

ANNOTATED SoA ELECTION NOTICE OF 7/22/2010

Elections

<http://www.soa.org/leadership/elections/elec-2010-nominating-process.aspx>

SOA Board Addresses Questions Concerning Nominating Process

Some members have recently raised questions about the process by which candidates are determined for the SOA Board election ballot. Specifically, there is a question as to whether all Fellows who are properly nominated by themselves or other members should automatically be placed on the final ballot for the SOA election.

Under the SOA Bylaws, Fellows who are placed in nomination or self-nominate undergo a screening process by the Nominating Committee. The Nominating Committee then determines the final election ballot, which is reviewed and approved by the Board. This process has been in place since 2006.

Board action

At a July 20 conference call meeting, the Board was asked by one of its members to support a motion that any Fellow who has been properly nominated should automatically have his or her name placed on the final ballot. The Board confirmed that, based on the Bylaws and SOA election policies, the Board cannot place candidates on the final election ballot, as that is the role of the SOA's Nominating Committee.

Background on the nominating process

Under the current process, Fellows are encouraged to nominate themselves or other Fellows for consideration by the Nominating Committee. The Committee conducts a comprehensive, thoughtful review of all nominees in an effort to create the strongest possible list of candidates for election by voting members. This includes a review of their responses to a questionnaire and a telephone interview with the committee. The purpose of this process is to identify the candidates who are most qualified to address the current needs of the Board and the SOA. The Committee provides voting members with multiple choices for each office, ensuring that the Society's leaders are chosen by members in a highly competitive, democratic election. The Nominating Committee's independence from undue influence by the Board is an important element of the

Exactly. The issue is: What is the meaning of Article III, Section 1(b) of the SoA Bylaws – which guarantees FSAs a fundamental right to “make nominations”.

This is incorrect! The SoA Bylaws do not describe a “screening process”. A Board Policy addressing the operation of the Nominating Committee created a “screening” process in 2006. This Board Policy neither legally or even with intent to do so affected the Article III, Section 1(b) rights of FSAs to “make nominations” which would result in a candidate’s name appearing on a ballot for election by the members.

Correct. I (i.e., Tom Bakos) was the Board member who made the motion. SEE FOOTNOTE 1 for the motion language.

This is incorrect! The motion that I made asked the Board to determine the meaning of Article III, Section 1(b). This motion was ruled out of order and the Board was not allowed to vote on it. The Board did (incomprehensively) vote on a motion that agreed the motion I made was out of order!

THIS IS SPIN designed to obfuscate and support a Board Policy illegally designed to amend the Bylaws. The Board refused to vote on this issue on the July 20, 2010 conference call. ASK FOR MINUTES.

There is absolutely nothing wrong with a process designed to assure that highly qualified candidates who agree to run are placed on the ballot by a Nominating Committee.

However, there is no reason (nor is there legal authority in the SoA Bylaws to reject it) that this process cannot and should not run in parallel with a process, as defined in Article III, Section 1(b), which allows FSAs to also nominate candidates whose names will appear on the ballot. (SEE FOOTNOTE #2)

MORE SPIN! I suppose the question may center on what is “undue” influence of the Board. However, the Nominating Committee appointments are, effectively, made by the Board (SEE FOOTNOTE #3). More importantly, 7 out of the 10 current NC members were on the Board during the last 10 years. Three just got off the Board in 2009.

SOA's Bylaws and ensures that the Society's leadership is continually renewed by a diverse set of candidates from across the spectrum of the membership.

The SOA has never had a system by which all nominees were placed directly on the final ballot and became candidates for election, either under its current process or the process used in 2005 and before. **Previously, the SOA used a two-step election process, whereby all Fellows submitted for nomination appeared on a "first" ballot, with an indefinite number of the highest vote getters being selected as candidates for election on a second, final ballot. Many members** expressed the view that this process was too lengthy, relied too heavily on name recognition alone and did not always produce a strong list of candidates. They asked for a process that was better at assessing leadership potential and the strengths of potential candidates.

