

**Decision regarding interpretation of Article VIII**  
*(Released April 15, 2011)*

*Respectfully submitted to the FA and FAEC by*

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*Associate Professor of Economics*  
*FA Parliamentarian*

## Charge

As requested by Faculty Assembly President James Morley on March 22, 2011, the Parliamentarian has been asked to provide interpretation of Article VIII of the Faculty Assembly by-laws, in regard to the permanent adoption of amendments to the FA by-laws. The area of the article in question reads:

“These bylaws may be amended by a two-thirds vote of the full membership submitted by mail-in ballot, provided that the amendment has been submitted in writing at the previous Faculty Assembly meeting....”

The second part of the article refers to the temporary suspension of the by-laws for a particular meeting, and thus is not applicable to the request for interpretation. Once the question has been referred to the Parliamentarian, Article VII, Section 2 governs this matter. It states:

“...If the Parliamentarian is asked to rule on a question of process at Faculty Assembly or in the Executive Council the decision made by the Parliamentarian shall be final....”

## Process

The parliamentarian on March 23, 2011 asked for comments from three different constituent groups, with the applicable timelines, to promote a fair and open decision making process. All correspondence received has been put into the appendix of this document.

1. The majority and any minority opinions, if available, on the interpretation of Article VIII from the Faculty Executive Committee (hereafter FAEC) by the close of business on Friday April 1.
2. The majority and any minority opinions, if available, on the interpretation of Article VIII from the Faculty Governance Review Committee (hereafter FGRC) by the close of business on Friday April 1.
3. Opinions from the Faculty: The Faculty Assembly, being a constituent-led body, should have the voices of its members heard, especially when it concerns the amending of its governing document. As such, the Parliamentarian invited any faculty member (or group of faculty members) to email at [aolbrech@ramapo.edu](mailto:aolbrech@ramapo.edu) by Saturday April 2, at noon. Specifically, any opinions were requested to focus on issues directly related to the interpretation of Article VIII.

## *Timeline / Deadlines*

April 1, 4:45 pm : FAEC and FGRC opinions

April 2, noon: Faculty opinions

April 4 to 11, Additional comments

April 22, Decision made public

### Criteria for Decision

The crux of the issue at hand is how to interpret the part of the statement that reads “two-thirds vote of the full membership.” What is important to note is that the consequences of the interpretation are irrelevant to the question at hand. Thus arguments made to consider what voting threshold would be appropriate and realistic for the FA body to amend the by-laws, while perhaps in and of itself an interesting academic question, are nonetheless mute given this decision. Therefore, the only criteria important when considering this question is how to interpret this particular language given no past precedent in the application of said by-law.

Thus there are several strategies by which the Parliamentarian can analyze this question. First, there may be clues as to the interpretation in the rest of the by-laws. Second, Robert’s Rules of Order may be consulted. Finally, the Parliamentarian can use common sense when making a determination.

### *Evidence in the By-Laws*

There are several areas of the by-laws where voting is referenced. In the election of FAEC members (president, secretary and two at-large), the by-laws state that election shall be “by referendum of all voting members of the Faculty Assembly.” Traditionally this has been interpreted to be a vote where all voting FA members have a right to vote and that election is by 50% plus one. The specific language refers to a referendum of all voting members and is silent on the percentage required.

The by-laws also discuss a vote at an FAEC meeting stating, “A majority vote of the Council carries the motion. A tie vote on the motion means that the motion fails.” The previous section sets a quorum. Once again, the voting does not specify a number of votes required, just the more traditional majority term. The same majority term is used to indicate the selection of the chair of the Academic Review Committee.

Sections six and seven of Article VII are also particularly illuminating:

Section 6. A motion to table a decision item to the next Faculty Assembly meeting must pass by a majority. A motion to table a decision item for any period of time longer than the next Faculty Assembly meeting must pass by a 2/3 majority. In all other respects motions to table of any kind shall be in accord with Robert's Rules of Order.

Section 7. Whenever these Bylaws refer to a “majority vote,” this shall refer to a majority of those members present and eligible to vote in the meeting, so long as a quorum is present.

Section six is the first area which makes a distinction between majority vote and a 2/3 majority. Section 7 states that whenever the by-laws refer to a majority vote, the vote shall be valid as long as the quorum is met. In other words, as long as a quorum is met, uncast votes or abstentions do not count against a particular motion or referendum from passing.

