**FOR IMMEDIATE RELEASE**

AAUP Statement Concerning UVA Faculty Senate Suppression of Vote on Faculty Member of Board of Visitors

**Charlottesville, November 18, 2018**. The UVA Chapter of the American Association of University Professors condemns the improper suppression of an election in the Faculty Senate for two candidates for the non-voting faculty member of the UVa Board of Visitors (BOV) for the 2018-19 term. The chapter calls on the Senate for the election to be held immediately.

Though the Board of Visitors Manual (section 2.22) calls for an election of representative candidates for a one-year term, the Faculty Senate has refused to comply since June 8, 2018. On October 23, the UVa Faculty Senate passed a motion to hold an election immediately after its November 15 meeting for two candidates for the 2018-19 academic year to rectify the problem.

However, at the November 15 meeting of the Faculty Senate, the motion was suppressed by the Senate Chair, after he inaccurately alleged that the motion of October 23 for the election was inconsistent with a Senate bylaw and further violated senate rules. Given the urgency of the matter and the lack of quorum on November 15, the electronic voting that was slated to occur immediately after the November meeting should proceed immediately. Until the election is held, the Senate remains out of compliance with requirements as specified in the BOV manual.

The AAUP objection to these actions is based on 1) the principle[[1]](#endnote-1) that “‘[f]aculty representatives should be selected by the faculty according to procedures determined by the faculty” and “that the faculty should select its own representatives; 2) the principle that obstruction of a duly carried motion calling for an election undermines the very foundations of shared governance. Therefore, we call on the presiding officers of the Faculty Senate to conduct the election mandated by the October 23 motion without further delay.

Below please find an appendix detailing the process through which this this violation occurred.

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Appendix. Background

During the 2012 attempted ouster of President Theresa Sullivan by the Board of Visitors (BOV), Senate leaders demanded and fought hard for the creation of a non-voting faculty member of the Board. Prior to that perior, the only representation was provided for when the BOV allowed for the Immediate Past Chair of the Senate to sit on select committees of the Board. The intent of that demand was to provide for authentic faculty representation in Board deliberations. As detailed below, following extended negotiations, the BOV agreed in 2015 to appoint a non-voting faculty representative to the board. The Faculty Senate Executive Council (ExCo) nominated the immediate past chair of the Senate to serve as the first faculty representative. Subsequent chairs of the Senate were elected based on the understanding that, immediately following their terms as chair, they would serve as faculty representatives on the BOV for the following year. For three consecutive years (2015-2018), the Immediate Past Chair of the Faculty Senate was appointed as the faculty representative on the BOV.

On May 21, 2013, the Board of Visitors passed a Resolution on Faculty Role in University Governance, which outlines specific areas of responsibility and authority of faculty in academic and governance matters. This resolution, which holds the status of policy (BOV-006), was published in the University’s policy directory and the *Faculty Handbook*. (<https://uvapolicy.virginia.edu/policy/BOV-006>)

On March 25, 2015, the Board of Visitors passed a resolution providing for the appointment of a non-voting advisory faculty representative to the Board. With the passage of this resolution, the Board policy (BOV-006) requires updating to reflect the addition of the non-voting faculty member to the Board of Visitors. (<https://uvapolicy.virginia.edu/policy/BOV-006>)

On June 7, 2015, the Executive Council (ExCo) voted to appoint the past-Chair of the Faculty Senate, Joe Garofalo, to serve as the first faculty member of the Board for 2015-16. Senate leaders, citing reasons of time, did not refer the matter to the full Senate, agreeing to discuss the process of future selections with the Senate at a later time.

The September 15, 2017, BOV Meeting Minutes indicate ([file:///C:/Users/kf9j/AppData/Local/Temp/'17%20SEPT%20-%20MEETING%20OF%20THE%20FULL%20BOARD.pdf](file:///C%3A/Users/kf9j/AppData/Local/Temp/%2717%20SEPT%20-%20MEETING%20OF%20THE%20FULL%20BOARD.pdf)):

. . . .

WHEREAS, appointing nonvoting student and faculty representatives to the Board is authorized by state law (Code of Virginia § 23.1-1300); and

. . . .

RESOLVED, the Board of Visitors amends the *Manual of the Board of Visitors* to add a new section on appointing a nonvoting faculty representative as follows:

SECTION 2.22 FACULTY NONVOTING MEMBER — In addition to those members appointed by the Governor and referred to in Section 2.2, the Board of Visitors at its late spring meeting may appoint a nonvoting, advisory faculty representative to the Board of Visitors for a term of one year commencing July 1. Such representative shall be chosen from individuals elected by the faculty or by the faculty senate. The faculty member may attend and participate in a nonvoting capacity in all deliberations and meetings, in Open and Closed Session, of the standing and special committees of the Board as well as meetings of the Board of Visitors itself unless the Board has deemed it appropriate to exclude the faculty member from discussions of faculty grievances, faculty or staff disciplinary matters or salaries, or any other matter.