That led to adoption of the current process in 2006, following an extensive study in 2004 and 2005 by a special governance task force. Now, Fellows who are nominated are reviewed by the Nominating Committee, independent of the Board, and those who are best suited are selected as the candidates for election. The SOA Bylaws were amended in 2006 to establish this role of the Nominating Committee. **A comprehensive revision of the Bylaws**, including those prescribing the role of the Nominating Committee, was endorsed by the Fellows in 2007, easily exceeding the 2/3 majority required to adopt them.

The SOA, its Board and the Nominating Committee are committed to supporting the integrity of the SOA's election process. **Proposed changes to our process, especially one as significant as proposed in the question that came before the Board**, should not be undertaken without serious review and consideration.

This year, as has been the case every year, there were many qualified nominees for consideration by the Nominating Committee, and the process resulted in a ballot of very strong candidates. And, inevitably with any selection process, some very qualified nominees were not included on this year's ballot. Those nominees will be encouraged to submit their names again for consideration for future years' ballots. While we can understand that some nominees might be disappointed at not being named a candidate for this year's election, **the SOA has scrupulously followed the nomination**

This is technically true but a dishonest statement – perhaps a worst example of SPIN!

Prior to 2006 any eligible FSA (as described in the yellow highlighted segment) could have his or her name appear on a *first ballot* for election by the FSAs. The election, prior to 2006 was a two step process. In the first step FSAs were allowed to exercise their right to “make nominations” and in both steps FSAs were allowed to vote.

No one, not even the Elections Committee (the name of the Nominating Committee at the time) was allowed to add names for the final ballot that were not selected by members in the first ballot election.

Effectively, the first ballot election, effectively a primary election, was replaced by a closed candidate selection process run by the Nominating Committee which excludes FSAs and eliminated the nomination process – in clear violation of Article III, Section 1(b) which has not been amended!

This is a rather disingenuous statement. The “many members” referred to here may have amounted to 15 - 20 at the very most out of, currently, our 21,000 members.

Again, it is probably OK to establish this role for the Nominating Committee. **However, it is incorrect to say this change was made by a bylaws amendment.** The change was made by a Board Policy which produced a set of operating Guidelines for the Nominating Committee.

The 2006 bylaws amendments, essentially, only renamed to former *Elections Committee* to the *Nominating Committee*. Claiming anything more from this amendment is a gross exaggeration. (SEE FOOTNOTE #4)

Incorrect! In 2007 the “comprehensive revision” of the Bylaws consisted of combining the old bylaws with the old Constitution into one document.

The SoA Bylaws were never amended to change *Article III, Section 1(b)*. In fact, the language of *Article III, Section 1(b)*, guaranteeing the fundamental FSA right to “make nominations”, has remained unchanged in our governing documents since our founding in 1949.

Incorrect! No changes to the process were proposed on the 7/20/2010 Board conference call by the Motion made. (Again, SEE FOOTNOTE #1 for the Motion language)

The Board was merely asked to consider the Motion on 7/20/2010 in order to acknowledge the meaning of Article III, Section 1(b). The Board refused to even consider the motion – preferring to rule it out of order and not decide on the issue – either way.

The obvious fear of the Board to face this issue seems a sure sign that there is something very, very wrong.

process prescribed in its Bylaws and used in every election since 2006.

Disingenuous! The “nomination process” is most definitely not prescribed in the Bylaws. (SEE FOOTNOTE #5)

Question on number of President-Elect candidates

There have also been questions about how many candidates should be on the ballot for the position of President-Elect. For this position, **the Nominating Committee was required by the Board in a decision made last fall to select no fewer than two and no more than three candidates.**

Incorrect! And, even if it were true, since the Board is purported to have established the rule, the Board can just as easily ignore or change it!

The fact of the matter is this is just an excuse. The NC Guidelines make no such absolute requirement. They are stated in terms of “ordinarily”. Last year there were 4 candidates for President Elect.

Answers to additional questions about the nominating process can be found [here](#). **If you have other questions please write to elections@soa.org.**

I strongly encourage you to ask questions based on the material I have provided herein. An active and participatory membership can get its rights back. An apathetic and complacent one will not.

As a reminder, the election runs Aug. 9-Sept. 3.