However, Article VIII is rather distinctive in its language. It specifically refers to a vote requiring 2/3 “yes” votes to pass and that it must be a vote encompassing the full membership. Intuitively this leads to the conclusion that 2/3 of all eligible voters must approve of a change to the by-laws (and inherently then all abstentions or votes not cast count against the passage of the referendum or decision item). Given the previous wording in the by-laws, had the writers wanted a lower standard, it would have been written as a 2/3 majority. However, the writers picked different wording and I can only surmise this was done for a very specific reason, in that voting to amend the by-laws would require a higher hurdle in terms of voting.

#### *Robert’s Rules*

An additional approach is to also consult Robert’s Rules of Order. In the interpretation of Article VIII, I must concur with the opinion argued by the FAEC, as provided in the appendix of this document. In Robert’s Rules (10<sup>th</sup> Ed. On page 390), the term “majority vote” refers to a majority vote of those present who vote. A “majority membership vote” is explained to be a vote where the majority of all those eligible to vote participate. In terms of the 2/3’s argument, Robert’s Rules provides additional guidance. A “2/3 vote” requires two-thirds of all those present to vote to approve a motion. As such, while Robert’s Rules is silent as to what “2/3’s vote of the full membership” means, it is clear that the logical conclusion from Robert’s rules is that 2/3 of all faculty eligible to vote in the FA must return a yes vote in order to amend the by-laws.

#### *Common Sense*

The changing of a governing document is generally reserved by organizations to be the most difficult hurdle to pass and one would prefer that it be clearly spelled out. Given this generally accepted idea, I believe that the framers of our governing document had this in mind when writing Article VIII. In most cases, organizations require a full canvassing of their memberships and a 2/3 majority in order to adopt a change. My conclusion from the wording is consistent with this common sense outcome.

An alternative argument was presented in that the FA should be bound by the previous vote on making these bylaws permanent. However, the implementation of that vote concerned an interpretation of Article IX of the by-laws. Given that there were no objections to that vote and that the parliamentarian was not asked to rule, this is not

considered a binding (or even an appropriate) precedent in this case because it concerned a vote under the auspices of another article.

## **Decision**

Based upon the three different standards to interpret Article VIII, the conclusions among the different approaches are consistent. As such, the FAEC, and by extension the FA, is hereby directed to implement Article VIII of the Faculty Assembly By-laws under the following conditions:

1. Votes must be submitted by mail ballot. This can be done through campus or U.S. mail.
2. Only eligible voting members of the FA may vote, as defined in Article II
3. In order to pass,  $2/3$  of all eligible voters must approve (abstentions count as no votes, consistent with Robert's Rules). Specifically, if there are 100 eligible voters, 67 yes votes are required to amend the by-laws.

## APPENDIX

FA Executive Council Discussion of The Question Submitted to the FA Parliamentarian Regarding Voting Procedure For Amendment of the Bylaws.

April 1, 2011

Summary:

Amendments to the bylaws requires that two-thirds of the full faculty membership eligible to vote must agree to the amendment, and the vote must occur by mail-in ballot.

Discussion:

### Interpretation of the Current Bylaws: the Amendment Process

Article VIII of the current Bylaws now in effect require that amendments of the Bylaws be made by a “two-thirds vote of the full membership submitted by mail-in ballot.”

The members of the Faculty Assembly are defined by Article II , Section I of the current Bylaws. “Voting members” include the full-time Faculty in residence (i.e., not on leave), Library Faculty , and Professional Staff who have teaching responsibilities as part of their contractual load. There are also “non-voting ex officio members,” which includes part-time faculty, the Provost, academic deans, and administrators who hold concurrent academic rank. While the term “full membership” as used in Article VIII does not explicitly exclude “non-voting ex officio members,” the designation of such members as “non-voting” does have the effect of making it explicit that such members are not to be counted in any vote of the Assembly, regardless of the number needed for a majority or super-majority. Thus, it is clear that a “two-thirds vote of the full membership submitted by mail-in ballot” does not include the “non-voting ex-officio members” referred to in Article II.

The term “two-thirds vote” is significant here. Robert's Rules, 10th Edition, page 390, defines "**majority vote**" as a majority of those present and voting. By contrast, it defines a vote of the "**majority of the membership**" as a majority of all those eligible to vote being in favor of the resolution. By analogy, a simple "**two-thirds vote**" would mean two-thirds of all those present and voting. By contrast, "**two-thirds vote of the full membership**" means that two-thirds of all those eligible to vote are in favor of the resolution. Following Robert's Rules requires that amendment of the current Bylaws now in effect be done by two-thirds of all members eligible to vote, and that it be done by a mail-in ballot.

This would require, as noted in Robert's Rules, *ibid.*, that abstentions and failures to vote are counted as “no” votes.

