

COMPLAINT PBRC039

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Anonymous: No

Complaint – The vote “NO” on the proposed by-laws side has gained unfair advantages because members were not informed, or not sufficiently informed that they were able to change their votes

During the Bylaws voting period at several stations those opposed to Bylaws Reform (the "NO" side) got a head start which constitutes a Fair Campaign Violations, and which was in violation of the judge's order of fairness for both sides.

The head start was that the NO side got their one-sided information to voters considerably in advance of any comparable air time for the YES side. Further, there was “heavy” voting during the first part of the voting period. This means many members voted after hearing only one-sided NO programs on air in violation of the judge's order, and before hearing the YES side of the story.

PacificaRestructuringProject (PRP) has learned that members may change their vote by asking for a "reset" of their vote. However, few members know this, because there has been no on-air announcements that explicitly say inform subscribers that they are able to change their vote (if you obtained more information after you voted, or made a mistake, or for any other reason). The statement on the elections web site (elections.pacifica.org) does say that "if you made a mistake in our ballot...your ballot will be reset once". In most elections, you can't change your vote. It is clear, without an announcement advising voters of the chance to change their vote, most people likely assume they cannot. Moreover, without on-air announcements about this, few would even think to go to the elections web site to see if it was possible.

Another part of this complaint is that the elections web site says you can only request to reset your ballot through March 12.

The NES stated at the March 5 PNB meeting that:

“ [We] decided that we honor voter’s choice as much as possible.

Logistically it is little complicated on my end because you can just imagine it is just another layer of work, and also the turnaround time, I am hoping that I do not get flooded by request to change their vote at the end, which is why I put a deadline to do that, but obviously if there are few people, I am going to do my best to honor how people want to vote to the last date. I think it is important. It’s just a more of logistical hassle than anything else.

[Reset ballot] is just done the same way as any ballot request is done.

You just request the ballot and you write in the note field why you a requesting the ballot, that you want to change your vote.”

Therefore, it should be possible to change one’s vote to the last date.

PRP has been prevented from communicating with members, who voted before the March 12th arbitrary and unnecessary deadline, the critical information that they may change their vote. PRP has been prevented from communicating any information about the new Bylaws, because the e-mail lists (that our mailing house had to use before then) had e-mail addresses removed for members who had already voted. Thus, PRP was prevented from communicating with all members, in violation of California law, and with no on-air announcements either about the ability and procedure for changing one's vote, we have been prevented from communicating this critical information to voters.

Suggested remedy:

1. Air regular announcements (several times per day) on each Pacifica station, informing members that, because of Fair Campaign Violations by people opposed to Bylaws reform, that they may change their vote, and how to do it. Note that using the term "reset your ballot" is unclear and should be explained if used, so members explicitly know they may change their vote. It is important to get verification from each station that such announcements are being broadcast, especially as some stations have failed to air elections carts as proscribed by the NES.
2. Change the deadline for requesting a "reset" of one's ballot to at least 4 days after the start of such announcements on all stations, and make sure that deadline change is provided in both the on-air announcements and on the elections web site.
3. Extend the voting deadline to at least 2 days after all members who requested a ballot "reset" were informed that their ballot was in fact reset.

Election Inspectors Committee Opinion:

With respect to the complaint that those opposed to the referendum got a head start, that this constituted a Fair Campaign Violation, and that this was in violation of the Court's order, the complaint fails to provide sufficient detail for the Election Inspectors to verify the assertion. Complaints of broadcast violations should include date, time, and station of broadcast.

The Fair Campaign Provisions went into effect on February 11, 2020.

The Inspectors Committee is aware of a January 31, 2020 substitute for "The WPFW LSB Show" which was biased against the referendum and aired on WPFW and WBAI.

The Inspectors Committee is similarly aware of a February 17, 2020 "Pacifica Bylaws Special" substitute for "From the Vault," which was biased in favor of the referendum and also aired on WPFW and WBAI.

Technically the January 31 broadcast was not in violation of the FCP. But it is the view of the Election Inspectors that nevertheless a breach of the spirit of campaign fairness did occur.

The February 17th broadcast constitutes a clear violation, but by every appearance was intended as a counterweight to the January 31 program. Out of a spirit of fairness, and so as not to escalate a prolonged sequence of tit-for-tat programming, the Election Inspectors Committee has allowed the violation on February 17 to go without remedy. We feel that both parties should recognize the fairness of this decision.

Importantly to the analysis of this complaint, both broadcasts occurred prior to commencement of voting.

Any and all subsequent alleged fair campaign violations, if properly reported and confirmed, are coming to us on a case-by-case basis. All properly filed complaints will be granted a response. We are not, however, in a position to investigate every rumor and vaguely stated possibility.

Further, the complainant claims that many members voted after hearing only one-sided programs on-air, but provides no evidence for the claim and ignores all other possible voter inputs. Some early voters likely knew more about the restructuring proposal from off-air sources than any broadcast could reveal. In any case, no ballot credentials were issued prior to the broadcast of both of the previously mentioned programs. If these were the only influencing broadcasts, voters may have been persuaded or dissuaded by either broadcast.

The Election Inspectors Committee agrees that the ability of members to rescind a previous vote was not publicized, but disagree with any assertion that this favors one side over the other. The ability to change a vote is a courtesy not required by the bylaws or the Court's order. If over-utilized, the facility could jeopardize the ability of the National Elections Supervisor to meet the election deadlines. In the opinion of the Election Inspectors Committee, electors requesting ballots who have not voted should be given priority over electors requesting replacement ballots who have already voted.

The Complainant asserts that "PRP has been prevented from communicating with members, who voted before the March 12th arbitrary and unnecessary deadline, the critical information that they may change their vote." PRP has a restricted right under law to communicate to the Pacifica membership via postal mail. PRP's right, if any, to access Pacifica's members via electronic mail is arguably different.

The Complainant asserts that the e-mail lists provided to their mailing house had e-mail addresses removed for members who had already voted. The reason that those who have already voted are removed from the member email lists is that vendors handling the email distributions receive more abuse complaints from members who have already voted. This affects the deliverability of all future campaigns and can have legal consequences (CAN-SPAM act, www.ftc.gov).

The vendors (mailing houses) for proponents and opponents received the same lists at the same time updated regularly throughout the campaign. We are firm in our belief that this was not only a reasonable policy, but necessary to reduce the abuse complaints received in response to the dozens of e-campaigns that went out over the course of the campaign from both proponents and opponents.

The Complainant asserts that, due to this policy, "PRP was prevented from communicating with all members, in violation of California law..." The Election Inspectors Committee dissents from the Complainant's interpretation of law with respect to its email list disclosures, since Pacifica's regular method of communicating with its membership about membership matters is by postal mail rather than by electronic mail.

With respect to the Complainant's suggested remedies, in the opinion of the Election Inspectors Committee, no remedies should be ordered for violations not confirmed, the equal ability of voters of each side to reset a ballot should not be utilized to advantage one side over the other, and voting deadlines should not be extended in violation of Judge Roesch's order of February 6, 2020.