MEMORANDUM

To: ARRL Executive Committee and Ethics and Elections Committee Members

From: Mike Lisenco, N2YBB and Chris Imlay, W3KD

Copy: Sean Kutzko, KX9X, Media and Public Relations Manager

Re: Public Statements of Dissenting Views about the Amateur Radio Parity Act

Date: June 6, 2016

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It should never be necessary to admonish members of the Board of Directors (or Vice Directors) to avoid unauthorized disclosures of internal debates or discussions within the Board or the Executive Committee, and it should not be necessary to do damage control as the result of public expressions by Board members of personal opposition to collective decisions of the Board or the Executive Committee. Avoiding those transgressions is a very basic element of good Board governance. Unfortunately, due to several such instances recently, it apparently is necessary in our view to do so.

We are and have been in a very, very sensitive position with respect to the Amateur Radio Parity Act on Capitol Hill and with our opponent, the Community Associations Institute. We have received guidance as to strategies to be employed in negotiations with CAI and with Hill decisionmakers in real time from the Executive Committee and we have acted at all times in accordance with that advice. There was never unanimity within either the Legislative Advocacy Committee or the Executive Committee about the strategies to be employed, which is to be expected, but we have acted on majority direction, as has always been standard operating procedure.

The following was sent in a very recent ARRL Division newsletter by Director Woolweaver and is now circulating publicly in Amateur media.

"--- H.R. 1301 The Amateur Radio Parity Act moves ahead  
  
The ARRL Legislative Team in Washington, DC, consisting of ARRL Chief Counsel Chris Imlay, W3KD, and Hudson Division Director, Mike Lisenco, N2YBB, was told by the staff of Rep Greg Walden, W7EQI (R-OR) Chair of the US House Subcommittee on Communications and Technology that the ARRL had to reach a compromise on the language of the bill with the HOA lobbyists if H.R. 1301 was going to pass the House Energy and Commerce Committee and be available for a floor vote.  
  
The ARRL Legislative Team made three attempts at compromise with the HOA lobbyists. All of the ARRL attempts to reach an agreement were rebuffed by the HOA’s lobbyists. I did not support these attempts at compromise, as I felt that H.R. 1301 was already a weak bill. In my opinion, the original H.R. 1301 did not contain language strong enough or specific enough to protect Amateur Radio operators living in HOA’s from overly restrictive CC&R’s.  
  
It was thought that H.R. 1301 was dead for this session until out of nowhere came a fourth compromise. This time the compromise was presented not by the ARRL but by the HOA lobbyists. The HOA compromise is written to protect the interest of the HOA’s. It eliminates the “reasonable accommodation” standard as described in PRB-1 and it does not define the limits that HOA’s can impose on the installation of Amateur Radio antennas and support structures. The substitute amendment should be available soon for your review.  
  
The ARRL Executive Committee kept voting for compromise by jointly stating that “something is better than nothing”. I was the only member of the Executive Committee who voted against these compromises. Sometimes “something is not better than nothing”. I guess that they have never found half a worm in their apple. There will more discussion this matter in another newsletter."

This inaccurate and misleading announcement to the entire West Gulf Division is in our view far, far worse than unhelpful to our legislative effort. According to our consultants at TKG who have reviewed the statement, it stands to potentially very seriously damage our ability to get the Bill passed. Public statements of non-support of a Bill by individual Board members of the association advocating that very Bill after the group as a whole endorsed the effort are, in the view of Matt Keelen, unheard of. The newsletter preceded a press release from Headquarters about the details of the Bill which is about to be released. It was not possible to have a more detailed press release before the succinct one that HQ released earlier because, until recently, the final text of the substitute amendment had not yet been released by the Office of Legislative Counsel in the House and we could not publicize a non-final version of the text of the Substitute Amendment. We have since the Division newsletter was released heard, and have had to respond to several uninformed complaints about the Substitute Amendment which need to be addressed. This is an unnecessary distraction and since the complaints all come from ARRL members in the West Gulf Division they are obviously the direct result of the Division Newsletter above or other statements by West Gulf Division leadership. Members in that Division are now prejudiced against the Bill right at a time when we need to marshal support for it in the Senate.

There are two major problems created by the Division newsletter. Not only is the public dissention harmful to the image of the association, leading to distrust of ARRL leadership including the entire Board; it is potentially seriously damaging to our legislative advocacy. Worse still, the Newsletter discloses publicly the internal deliberations of the Executive Committee, for the personal (political) benefit of one member of the Board who is privy to EC deliberations. *We simply can’t have that happen*. No member of the Executive Committee can candidly debate issues within the obviously closed meetings of the Executive Committee if he or she has to be concerned that those deliberations will become public every time an EC member disagrees with a position expressed during the meeting.

Nor is this the only instance of this kind of thing happening. At the Rocky Mountain Division Convention recently, President Roderick and Chris Imlay were told that two members of the West Gulf Division wanted to talk about problems with our Bill, having been told by the Vice Director of the West Gulf Division that the Bill is unsupportable. And very recently, an e-mail discussion occurred between the Atlantic Division Vice Director and a prominent Volunteer Counsel and others about perceived defects in the Substitute Amendment.

The following is a fairly typical policy on public statements and confidentiality by Board members. This particular version is part of the policies governing responsibilities and conduct by members of a board of directors of a non-profit association of actuaries:

PUBLIC STATEMENTS: A Board member may not act in an official capacity or speak publicly on behalf of the [association] unless empowered to do so under the Bylaws or as specifically empowered by the Board.

a. A Board member who, by virtue of Board assignments or duties, is asked to or is expected to communicate about Board matters through an official [association] communication channel or forum is authorized to speak for the Board in that capacity and for that purpose.

b. Except where so empowered or authorized, a Board member speaking publicly to

[association] membership or in any other public forum must ensure that his/her statements are clearly identified as personal opinions and that he/she is not speaking on behalf of the [association] in any official capacity or expressing the views or positions of the [association].