### The Previous Vote Did Not Interpret Differently

The argument has been made that the Faculty Assembly previously interpreted a “two –thirds vote of the full membership” differently in the case of the recent vote on whether to adopt permanently the “Pilot” Bylaws of 2008. The contention is that the Faculty Assembly interpreted “two-thirds vote of the full membership” to mean only two-thirds of those who actually voted, rather than two-thirds of all those eligible to vote. This is factually incorrect.

Under the “Pilot” Bylaws of 2008, the text of Article VIII contained two paragraphs (in contrast to the current version), which stipulated two different procedures, one for general amendment of the bylaws, and the second specifically relating to the approval of the “Pilot” Bylaws of 2008. The portion relating to approval of the “Pilot” Bylaws read, in pertinent part:

“...a vote will be taken in March 2010 on whether to make this version of the Faculty Assembly bylaws permanent. The vote must pass by a two-thirds majority.”

As noted above, Robert’s Rules defines a simple “**two-thirds majority**” as two-thirds of all those voting. Thus, it was proper to measure the vote by measuring whether two-thirds of all those voting approved of the permanent adoption of the “Pilot” Bylaws of 2008. In such a case, as noted by Robert’s Rules, *ibid.*, abstentions and failures to vote are not counted as part of the vote.

#### The Faculty Assembly Received Notice of the Parliamentary Procedures To Be Used Without Objection

Adding force to the plain language of the Bylaws, it is important to note that, in a joint meeting of the FA Executive Council and the FGR Committee, it was agreed that the language of the second paragraph of article 8 for approving the “Pilot” Bylaws of 2008 did not specifically use the term “full membership.” Therefore this allowed for a motion to pass with a 2/3 majority of votes cast, rather than of all those eligible to vote. All parties understood that this interpretation only applied to the second paragraph – not the first paragraph. Minutes show no discussion of any intention to make this particular procedure apply to the amending of bylaws in the first paragraph. Indeed, it would not be possible for the FA Executive Council to bypass the plain language of the Bylaws.

The approved bylaws must be honored as written.

#### Conclusion

Article VIII of the current Bylaws requires that amendments pass by a “two-thirds vote of the full membership submitted by mail-in ballot.” This is defined by Robert’s Rules to mean that two-thirds of all those eligible to vote as part of the full faculty membership are in favor of the resolution. Previous votes did nothing to diminish this interpretation and are not contrary to the position taken by the FA Executive Council. We ask that the Parliamentarian hold that

amendments to the current Bylaws now in force require a two-thirds vote of all those eligible to vote as part of the full faculty membership, rather than simply two-thirds of those voting.



FGRC position on Bylaws Article VIII:

### Article VIII Amendment of Bylaws

These bylaws can be amended by a two-thirds vote of the full membership submitted by mail-in ballot, provided that the amendment has been submitted in writing at the previous meeting. Note: The bylaws can be temporarily amended for the length of a particular faculty assembly meeting by a motion on the floor passed by a 2/3 majority.

1. The original bylaws use the term “majority” in regards to voting 3 times and use the term “plurality” in regards to voting 3 times.

So why are we to assume that Article VIII means that a majority vote is required to amend? Why not a plurality?

Assuming *arguendo* that the FAEC would interpret Article VIII to read 2/3 of 222 (full voting members of the FA), would the FAEC require a majority or plurality? What is the rationale for either? Again, assuming *arguendo* that Article VIII is to require 2/3 of 222, since it is subsequently unclear as to whether a majority or plurality is required, the FAEC would not be simply interpreting Article VIII but implementing a voting procedure that is not specified anywhere in the bylaws. As noted, the original bylaws specify majority or plurality in other instances thus an interpretation of either in an instance where it is not specified simply reads as “creating law.”

2. Clarity and intent

Article VII, Section 6:

Section 6. A motion to table a decision item to the next Faculty Assembly meeting must pass by a majority. A motion to table a decision item for any period of time longer than the next Faculty Assembly meeting must pass by a 2/3 majority. In all other respects motions to table of any kind shall be in accord with Robert's Rules of Order.

In the above section, the drafters intentionally made the bylaws clear and unambiguous. For reasons unknown to us, the drafters made the article that concerns us for this upcoming vote ambiguous, unclear, vague, and thus, unenforceable.

The drafters of the bylaws made an error in drafting an unclear Article VIII. We can see from the bylaws as a whole that they had the ability to draft clear articles.

### 3. Unenforceable

What makes a contract unenforceable?