In September of 2017, the BOV amended its Bylaws and Manual to include Section 2.22 that allowed for the appointment of a Faculty Member to the Board for a one-year term. Section 2.22 of the Manual states:

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However, this information was never communicated to the Faculty Senate or its Executive committee by the Board or the then Faculty representative to the BOV. As a result, during the period September 2017 to May 2018, the Faculty Senate failed to deliberate and construct a procedure for electing such representative names to be submitted to the BOV in the Spring of 2018.

In early-May 2018 the then Chair of the Senate, Alf Weaver, received a telephone call from the Rector of the BOV informing him that he, as Immediate Past Chair, would not, be appointed as the Non-Voting Faculty Member of the BOV for the 2018-19 term as had been custom for the previous three years. Instead, the Board would reappoint the faculty representative who had served in this capacity during the previous term. The Rector cited issues related to transitions of other administrative positions at the University and diversity as the reasons. Between the time of that call in early-May and June 1, 2017, the Chair of the Faculty Senate did not communicate that decision to the Executive Council of the Faculty Senate.

On June 1, 2018, Faculty Senate Chair Alf Weaver e-mailed the Senate stating, “Today marks our annual leadership transitions: Peter Brunjes becomes Chair, Ellen Bassett becomes Chair-elect, and I become immediate past chair. Mimi Riley will continue in her role as the faculty representative on the Board of Visitors.”

This is announced as a settled fact, not as a proposal.  Riley’s selection was inconsistent with (a) the 2015 agreement, (b) the precedent of 2015-18, (c) section 2.22 of the Board’s manual, and (d) commonsense understandings of “representation,” including those intended by Executive Council when it issued its demand for faculty representation on June 18, 2012. This lack of communication left virtually no time for the members of the Executive Council, the Senate, or the Faculty to deliberate regarding the Board’s decision. However, several the following week, several Senators posted objections to the procedural impropriety of this action.

On June 7-8, 2018, the BOV resolved at its meeting: “RESOLVED, Margaret F. Riley’s term as the non-voting faculty representative to the Board of Visitors is extended for one year, commencing July 1, 2018 and ending June 30, 2019.” (<http://bov.virginia.edu/system/files/public/minutes/%2718%20JUNE%20FULL%20BOARD%20MINUTES_0.pdf>) However, because Riley was not “elected by the faculty or by the faculty senate” for the 2018-19 term, she was not qualified to serve in this capacity under section 2.22 of the Board’s manual.

Following the appointment, others senators and faculty also objected to the Senate presiding officers on the grounds that this decision violated the terms of the Board’s own Manual Section 2.22 as Ms. Riley had not been elected to this position for the term specified. In addition, she was no longer Immediate Past Chair of the Senate nor was she a member of the Senate. Senators also objected because Virginia Statute governing the matter calls for the terms of such positions to be negotiated with faculty senates and that no such negotiations had taken place. The Statute states:

*[Code of Virginia] § 23.1-1300. Members of governing boards; removal; terms; nonvoting, advisory representatives; residency.*

*G. The governing board of each public institution of higher education and each local community college board may appoint one or more nonvoting, advisory faculty representatives to its respective board. In the case of local community college boards and boards of visitors, such representatives shall be chosen from individuals elected by the faculty or the institution's faculty senate or its equivalent. In the case of the State Board, such representatives shall be chosen from individuals elected by the Chancellor's Faculty Advisory Committee. Such representatives shall be appointed to serve (i) at least one term of at least 12 months, which shall be coterminous with the institution's fiscal year or (ii)* ***for such terms as may be mutually agreed to by the State Board and the Chancellor's Faculty Advisory Committee, or by the local community college board or the board of visitors, and the institution's faculty senate*** *or its equivalent. (*[*https://law.lis.virginia.gov/vacode/title23.1/chapter13/section23.1-1300/*](https://law.lis.virginia.gov/vacode/title23.1/chapter13/section23.1-1300/) *)*

On June 20, 2018, Rector of the University of Virginia explained to Senate Chair Peter Brunjes the BOV’s reasons for extending Mimi Riley’s position as Faculty Representative on the BOV, concluding: “I am hopeful that this explanation is persuasive to the Faculty Senate as to the BOV reasoning for altering recent tradition but I also want to make clear that the BOV reserves the right to select the faculty representatives in accordance with the Manual of the BOV.” Several senators questioned the process by messages to the presiding officers of the Senate (new chair: Peter Brunjes), or to the full Senate list, and called for compliance with provision 2.22 of the Board’s manual.  The new Senate chair’s replies were noncommittal.

