

**From:** Steven Berkson <[sberkson@blazingimages.com](mailto:sberkson@blazingimages.com)>

**Date:** Monday, March 25, 2024 at 9:22 PM

**To:** Frank Gibson <[fgibson@eugenelaw.com](mailto:fgibson@eugenelaw.com)>

**Subject:** Question

Hi Frank,

I would like to ask a question, as last time, on my own behalf. Please feel free to decline, and as before I am happy to pay for the time, which I doubt would be much. It seems easier to just send you the question right up front, so again, please do not feel obligated in any way. I am also attaching the feedback I gave them, just for reference, in case it helps, so don't feel obligated to review it.

At the OCF, there are bylaw changes being discussed. I have not been in many of the conversations. The particular question has to do with whether or not a particular change by the board is a violation of the bylaws. The OCF does not require member approval for bylaw changes with one notable exception. So here is the issue...

Article V Section 6(a) reads:

Article V Section 6(a)

6 (a) **Voting.** All members **who have been members for at least 30 days prior to the date of a membership meeting** shall be entitled to cast one vote on any issue brought before the membership. Members shall vote to elect the Board, remove a Director, amend the Articles of Incorporation, and on all other matters for which a membership vote is required by the Oregon Nonprofit Corporation Act and by these Bylaws. In addition, members shall have the right to vote on advisory resolutions concerning any other matter to come before the membership.

This is the only section that is protected from changes by the Board. The specific protection is in Article XI Section 2 and reads:

Article XI Section 2

2. Notwithstanding Section 1 of this Article, no amendment to Article V, Section 6(a) of these Bylaws pertaining to the voting rights of the membership may be enacted unless such amendment is ratified by the affirmative vote of a majority of the membership at a membership meeting held pursuant to Article VI of these Bylaws.

The proposal includes moving the highlighted language in 6(a) above, "**who have been members for at least 30 days prior to the date of a membership meeting**" to another section. The new language offers slightly expanded access, which I believe is irrelevant to the issue, "An individual must submit a registration form at least 30 days before a membership meeting or election to be eligible to vote at that meeting or election.", however, the issue obviously is that

the new language, no longer being in 6(a) is stripped of the protections afforded by Article XI Section 2.

In particular, someone with a legal background is arguing that Article XI Section 2 specifically talks about “voting rights” and is contending that the plainest language reading of the document is that this change is not a voting right and thus not covered by Article XI Section 2. His contention is that what members are entitled to vote on is the only thing protected.

It seems to me that this is using legal terminology to argue the opposite of what appears to me to be plainly true. We’re not talking about pending members but people who are members, even if newly minted members, and while the reorganization of the document is not without some merit, it certainly seems to me that whether or not a member gets to vote and which members get to vote are matters related to the “voting rights of members”. Arguing otherwise, while not without some substance, is certainly the more strained reading of the language. This phrase perhaps should not have been in this paragraph, but it seems to me that, having been in here, the presumption should be that it was placed here to be protected, so the waiting period could not become 0 days or 180 days without member approval.

Thanks for any insight,

Steven

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**From:** Frank Gibson <[fgibson@eugenelaw.com](mailto:fgibson@eugenelaw.com)>  
**Sent:** Friday, March 29, 2024 10:13  
**To:** Steven Berkson <[sberkson@blazingimages.com](mailto:sberkson@blazingimages.com)>  
**Subject:** Re: Question

Hi Steven,

I see your point. The stated qualifications for voting pertain to “voting rights” as much as the identification of topics subject to vote. The issue could be resolved, I think, by including reference to Art. V, Sec. 2(d), in Art. IX, Sec. 2, along with the Art. V, Sec.6(a) reference already there. If that inclusion were made, the protections of Art. IX, Sec.2 would be retained for voting qualifications and well as for the topics subject to member vote. In that scenario, the Board could adopt the new Bylaws itself.

As always, if you have questions or concerns about this matter, please let me know.

Thanks,

Frank  
**Frank C. Gibson**  
Partner (he/him) | [Hutchinson Cox](#)

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**From:** Frank Gibson <[fgibson@eugenelaw.com](mailto:fgibson@eugenelaw.com)>  
**Sent:** Friday, March 29, 2024 10:53  
**To:** Steven Berkson <[sberkson@blazingimages.com](mailto:sberkson@blazingimages.com)>  
**Subject:** Re: Question

Responses in **red** below.

**From:** Steven Berkson <[sberkson@blazingimages.com](mailto:sberkson@blazingimages.com)>  
**Date:** Friday, March 29, 2024 at 10:43 AM  
**To:** Frank Gibson <[fgibson@eugenelaw.com](mailto:fgibson@eugenelaw.com)>  
**Subject:** RE: Question

Hi Frank,

Thanks for getting back to me.

The main reason I contacted you is that an attorney is arguing that the plain meaning of the language is unquestionably that Article XI, Sec.2 does not apply to the right to vote after 30 days. He educated us on how criminal laws are first interpreted by the plain meaning of the language and then asserted that the plain meaning of Article XI, Sec.2 obviously only applies to what members have a right to vote on and not whether or not they get to vote.

My response was simply (paraphrasing)...

1. If you are a newly minted member of the organization, under the current bylaws, do you have a right to vote after 30 days?
2. If you are a newly minted member of the organization with an election taking place in 45 days, and after being a member for 2 weeks, the waiting period was changed to 45 days, would you say your "voting rights" had changed?

3. If someone is trying to participate in a presidential election, and that person goes to the polls and finds out they had been purged from the voter lists, and the person is told they could fill out a card and vote next election but not this election... would that person say their voting rights were impacted?

None of that was persuasive to the committee.

So, first, am I correct that this is unlikely to be interpreted as something ambiguous and therefor more open to interpretation by the board? In other words, the plain meaning of the language clearly includes this phrase that is proposed to be moved? **The “plain meaning” of “voting rights” includes topics *and* qualifications, so yes, you are correct.**

Secondly, are you saying it would that be acceptable to move this phrase to Art. V, Sec. 2(d) and add the existing Article XI protection to Art. V, Sec. 2(d) without a vote of the membership since the rights are retained? **Yes, because both aspects of a members’ “voting rights” would thereby be protected so that they don’t need to weigh in on it – except with respect to the point you make in the paragraph below, which is a good one but likely not one to carry the day with the committee. Getting them to make the suggested change to Art. XI would get you most of the loaf.**

Lastly, if the meaning of the existing language is changed in any meaningful way (including more people get to vote), then it would still have to be voted on by the membership. The membership has the right to vote on changes both restrictive and liberalized. The proposed language changes the voting to be slightly more inclusive, but Article XI (2) says members get to vote on change, not only on changes that are more restrictive. Maybe the members don’t want more people voting.