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Sent: Friday, January 3, 2025 5:57 AM

To: ARRL Board

Subject: Proposed Bylaw 46

First, I want to thank the Board for its efforts to clarify the previous proposed bylaws and repair the (numerous) noted deficiencies in the prior drafts.

However, there still appear to be some problems with the current proposal. I understand that other members (including several other attorneys) have pointed out those problems, so I won't repeat them here. There is one item, though, that I do wish to comment on, namely proposed Bylaw 46.

That bylaw suffers from both a dubious legal supposition and reflects a very troubling and unethical ruse to avoid applicable corporate law. I've practiced law for 40 years, including representation of numerous nonprofit organizations. This gamesmanship on the part of the Board does not reflect well on ARRL.

The current proposal seems to struggle with what to do with a Board member that the Board determined has violated some provision of the bylaws and ought to be removed from participation on the Board, but for some reason the Board wants to bar him from participation without triggering the provisions of Connecticut corporation law that require removal be done only via action by eligible voting members or by legal action. The mechanism proposed is a "finding of ineligibility." According to the FAQ on the ARRL website, a finding of ineligibility, even though it has the effect of removing the director from participation on the Board, is not "removal." It is this concept that troubles me.

First, I doubt the proposed mechanism is legally effective.

- As near as I can tell, a "finding of ineligibility" represents a factual determination by the Board and, in terms of that director's participation on the Board, ought to have no legal significance. That is, while the bylaw states that the director must "vacate" his position, if he declines to do so, the previously elected but allegedly "ineligible" Board member would continue to serve until there were legal action or a vote of the members. I assume the "finding of ineligibility" would be evidence, maybe even conclusive evidence, supporting removal, but would not be sufficient to prevent participation.
- In other words, a finding of ineligibility by the Board would not effectively bar the director from participation until it were validated according to the provisions of the Connecticut nonprofit corporations code, namely through legal action or action by eligible members.
- If the Board were to prevent the director from participating in Board activities after a "finding of ineligibility" and his refusal to "vacate" the position (perhaps by forcibly removing him, or calling the sheriff, or excluding him from notice of the meeting time and place), then it would seem that, somehow, between the finding of ineligibility and the bar on participation, the director has been "removed." If he hasn't been removed, then a duly elected director, if he declines to voluntarily vacate the position, is entitled to participate.

- Phrasing this another way, I see nothing in the Connecticut corporations code that says an allegedly ineligible Board member is barred from participation on the Board. Either a duly elected director is a member of the Board, entitled to participate, or that duly elected director somehow has been removed from the Board. Legally and logically, there's no third category. If he refuses to vacate his position voluntarily, then the only recourse is either legal action or a vote of the members.
- For all these reasons, I doubt the "finding of ineligibility," clever as it may be (which it actually isn't), accomplishes the desired purpose.

Second, there's another and even more important reason why this ruse is very troubling. Why do this? It seems as if the Board doesn't particularly like the Connecticut corporations code, so all of this is nothing more than the Board trying to figure out how to wiggle out the letter and spirit of the code. Does this kind of devious machination meet the Board's standards for ethics and fair play? Is the current Board proud of this kind of subterfuge designed to circumvent applicable law?

If a director has committed such a serious violation of his duties as to warrant removal, how about following the law and proceeding with removal? Or, on the other side, if a Board member can't be removed in accordance with the law, then, like it or not, he gets to serve.

I practiced law for decades, including litigating many matters involving nonprofits. I know that complying with the law can be tedious, time consuming, and expensive. But that's what good corporate citizens do. They suck it up and comply, and don't try to dance around the legal requirements with cunning little ploys that likely will only work so long as no one brings them to light.

You guys are better than this. Please ditch this proposal.

Thanks very much,
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