On July 11, a statement signed by 20 School of Engineering faculty members was sent to the presiding officers of the Senate, calling for compliance with BOV manual Section 2.22.  The message was copied to the full Senate list.

On July 16 and 17, having received no reply, Senate Chair Brunjes informed of the request by SEAS faculty members by message copied to the full Senate list. Chair Brunjes replied, promising that the full Senate would weigh in on the matter “at the first opportunity” (presumably the full Senate meeting of September 18).

During July-August the Senate Executive Committee met at least three times, but did or agree upon, nor take, any action. The Executive Committee formed a drafting committee to draft a response to the BOV action but that process was bogged down over a dispute on whether or not that letter should include a statement indicating the Senate will hold an election for the 2018-19 representative. It was apparent during these deliberations that the presiding officers opposed such an action. A draft , refrred to as the “compromise draft” was passed by the drafting committee in a 4-1 vote (The Senate chair voing no),. That draft was voted down by the Executive Committee. The drafting committee spent significant time drafting letters that would be summarily abandoned.

On September 18 the full Senate met, and the matter of faculty representation to the Board was not placed on the agenda by the Chair despite requests by Executive Committee members and other senators that it be added to the agenda.  In the final 30 minutes of a two-hour meeting, senators are invited to speak.  Several senators urge immediate action on the issue of the faculty member on the Board to save faculty representation to the Board. This discussion would later be left off the minutes and only added after objection by an Executive Committee member.

On September 20, the Executive Committee of the University of Virginia Chapter of the American Association of University Professors (AAUP) sent a letter to the Rector and the Chair of the Faculty Senate, objecting to the appointment of Ms. Riley as Board Member on the basis that it did not comport with the BOV’s own manual and based on the principle that faculty should be allowed to elect their own representatives, noting that the faculty have had no member on the Board since May 31, 2018, by any standard. The AAUP Chapter called for the immediate selection of such representative for the 2018-19 year by the procedurally correct manner, an election.

On October 4, 2018, the Executive Council of the Faculty Senate sent a letter to the Rector of the BOV stating: “we would like to respectfully request that we set up a shared working committee with members of the BOV to craft mutually agreed upon/mutually beneficial procedures for selecting the faculty representative in future years.” The statement is the product of a failed attempts by the drafting committee that was overruled by the Senate presiding officers and neglectsed some senators’ demand that the Senate take remedial action this academic year, and treated the existing codified procedure as if it did not exist. In an email about the letter, the Chair referred to the AAUP letter that had been previously sent to the Board claiming that since that letter had made the points the Senate had intended to, the Senate’s letter was modified appropriately. However, it is interesting to note that the AAUP letter had called for an immediate election for the 2018-19 term but the Senate’s letter to the Board did not reflect this demand.

On October 19, the Senate Executive Council met with Rector of the BOV. The meeting was not well attended nor did it have a quorum of Executive Council members. As reported there was still significant disagreement over the meaning of Board manual section 2.22 related to the election of a faculty member to serve as faculty representative to the Board. The primary issue remained as to whether the faculty were going to be able to choose their representative to the Board or would the Board choose the representative without an election. During the meeting the Rector mentioned they might like to have up to five names sent to them. Also, during the meeting when an Executive Council Member raised objections, the Rector commented that the Board could just terminate the position to which the Senator responded ’you wouldn’t want to have that in the press.’ There was no resolution about the matter resultant from this meeting.

A group of faculty then sent all Faculty Senators an informal survey polling their preferences on what direction to take: follow the lead of the Executive Committee and wait until next year to act on this or move forward with an election for this academic year. According to Survey Monkey, 49 of 81 senators (60.5%) took the survey:

19 senators (38.8% of respondents) prefer option 1

30 senators (61.2% of respondents) prefer option 2

A majority of those taking the survey indicated their preference for resolving the issue through a vote for a Faculty Member on the Board for the 2018-19 year.

On October 23 the Faculty Senate met and, during that meeting, Senator Sylvia Chong made the following motion:

*“Senator Chong: I move that at the next full Senate meeting we have a vote on a slate of candidates to serve out the remainder of this year’s term, a slate of candidates that we will select two from to serve out the remainder of the term for our Faculty senate representative to the BOV to be conducted by a secret poll after the Senate meeting.*

*Chair Brunjes: Alright? Are you Ready? (pause, no comment). All those in Favor…”*

The Senate voted 22-16 to approve the Motion. The procedures for this vote were meticulous about confirming quorum and counting votes. All proxy votes were counted. It's worth noting that the Senate Chair held 11 proxies. Hence, including his own his vote, he cast 12 of the 16 NO votes.

