

REPORT TO ALA COUNCIL OF THE
ALA BYLAWS COMMITTEE

ALA LLX 2024
JANUARY 21, 2024

TO: ALA Council
FR: Brian E. C. Schottlaender, *Chair*
ALA Bylaws Committee
RE: Information Report/Action Items

I. INFORMATION REPORT

In addition to working on the General Revision of the ALA-APA Bylaws in order to harmonize them with the revised ALA Bylaws, the Bylaws Committee has been working on two other issues as well, both directed to it by ALA Council.

A. CD#57: **Resolution on Guaranteeing Virtual Participation in ALA Governance**

While CD#57 called for amending Bylaws Article VII, Section 2 by striking “may be held virtually” and inserting “shall be held virtually,” subsequent consultation with Councilors Jessamyn West (Mover) and Tara Brady (Seconder) clarified that the Resolution to guarantee virtual participation in ALA Governance [emphasis supplied] actually implicates Bylaws Articles V and VI, not VII. With that clarification, the Bylaws Committee has crafted a new Section 5 for Article V and a new Section 6 for Article VI to address the Resolution. Those amendments are presented as Action Items A and B below.

B. CD#60: **Resolution on Actions by the Executive Board**

1. *Resolved ... That the Policy Manual Revision Working Group review the process for vacancy appointments to the Executive Board and draft any amendments or policies necessary to clarify the term for these vacancy appointments, following legal or parliamentary best practices or recommendations.*

This item has been referred to the ALA Policy Manual Revision Working Group, which will take it up in the course of their work to revise the APM.

2. *Resolved ... That the Bylaws Committee review the Bylaws and develop recommendations regarding a process whereby actions of the Executive Board may be review[ed], amended, or overturned by Council or by the Membership and draft any proposed amendments or policies necessary for this process, following legal or parliamentary best practices or recommendations.*

In addressing this issue, the Bylaws Committee consulted both ALA Council Paula Goedert and ALA Parliamentarian Adrian Stratton for legal and parliamentary input, as Council directed. Both agreed that neither legal nor parliamentary best practice would argue for the actions of the Executive Board to be subject to review and rescission by either Council or the Membership. Both strongly counseled against crafting either ALA Bylaws or ALA Policy revisions that would propose that sort of oversight. Ms. Goedert's opinion, attached to this report, notes:

Shifting governing authority and fiduciary responsibility to either Council—a body with more than 100 members that meets only twice a year—or to a broad international membership of 55,000+ individuals would create chaos and bring the work of ALA to a halt. It is inadvisable.

In light of this opinion and confirming input from Mr. Stratton, the Bylaws Committee recommends that no further action be taken on this matter.

II. ACTION ITEMS

A. MOTION

On behalf of the ALA Bylaws Committee, I move to amend Article VI of the ALA Bylaws by adding a new Section 6 (and renumbering subsequent Sections of the Article) as follows:

“Section 6. Council Virtual Participation and Observation. Meetings of the Council shall be conducted in such a manner as to allow for virtual participation by Councilors. Councilors participating virtually will be required to follow instructions communicated in the notice of each meeting which may include, but not be limited to, prior registration. At each meeting, the Council will adopt rules to manage participation by both in-person and virtual participants as appropriate. Virtual observation methods shall be provided to the Association’s membership during open portions of meetings.”

Rationale

The language proposed in the new Section guarantees that Councilors will be able to participate virtually. It also stipulates that virtual observation methods shall be made available to the ALA membership during open portions of meetings.

B. MOTION

On behalf of the ALA Bylaws Committee, I move to amend Article V of the ALA Bylaws by adding a new Section (and renumbering subsequent Sections of the Article) as follows:

“Section 5. Executive Board Participation and Observation. Meetings of the Executive Board shall be conducted in such a manner as to allow for virtual participation by Executive Board members. Board members participating virtually will be required to follow instructions communicated in the notice of each meeting which may include, but not be limited to, prior registration. At each meeting, the Executive Board will adopt rules to manage participation by both in-person and virtual participants as appropriate. Virtual observation methods shall be provided to the Association’s membership during open portions of meetings when scheduling, staffing, and other conditions reasonably allow.”

Rationale

The language in the proposed new Section stipulates that, while the Executive Board shall determine how its meetings are to be conducted (in person or virtually), the Executive Board shall make observation of the open portions of any such meetings available to ALA members when scheduling, staffing, and other conditions reasonably allow.

