response of either “Aye,” “No” or “Divided.” The effect of this Rule is that a response of “Divided” is assumed to acquire the effect of a negative or a “No” vote because of those provisions of Section 4 of Article I of the Constitution which provide:

“No action of either Order shall pass in the affirmative unless it receives the majority of all votes cast and unless the sum of all the affirmative votes shall exceed the sum of other votes by at least one whole vote.”

The Rule 41 concept of “Divided” as a vote is not found in the Constitution or in the Canons, or in any other parliamentary body of which the Committee is aware. Neither is the concept consistent with the historical polity of the General Convention as being a legislative body consisting of Dioceses and not one consisting of Deputies. To give effect to the concept of Rule 41 is to destroy diocesan polity by giving effect to a Deputy’s individual vote in the count of the totals of the Vote by Dioceses. The same Section 4 of Article I of the Constitution expressly provides that in the event of a Vote by Dioceses and Orders “each Diocese having one vote

*the divided vote not being a decisive factor.

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in the Clerical Order and one in the Lay Order. . . .” This provision does not contemplate or suggest that the one diocesan vote shall consist of four quarters or of two halves. A single vote should require a single voice and, just as in the case of an individual, if the voter cannot make up its mind, it does not cast a vote.

The Committee recommends that Rule 41 be amended to require either an “Aye” or a “No” vote. The adoption of the following resolution is recommended:

Resolved, that Rule 41 of the Rules of the House of Deputies be amended, to read as follows:

41(a). The vote upon any question shall be taken by Dioceses, Missionary Dioceses, and the Convocation of the Churches in Europe by Orders whenever required by the entire Clerical or Lay representation from any three Dioceses before the voting begins. Whenever a vote is so taken (except in the case of elections), the vote of each Order in each Diocese, Missionary Diocese, and the Convocation of the Churches in Europe shall be stated by one Deputy in each Order as “Aye” or “No.” If the Diocese cannot cast a vote it shall abstain.

(b) In lieu of a roll call, a Vote by Orders may be by written ballot signed by the Chairman of the Deputation, or, in his absence, by another member of the Deputation in the Order for which the ballot is cast, or the vote may be taken by electronic or mechanical means which display the vote to the entire House; and the vote in each Order from each Clerical and Lay Deputation so announced may be corrected before, but not after, the final announcement of the vote of the House. In all votes by Orders each Deputy voting, in either Order, shall record his individual vote on the motion or proposition.

This resolution and the amendment to Rule 41 herein proposed shall become effective only if, and upon the date, that the following amendment to Section 4 of Article I of the Constitution shall become effective:

Resolved, the House of _____ concurring, that the last paragraph of Section 4 of Article I of the Constitution be amended, to read as follows:

On any question the vote of a majority of the Deputies present shall suffice, unless otherwise ordered by this Constitution, or, in cases not specifically provided by the Constitution, by Canons requiring more than a majority, or unless all the members of the Clerical or the Lay deputation from any three Dioceses require that the vote be taken by Orders.

In all cases of a Vote by Orders, the two Orders shall vote separately, each Diocese and Missionary Diocese having one vote in the Clerical Order and one vote in the Lay Order and the concurrence of a majority of the votes cast in both Orders shall suffice unless prior to the commencement of the balloting by Orders, a motion is made by all the members of the Clerical or Lay deputation from any three Dioceses to require a 60% concurring majority of both Orders and the motion receives the support of at least 40% of the Deputies voting thereon. In such event, a concurrent majority of 60% in both Orders shall be required. The motion to require the extraordinary majority shall not be debatable. No action shall pass in either Order unless the vote therein includes votes of at least 60% of the Dioceses entitled to vote.

Resolved further that the proposed amendment be sent to the Secretary of the Convention of every Diocese and of the Convention of every Missionary Diocese and of the Convocation of American Churches in Europe to be made known to the Diocesan Convention, the Missionary Diocesan Convention and the Convocation of the American Churches in Europe at the next meeting thereof.

