

# Parliamentary Opinion

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By:

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## **Question:**

Why do the articles of incorporation state that “this corporation doesn’t have members” yet the State Rules of the GRP, Inc are replete with “member” language? (SR 1.1)

## **Background:**

O.C.G.A. § 21-2 comprises the election code for the state of Georgia.

All County Republican Party units in Georgia are organized under the Georgia Republican Party.

The parliamentary authority for the Georgia Republican Party is stated as:

### **9.12 RULES OF ORDER**

*All Precinct Caucuses, County Conventions, District Conventions and the State Convention shall be governed and conducted: first, in accordance with these Rules and the Call, and second, except as modified by these Rules or by the Call, or, with regard to the respective County and District Conventions, by the respective rules of each such County or District, the latest edition of Robert’s Rules of Order, Newly Revised.*

### **11.3 RULES OF ORDER**

*Roberts Rules of Order, Newly Revised shall be followed in all meetings of the GRP, including, without limitation, the State Committee and State Executive Committee, the District Committees and District Executive Committees, and the County Committees and County Executive Committees, unless modified by, respectively, these Rules, applicable County Party rules, or applicable District Party rules; provided, however, that the provisions of Rule 9.12 shall govern all Precinct Caucuses, County Conventions, District Conventions, and the State Convention.*

The organization has chosen to limit the application of Robert’s Rules of Order, Newly Revised (RONR) only to meetings and conventions. This question regards activity during meetings and conventions and so RONR will be used as the Parliamentary Authority.

The current version of Robert’s Rules is the 12<sup>th</sup> edition ( RONR 12<sup>th</sup> ed.) and this is the parliamentary authority used as the basis for this opinion.

## **Sources Consulted**

The GRP Rules, found at <https://gagop.org/wp-content/uploads/2021/04/Georgia-Republican-Party-Inc.-Rules-As-Adopted-June-17-2020-BJVver3.pdf>

O.C.G.A. § 21-2 found on [sos.ga.gov](http://sos.ga.gov)  
Robert's Rules of Order Newly Revised (12ed.)  
Articles of Incorporation of Georgia Republican Party, Inc.

**Circumstances:**

There exists a non-profit corporation named Georgia Republican Party, Inc. (hereafter referred to as The Corp) which is incorporated without members, and controlled entirely by a board of directors.

There exists an organization named "Georgia Republican Party" (hereafter referred to as The Party), which has bylaws (named as "Rules) which defines membership. This association operates as a political party as defined in O.C.G.A. § 21-2-110, holds conventions, and selects party nominees.

A request was made to The Corp to produce the "list of State Committee members", to which the attorney for The Corp replied that, The Corp has no members and therefore the requestors have no standing to request the list.

A check of the public records for The Corp indicate the officers are:

David J. Shafer	CEO – (is Current Party Chair)
Joseph C. Brannan	CFO - (not recognized as a current Party officer)
Michael Welsh	Secretary – (is Current Party Secretary)

The Articles of Incorporation of The Corp contains the following:

The Board of Directors shall exercise all of the powers of the Corporation, including the adoption and amendment of the Bylaws of the Corporation. The number, qualifications, terms of office, and manner of selection of members of the Board of Directors shall be as set forth in the Bylaws of the Corporation.

In other words, the Board of Directors of The Corp have complete power over the bylaws, and have complete power over selecting directors and officers.

The writer was unable to obtain the bylaws of The Corp.

**Discussion:**

If we look at the attributes of The Corp and The Party we can easily see these are two completely different entities. Here is a comparison of the attributes of both:

Georgia Republican Party (The Party)	Georgia Republican Party, Inc. (The Corp)
An association created by citizens exercising their constitutional right of free speech and association.	A legal person created by the State of Georgia
Has members	Has no members
Derives its authority from the member electors	Derives its authority from its Board of Directors
Performs the functions of electing delegates, holding conventions, and nominating candidate	Has no members to perform these functions
Has bylaws called "Rules" as adopted by the Convention and the State Committee	Has bylaws as adopted by the Board of Directors

There is NO requirement in the Georgia Election Code (21-2-110) for a political party to be incorporated. The possible advantages of having the finances of The Party move through The Corp may include tax advantages, campaign finance loopholes, limitation of liability, indemnification of officers, and others. This author is not an attorney and does not provide legal representation.

These two entities, which share a confusingly similar name, have no relationship to each other except as expressed in their governing documents. The "members" of The Party are completely separate from the "members" of The Corp. The Party and The Corp function completely independently.