In closing, I want to thank the other members of the Bylaws Committee, all of whom are wonderful colleagues to work with, as are Sheryl Reyes and Adrian Stratton.

Respectfully submitted,

Brian E. C. Schottlaender, *Chair*

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Cara B.

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David I. Stokes, *Associate*

Peter D. Hepburn (Executive Board Liaison)

Sheryl Reyes (Director, Office of ALA Governance, Staff Liaison)



MEMORANDUM

TO: Brian E. C. Schottlaender
Chair, ALA Bylaws
Committee

FROM: Paula Cozzi Goedert

DATE: July 26, 2023

SUBJECT: Council Resolution on Executive Board Oversight

At its recent meetings in Chicago, the ALA Council passed a resolution directing the Bylaws Committee to review the Bylaws and develop recommendations regarding a process whereby actions of the Executive Board may be reviewed, amended or overturned by Council or by the ALA membership and draft any proposed amendments or policies necessary for this process, following legal or parliamentary best practices or recommendations.

You have asked me for my opinion of the legal advisability of any such changes.

1. Authority of Council to Amend the Bylaws.

Article XVII of the ALA Bylaws provides that proposals for amending the Bylaws shall originate in Council and shall become effective when approved by the majority of the members of Council, present and voting, followed by ratification by the members of the association. A process by which Council or the membership would be given the authority to review, amend or overturn decisions of the Executive Board could be passed by Council but would not be effective without ratification of the membership.

2. Allocation of Authority Under the Current ALA Bylaws

Article V, Executive Board, Section 2, Roles and Responsibilities states that “the Executive Board has fiduciary responsibility for the association, manages the affairs of the association, and delegates management of the day to day operations to the Executive Director”.

Article VI, Council, states that the Council shall be the policy making body of the association with the authority to monitor and enforce adherence to all Association policies.

Giving the power to amend or overturn decisions of the Executive Board to either Council or membership will transfer the authority and responsibility to manage the affairs of ALA to Council or membership. Council or membership will be assuming the fiduciary responsibility for the management of the Association.

As a result of this transfer, no decision of the Executive Board would be final. The Executive Board would, in essence become a committee of Council or of the membership. The

The Executive Board's only authority would be to make recommendations, subject to ultimate approval by either body.

The desire to broaden decision making authority conflicts with the reality that nonprofits are businesses. They employ staff, they enter into contracts, and they instigate, defend and settle litigation. These activities typically involve hundreds of decisions in the course of a year. If Council or the membership were given the authority to overturn the decisions of the Board, the Board could not represent to its employees, contract partners or other parties in litigation that the actions of the Board were binding on ALA. It would be required to reveal that decisions of the Board were subject to be overturned by Council or membership.

For example, if the Executive Board voted to hold the 2028 Annual Conference in San Francisco, it could not enter into contracts with the Convention and Visitors Bureau, the convention center or hotels until the decision and the individual contracts were approved by Council or the membership. If it had an opportunity to settle a claim by an ex-employee, it would not be able to do so until the settlement was approved by Council or the membership.

It is easy to see why this structure is untenable. The Executive Board must be able to make decisions as the need arises to keep the business of the Association moving forward. Explaining to ALA's business partners that the Executive Board does not have the authority to make final decisions will mean that no business partner will be able to move forward in reliance on a decision of the Executive Board until it is ratified. A business cannot possibly survive under these conditions.

3. Practices of Other Nonprofits.

The ALA legal team, and Barnes & Thornburg as a national law firm, together represent hundreds of nonprofit organizations. Many of these organizations have Councils or Houses of Delegates. The Bylaws of each of these organizations divide duties between a governing board and a Council or House of Delegates. The typical division is to permit the Board to manage the affairs of the organization while the Council or House of Delegates makes policy decisions for the organization. We know of no organization which permits a Council, House of Delegates or membership to overturn decisions of the Board. In addition, nonprofits with memberships uniformly limit the powers of members to election of representatives to governing bodies and, in some cases, approval of Bylaws amendments and dissolution.

CONCLUSION

Shifting governing authority and fiduciary responsibility to either Council—a body with more than 100 members that meets only twice a year—or to a broad international membership of 55,000+ individuals would create chaos and bring the work of ALA to a halt. It is inadvisable.

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