- Vague – historically, the law has always found vague contracts unenforceable
- Impossibility of performance – have we ever had 2/3 yes vote of 222?
- Unconscionable – the bylaws, as is, are so unfair to the “yes” vote that they are unenforceable. Both a “no” and “abstain” count against a “yes” vote under the current structure.

### 4. Apathetic silence

Under the current bylaws, we are putting the “yes” at a disadvantage. We are, in essence, counting the abstentions as “no” votes and thus, creating an unfair advantage.

While it is noble to want absolute participation in faculty governance, and certainly in amending the bylaws, the current structure allows for the bylaws to be hijacked by the apathetic. Since their lack of participation is troubling, it seems they should not be counted as members of this process, at this moment.

At no other point does a non-vote count as a no vote in the democratic process.

### 5. Precedent

Important decisions across campus are made by a small group of faculty members on various committees (e.g., ARC, GECCo, FAEC, etc.). These decisions are considered legitimate by the faculty and administration even in the instance where less than 10 faculty members are voting on an issue. Ramapo has established a precedent that not all “important” decisions need to be considered by the full faculty in residence. We need not hold ourselves to the same standard as amending the U.S. Constitution – the bylaws are not as important and need not be as stable.

### 6. Common sense

If the voting procedure requires the performance of an impossibility, common sense requires that the process be deemed unenforceable. Simply requiring a yes vote of 2/3 of the full faculty in residence does not exemplify a “higher bar” for amending the bylaws. Rather, it

demonstrates the rigidity of the faculty and more importantly, prevents change in faculty governance in perpetuity.

Therefore we are calling for the current Article VIII to be INTERPRETED as follows and that said article be REWRITTEN as follows:

*These bylaws may be amended by satisfying the following requirements:*

- *a 2/3 majority vote of the votes cast and 2/3 of all voting members of the Faculty Assembly as defined in Article II (a yes vote from 2/3 of all votes cast and at least 2/3 of the full voting membership participate/vote) and,*
- *provided the amendment has been submitted in writing at the previous Faculty Assembly meeting.*

*The vote delivery shall be by electronic (i.e., Qualtrics) or mail-in ballot.*

*These bylaws may be temporarily amended for the length of a particular Faculty Assembly meeting by a motion on the floor passed by 2/3 of the voting faculty present.*

Respectfully submitted,

Faculty Governance Review Committee

Stephen Klein (Chair) – ASB

Lisa Cassidy – AIS

Meredith Davis – CA

Susan Kurzmann – Library

Aaron Lorenz – SSHS

Ash Stuart – TAS

I think we are all concerned with the ease at which we could potentially change the bylaws. I am curious, have the bylaws ever been changed? In other words, when they were amended in the past, did the votes have 2/3 of all faculty? I think there is a general concern that this is not possible. So, I am asking, is it? This would change my view of the article and history is a significant indication of the possibilities.

Additionally, I am concerned that if the article is interpreted as 2/3 of all faculty, then we will not be able to adequately interpret the results of the vote. It discourages dissenting votes to be cast. A vote not cast is the same as a vote cast no, so how do we determine the difference between people that don't care and people that don't agree? In terms of validity of a change, it is important to adequately represent the dissenting vote. People that abstain from voting do so for a number of reasons, but not because they want to vote no.

Amanda

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I am a second year faculty member in SSHS, so I cannot speak to the intent of the article as written. I have extensive experience with non-profit organizations and their bylaws. I have been involved in the amendment of bylaws in three different organizations. One of these organizations requires a 2/3 vote in support of any amendment of the entire board of directors. The other two organizations amend their bylaws by a 2/3 vote of a special quorum of the entire membership (one org was 60%, the other 2/3). I don't know of any organization that would require a 2/3 vote of the entire membership. That just doesn't seem feasible, considering my experience and understanding of organizations.

I think the article should be interpreted to mean that an amendment will occur when:  
1) a vote has been offered to the entire membership (through mail-in ballot in the current form)  
AND  
2) two-thirds of those who vote are in support of the amendment.

I believe "vote of the full membership" does not require 2/3 of the full membership, but speaks to providing the opportunity for the full membership to vote (meaning, not limiting the opportunity to those who attend a particular FA meeting.)

Sincerely,  
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Please consider the environment before printing this email. Thank you.

Alex -

Thanks for taking this on. I realize I've missed the deadline, but hopefully it's not too late. one quick thought: FA is not like the congress where the members, while not required, are under heavy pressure to attend and vote, and are held to account by their constituents if they do not. We should look back over the history of FA mail ballots and see if we have ever had a vote where 2/3rd of the faculty voted yes, or even if 2/3rd actually voted. If not, the 2/3 of voting members is an impossibly high bar to clear.

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