CONFIDENTIALITY: Transparency in governance and having input from [association] membership are both important considerations for the Board. Board members must, however, balance those considerations against their legal and fiduciary obligations to maintain the confidentiality of sensitive or proprietary information obtained as a result of Board service. In addition, maintaining the confidentiality of the Board’s deliberations (especially those held in executive session) is essential to having full and frank discussions necessary for effective decision-making. Therefore, subject to this Code of Conduct and the exceptions noted below, a Board member may solicit input from [association] members on matters being considered by the Board, and may informally share with [association] members the actions taken. However:

a. A Board member may not disclose any matters addressed in executive session to anyone not entitled to participate therein.

b. A Board member may not disclose confidential or proprietary information obtained as a result of Board service to anyone outside the Board or authorized [association] staff.

c. A Board member may not, in disclosing anything about the Board’s deliberations, discuss or disclose the votes of the Board or of individual Board members (including his/ her own) unless the Board has made these votes public, or negatively characterize the positions of the Board or the points of view taken by any members of the Board.

d. A Board member may not disclose anything about Board actions or deliberations if the Board has determined to defer announcement of that action or to control the dissemination of that information.

Admittedly, we don’t have such a specific, written statement of policy. However, as Matt Keelen put it, although it is fine for ARRL Board and Executive Committee members to disagree aggressively about our legislative effort within the confines of a Board or Executive Committee meeting, once the policy is established by majority vote, everyone must come together as a team to implement that policy and not publicly criticize our colleagues or the policy determined by majority decision.

Perhaps most discouraging are the factual errors in the Division newsletter. First of all, the legislative team for ARRL is not Imlay and Lisenco. It is a far larger group than that and includes our expert legislative consulting firm, a committee on which the author of the newsletter serves, and the Executive Committee on which the author of the newsletter serves. Second, there were not “three efforts at compromise”, or four. That makes it appear that ARRL kept giving up ground during the negotiations on three or four different occasions. That never happened. There was a two-and-one-half-month negotiation period during which there were numerous drafts of a substitute amendment that we and CAI could both live with, shared back and forth. It was one effort; and like all such efforts, it occurred in fits and starts. Of course there was compromise, but as was stated in the memo that Mike Lisenco sent around earlier about the status of the Bill, in our view it is *far stronger now than it was*. If either the Atlantic or West Gulf Division Vice Directors wish to debate that within the confines of a Board meeting or other internal discussion mechanism, we would be happy to do so. But to have a Director or Vice Director, speaking in his or her official capacity, and airing publicly those individually held dissenting views about our legislative plan is simply not on. Board members and Vice Directors have a fiduciary obligation to ARRL to not do that.

There is no stated basis for the summary position that the original H.R. 1301 and S. 1685 were “weak.” We started with the tenets of PRB-1 and attempted to carry them over to the CC&R context, which has been an effort that we have made periodically since the 1990s. To claim at this late date that the entire premise for our legislative effort over the past 20 years was flawed in the inception, 2.5 years after the most recent effort began, is an indictment of the entire Board as well as previous boards, and such a statement should never have been made publicly in an ARRL document.

What our supporters on Capitol Hill were willing to advocate for us was not open-ended, and the original H.R. 1301 may not have contained language that was what we might ideally have liked if we had unlimited ability to protect our members from CC&Rs. We don’t have that ability, however. It is debatable *within the Board* what our legislative goals are and should be, and that is always tempered by what is achievable. Board dissenters and Vice Directors can always have a forum to make their points. That forum does not include public statements or discussions outside the Board on this effort however. For an individual member of the Board to make the statement that the original Bill or the Substitute Amendment is akin to an apple with a worm in it is, however, at this point subversive to the goal that the Board decided on long ago. To plant in the minds of the members of an entire division who we need to support our effort more than ever the idea that we could have done better for them but deliberately didn’t because the association’s leadership is weak is detrimental to our organization. The statement that the West Gulf Division wants *“to see Amateur Radio operators living in HOA's free from CC&R restrictions”* infers that the rest of the Board or the Executive Committee does not want that. However, that was never the Board’s goal, nor was it ever a practically achievable goal. As it is, we received a large amount of pushback on our Bill from hams who felt that those who “entered into a contract should abide by its terms.”

The statement was made that “[i]*t was thought that H.R. 1301 was dead for this session until out of nowhere came a fourth compromise. This time the compromise was presented not by the ARRL but by the HOA lobbyists.* This statement is completely false. The final Substitute Amendment was due to the direct intervention of Congressional staff working on behalf of the legislators they work for; both our supporters and CAI’s. CAI was approached by the staff as a bipartisan effort to get to what we believe is a saleable plan for a Bill that can pass and be deemed acceptable to all. The claim that “[t]*he HOA compromise is written to protect the interest of the HOAs”* is simply ridiculous. The Substitute Amendment guarantees that every single Amateur Radio operator living in a deed restricted community is entitled to install and maintain an “effective outdoor antenna,” which is something that is impossible at this point in time for the vast majority of hams so situated. If a minority on the Board disagree with that assessment, they are entitled to do so. What they are not entitled to do is to make statements to the membership that discourage support of the Bill after the Executive Committee directed that we proceed with it.

It is recommended that the Ethics and Elections Committee consider some firm guidelines for public statements by Board members and Vice Directors concerning matters of League policy, specifically as it relates to matters of advocacy. It is also urgently requested that members of the Board and Vice Directors please refrain from negative public statements about ARRL’s advocacy initiatives. Your ARRL position obligates that you do so.