

Agenda Item # III

From: "Wendy Ehrlich, Esq." <wehrlich@comcast.net>
Date: August 11, 2021 at 1:40:33 PM MST
To: Scott Somers <ssomers@gvrec.org>, Mike Zelenak <mzelenak@gvrec.org>
Subject: Voting by Written Ballot; Write-in Candidates; Cumulative Voting

Article XI, which governs voting procedures, requires that all actions by members be "taken by written ballot" whether at a meeting (meaning a voice vote would not be permitted) or without a meeting. GVR, to my knowledge, has never conducted a vote *at a meeting*. It conducts all votes under Article XI, Section 2 without a meeting.

The term "written ballot" is a legal term and is now governed by A.R.S. §10-3708 of the Arizona Nonprofit Corporation Act. This statute allows members to vote on any matter by "written ballot" without a meeting (unless prohibited in the articles of incorporation or bylaws). The statute was amended several years ago to allow the delivery of a "written ballot" through an online voting system (I drafted the language for that amendment at the request of GVR). The statute does require, however, that the notice to members that the vote is being conducted by electronic means "include a reasonable procedure by which a member may obtain and cast a ballot through *some other form of delivery*, including U.S. mail delivery and fax transmission" (emphasis added). Thus, whether GVR can eliminate paper ballots altogether depends upon whether GVR can provide some other "reasonable procedure" for members to obtain and cast a ballot through U.S. mail. Offering to provide a pdf ballot via email to members who do not have or use a computer and printer may not be a "reasonable" alternative and therefore, I would recommend that GVR continue to allow members to request a paper ballot which can be mailed in or hand-delivered.

There was also a question from the N&E Committee regarding "write-in" candidates. To my knowledge, GVR has never provided for write-in candidates in any election, and based on my interpretation of the Bylaws (Article V, Section 2), write-in candidates are not permitted. Candidates must either be selected by the N&E Committee or nominated through the petition process.

The term "cumulative voting" in Article V, Section 3 refers to a type of voting system in which the number of votes that a member may cast (1 per household) is multiplied by the number of vacancies on the Board and allows the member to distribute those votes in any manner. For example, if I own one GVR property and there are 4 vacancies on the Board, I have 4 votes that can be cast in any number of ways: 1 vote for each of the 4 candidates; 2 votes for 2 of the candidates, 4 votes for just 1 candidate, etc. Under the Arizona Nonprofit Corporation Act, cumulative voting is prohibited unless specifically authorized and for this reason, I removed this language in the amended and restated bylaws.

Wendy Ehrlich, Esq.
9671 N. Horizon Vista Place
Oro Valley, AZ 85704
Tel: 520-229-1947
Email: wehrlich@comcast.net

*****Confidentiality Notice*****

This electronic message contains information from the law firm of Wendy Ehrlich which may be confidential or protected by the attorney-client privilege and/or the work product doctrine and is intended solely for the use of the addressee listed above. If you are neither the intended recipient nor the employee or agent responsible for delivering this electronic message to the intended recipient, you are hereby notified that any disclosure, copying, distribution or the use of the content of this electronic message is strictly prohibited. If you have received this electronic message in error, please notify this firm by replying to this message immediately and deleting the original message.