In practical effect, as a result of the adoption of this RECOMMENDATION NO. 1, the votes of the Divided Dioceses would not be counted and the result on any issue would turn on the tally of the “Aye” and “No” votes only.

RECOMMENDATION NO. 2. In the Committee there was considerable support for a process by which an opportunity to require an extraordinary majority for the enactment of significant legislative resolutions could be provided as a substitute for the concept of "Divided" as a negative vote. Proposals to increase the majority requirements to 60% or 66-2/3% of the vote were considered. Contrary views of the members of the Committee were based upon a conviction that adequate protection already exists under the provisions of Article X and Article XI of the Constitution with respect to liturgical changes or changes amending the Constitution. These articles currently require a concurrent majority of those Dioceses entitled to representation in the House. Under these requirements, the failure of a Diocese to vote (either an abstention or a "Divided" concept) is counted as a negative vote notwithstanding the provisions of Section 4 of Article I and notwithstanding the adoption of the recommendations of the Committee with respect to the "Divided" concept. These provisions, plus the further provision requiring two successive votes at two General Conventions, were, in the view of the opponents of the requirement of extraordinary majorities, adequate protection against precipitate action by bare majorities in these two significant areas of legislation.

Not infrequently, however, a call for a vote by Dioceses and Orders is made when the issue under consideration, even though neither liturgical nor constitutional, is of such significance as to warrant requiring a larger vote for approval than is the case under normal voting procedures. The historical interpretation of "Divided" votes as negative votes has made the vote by Dioceses and Orders appropriate for the achievement of this legitimate objective. The Committee recognizes that if the divided vote is to be eliminated there should be some structural opportunity for insistence upon an extraordinary majority in voting on certain non-liturgical and non-constitutional issues. The Committee recommends the following amendment to Section 4 of Article I of the Constitution to establish such an opportunity. The proposal not only provides a method for obtaining the requirement of an extraordinary majority but also imposes a minimum voting requirement of 60% in each Order of the Dioceses entitled to vote:

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Resolved, the House of _____ concurring, that the last paragraph of Section 4 of Article I of the Constitution be amended, to read as follows:

On any question the vote of a majority of the Deputies present shall suffice, unless otherwise ordered by this Constitution, or, in cases not specifically provided by the Constitution, by Canons requiring more than a majority, or unless all the members of the Clerical or the Lay deputation from any three Dioceses require that the vote be taken by Orders.

In all cases of a Vote by Orders, the two Orders shall vote separately, each Diocese and Missionary Diocese having one vote in the Clerical Order and one vote in the Lay Order and the concurrence of a majority of the votes cast in both Orders shall suffice unless prior to the commencement of the balloting by Orders a motion is made by all the members of the Clerical or Lay deputation from any three Dioceses to require a 60% concurring majority of both Orders and the motion receives the support of at least 40% of the Deputies voting thereon. In such event, a concurrent majority of 60% in both Orders shall be required. The motion to require the extraordinary majority shall not be debatable. No action shall pass in either Order unless the vote therein includes votes of at least 60% of the Dioceses entitled to vote.

Resolved Further, that the proposed amendment be sent to the Secretary of the Convention of every Diocese and of the Convention of every Missionary Diocese and of the Convocation of American Churches in Europe to be made known to

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the Diocesan Convention, the Missionary Diocesan Convention and the Convocation of the American Churches in Europe at the next meeting thereof.

Conclusion

The Committee proposes that its recommendation regarding an amendment to the Constitution be submitted to the Committee on Amendments to the Constitution and that the appropriate supplementary resolutions required by Article XI be made a part of that Committee's recommendation to the House of Deputies. The Committee further proposes that the other recommendation be submitted to the Committee on Rules for action and recommendation to the House.

Respectfully submitted,

COMMITTEE ON VOTING PROCEDURES

By James W. Winning, Chairman

Dated: February 23, 1976