But regardless of the reason for creating a corporate entity, it is clear that it was instituted as a secret organization that is all powerful and owes no duty to The Party, which is the group of voters that depend on the elected officers and delegates of The Party to represent their interests in the election.

Assuming that The Corp is actually in control of The Party, this probably explains why The Party has "Rules" instead of "bylaws". Bylaws are a higher authority than Rules so the Board of Directors may, at any time, pass bylaws which invalidate the Rules which were established through the representative democracy process.

The Party and The Corp are two completely different entities. The only way they can have a relationship is if such a relationship is defined in the governing documents. We don't know

what the governing document of The Corp are, and even if we did it would not matter because the “secret committee” of Board of Directors can change their bylaws at any time.

The Rules makes an incorrect statement when it states:

*All electors<sup>1</sup> who are in accord with the principles of the Republican Party, believe in it declaration of policy and are in agreement with its aims and purposes may participate as members of the Georgia Republican Party, Inc.. . .*

The Rules have no power to define anyone as a “member of the Georgia Republican Party, Inc.” because the Georgia Republican Party, Inc. does not have any members. Even if it did, the governing documents of one entity (The Party) does not have power to grant membership in an entirely different entity (The Corp).

By the same token, The Party does not grant The Corp any power over itself in The Rules. Why does The Corp say that it is not obligated to reveal the members of the State Committee – by what right does The Corp even have these records? The records of the State Committee belong to The Party, of which the State Committee is the governing body – not the Board of Directors. The Corp should not possess or keep the records of The Party. Requests for Party information should be directed to The Party officers, not to The Corp officers. Even if these are the same people, the officers need to know when they are acting as elected officer of The Party, subject or Robert’s Rules and the direction of the State Committee, and when they are acting as Board of Directors of The Corp and accountable to no one.

Possibly in the bylaws of The Corp there is language that makes The Party a subordinate organization. Possibly the bylaws have language that says the Directors will follow the Rule adopted by the convention or State Committee, but if that were going to be the case “The Rules” would already be called “the Bylaws”.

The fact is that there is only one way to establish a dominant role of The Party over The Corp is in the Articles of Incorporation, as that is the only document that is superior to the bylaws.

A good example of the proper way of setting up a corporation which is subservient to The Party would be from the Articles of Incorporation of the writer’s own county party corporation, which are summarized here:

*Article II – The corporation shall not have members.*

*Article III – The officers elected by the XXXX County Republican Party Convention or as may be replaced from time to time as provided in the bylaws, shall immediately become the respective officers and directors of the corporation.*

*Article IV – The constitution and bylaws of the XXXXX County Republican Party, as may be amended from time to time by the process defined therein, shall immediately become the bylaws of the corporation.*

The current Articles of Incorporation of The Corp include nothing like this. The Corp Articles of Incorporation creates an oligarchy of powerful individuals which have complete dictatorial powers over the Georgia Republican Party, Inc. which is completely opposed to the fundamental principles of parliamentary law. See RONR (12<sup>th</sup> ed.) Fundamental Principles of Parliamentary Law.

The operational question is which entity does the Sate of Georgia recognize as the voice of the Republican Party in Georgia? Is it the Georgia Republican Party, Inc., or is it the Georgia Republican Party? Does Georgia recognize the governing committee to be the Board of Directors of The Corp? Or the State Committee of The Party?

The author has placed an Open Records request with the Secretary of State of Georgia in order to answer this question, but no response has been yet received.

**Conclusions:**

The Articles of Incorporation of the Georgia Republican Party, Inc. put the board of directors in complete control over the Georgia Republican Party, Inc., even above The Rules and the State Committee and the Convention.

**Recommendations:**

The State Committee should, by adopting a resolution, direct the elected officers of The Party, who are also the Board of Directors over The Corp, to amend the Georgia Republican Party, Inc. Articles of Incorporation to make The Corp subservient to The Party. If they refuse, then that is the best indication of all that they consider themselves to have dictatorial power over The Party.

If the officers of The Corp refuse to amend their Articles of Incorporation, then The Party has two courses of action:

If Georgia recognizes the State Committee as the governing committee of The Party, then that body should be able to inform that State that the Georgia Republican Party, Inc. is no longer affiliated with The Party.

If Georgia recognizes the Board of Directors of The Corp as the governing committee of The Party, then The Party will have to form a new party outside of the Georgia Republican Party, Inc. The new party does not need to have members, and an attorney can advise of the reason for or against, but what it MUST have is the provision indicated above that place the corporation UNDER the party.

Legal counsel should be engaged in this process.

**Respectfully submitted**

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National Association of Parliamentarians