1. The Motion I made was as follows:

Resolved that:

1. The Board of Directors recognizes that **Article III, Section 1(b)** of the SOA Bylaws requires that candidates nominated by FSAs must have their names placed on the ballot for the position to which they were nominated. The Board, therefore, directs that the names of all such candidates nominated for the 2010 election cycle shall be placed on the ballot.
 2. The Board of Directors has determined that the Compliance section contained in the **Policy on Responsibilities and Conduct of Members of the Board of Directors** (Board Policy) adopted in February 2010 is unworkable. The Board, therefore, amends the Board Policy to remove this Compliance section retroactive to the date on which it was adopted.
 3. The Board of Directors authorizes reimbursement under Article XII (indemnification) for any legal expenses incurred by a board member in connection with the defense of member rights related to paragraph 1 above or the defense against disciplinary complaints related to paragraph 2 above.
2. Essentially, “leadership” hijacked the right of FSAs to “make nominations” because “leadership” did not believe that FSAs could exercise this enumerated right of membership responsibly. The effect of this, obviously, is to create a club or class of super members who, in the context of supposedly selecting “highly qualified candidates” could very easily select a like-thinking leadership to follow them.

This effective isolation of the broad membership population from participation in selecting who is allowed to run is further enforced by the imposition of secrecy and confidentiality surrounding board meetings and the establishment of a Board Code of Conduct Policy with disciplinary procedures intended to keep those who are elected in line.

3. The language of **Article IX, Section 2** of the SoA Bylaws states: “The Nominating Committee is composed of Fellows appointed by the Leadership Development Committee, with input from the Board of Directors and the Leadership Team.”

Clearly, the Board, and, in particular, the Leadership Team which consists of the presidential officers, the Secretary/Treasurer, and the Executive Director, have a strong influence over the Nominating Committee and, therefore, the nominating process they apply.

Asserting that the SoA Bylaws assure independence from the Board is absurd when 7 of 10 current members were on the Board as little as 1 year ago. Independence from the Board could only be assured if Nominating Committee members never served on the Board or, at least, their service on the Board ended 10 or more years ago because they would not have developed any biases (for or against) a potential candidate they may have served with on the board..

4. A history and brief description of the recent SoA Bylaws amendments are given in the following:

In **March 2006** the SoA had two governing documents:

- The old Bylaws – which could be amended by the Board alone but contained only administrative-like functions
- A Constitution – which defined substantive FSA member rights and could only be amended by FSAs

In **March 2006** the Board amended the old Bylaws to rename the Elections Committee the Nominating Committee and some other minor things, none of which effected substantive FSA member rights since those were contained in the Constitution at the time which was not amended in March 2006. In particular the current Article III, Section 1(b) language was in the Constitution.

In **September 2007** the FSAs combined the old Bylaws and the Constitution into a new Bylaws document. We had not paid much attention to the governing documents and this effort was, in part, done to assure we were in compliance with Illinois law. A 2007 Bylaws Comparison was provided to FSAs which shows how that was done. In particular, the **Article III, Section 1(b)** language was moved from the Constitution to the new Bylaws intact so this combination, or amendment, involved no revision to that language.

In **2008** the new Bylaws were amended by the FSAs and the Board (both need to approve a Bylaws amendment that involves substantive member rights per Article XVII) to allow ASAs with five years of membership to vote in elections. That was the only change made at that time, I believe. This is the current set of Bylaws.

5. Article IX, Section 2 of the Bylaws describes the Nominating Committee function as follows:

SECTION 2. Nominating Committee. The Nominating Committee is responsible for nominating candidates for election in accordance with SOA policies and may establish guidelines for conducting elections consistent with SOA policies.

The processes used are definitely not prescribed in the SoA Bylaws meaning that they are not *set down, contained in, or specified in* the Bylaws.

The SoA, of course, may establish policies and the Nominating Committee is given the authority to “establish guidelines” in the Bylaws – but it should be recognized that these policies or guidelines cannot have the effect of amending the Bylaws. The Bylaws can only be amended as specified in the Bylaws.

It is an important distinction to make and seems purposely misleading and disingenuous for the Election Notice to imply that the nomination process the SoA uses is specified or prescribed in the Bylaws, falsely giving it the weight of actual Bylaws language. Of course, the nomination process used by the SoA is not specified in the Bylaws while the nomination process that is specified in Article III, Section 1(b) is ignored by the SoA.

Tom Bakos, FSA, MAAA
VP – SoA Board of Directors (term ends October 2010)
July 22, 2010