On October 24, the UVA Chapter of the AAUP sent a letter to the Senate Chair commending the Senate for taking the action to hold an election at its November 15 meeting for two candidates for the 2018-19 year and upholding the principle that faculty should select their own representatives to administrative bodies.

Immediately thereafter, the Senate members received an email from the Chair stating that the motion passed at the October 23 meeting was for the 2019-20 term and was for 3 names to be sent on to the BOV for selection not for the 2018-19 term and two candidates as the motion had specified. He also claimed that the motion was unclear and hasty. In that email and others, the Chair indicated his opposition to an immediate election and proposed alternative actions to the motion. This caused confusion and doubt about the motion and appeared to be an effort to lobby support in opposition to the election. Several Senators objected to the Chair’s message on the Senate email list serve. One Senator asserted that there is no provision in Robert’s Rules for the Chair circumventing a duly approved motion of the Senate on October 23 to hold the Election.  In fact, what the Chair proposed to circumvent the approved motion is considered by parliamentary procedure to be “dilatory and improper.”  To quote Robert’s Rules in a section with the title of improper motions, “Motions are out of order if they conflict with a motion that has been adopted by the society and has been neither rescinded, nor reconsidered and rejected after adoption.”  (Robert’s Rules, 11th edition, p. 343.)

  When there was no response by the chair to the objection, a Senator revealed that he had a recording of the proceedings taken because of his vision impairment. That recording was shared with the entire Senate. The original proposer of the motion also then concurred that the motion was for the 2018-19 (not the 2019-20) year and for two (not three) nominees. The recording verified that the Senate Chair was incorrect in his statement that the motion that had passed was for the election of three nominees for the 2019-20 year.

In early November the presiding officers of the Senate then sent an email to the Senate describing the procedure for the election on November 15. That included the nominations process and that voting would occur by electronic procedures immediately following the November meeting. Three nominees, Mimi Riley, Senator and immediate previous Past chair and Member of the BOV, Ellen Basset (current Chair-Elect) ,and Senator Aniko Brodgursky submitted their candidate statements which were posted on the Senate’s web page.

On November 15, the Senate met and discussion regarding election of the Faculty Representative on the Board was on the agenda. It was widely anticipated that the Senate leaders would act in good faith in compliance with the above-mentioned motion and each nominee would present a statement and electron voting would proceed immediately following the meeting. However, the election process was blocked by a senator and the Chair with the introduction of an erroneous use of Roberts Rules “point of information.” A Senator, Steve Macko, stood up before the election process began and erroneously asserted that Senate Bylaws Section A.ii.b. contravened the Motion for the election passed by the Senate on October 23.

Senator Macko’s assertion, accepted by the Senate Chair, that the election violated Senate bylaw A.ii.b—was patently false on its face.  Senate Bylaw A.ii.b provides:

“The immediate Past Chair of the Faculty Senate shall serve as a **consultative member of select committees of the Board of Visitors**.”

This bylaw, which predated the governance crisis of 2012, has nothing whatsoever to do with the faculty’s non-voting MEMBER of the Board of Visitors, which is provided for in section 2.22 of the Board’s manual, or with the motion for the election passed by a majority at the October 23 Senate meeting.  The faculty member of the Board, and the immediate past chair’s responsibilities to sit on select committees of the Board, are entirely distinct responsibilities.  The conflating of the two was inappropriate. It provided the Chair with a rationale (albeit inaccurate) to cancel the election. Indeed, past chairs of the Faculty Senate have served as consultative members of select committees of the Board years before the Faculty Senate first agreed to seek a faculty member on the Board itself in 2012.  Some of the former chairs were personally involved in this effort and they would obviously state that they were not members of the BOV when they attended those committee meetings as representatives in past.

It is also worth noting that the alleged inconsistency between bylaw A.ii.b and the motion of October 23 was never explained by anyone at that Senate meeting on November 15. It was merely asserted. It was not explained by the senator who asserted it, or by the Senate chair who quickly concurred with it. Again, at that Senate meeting an explanation was requested, but none was offered. The next day a Senator requested an explanation by message to the entire Senate. He received no reply.

If the duly passed motion for an election was to be overturned by the decision of one person, it would seem the senators were entitled to an explanation. In the Senate list serves following the meeting, Senators repeatedly asked those who claim a bylaws violation to explain the violation, and received no answer.

Lack of Quorum Nullifies Point of Order

More importantly and controlling, there was no quorum at the Senate meeting of November 15. Therefore, the Chair violated Robert’s Rules of Order when he acknowledged the Point of Information or Oder raised by Senator Macko. Robert's Rule of Order, 11th ed. (latest ed.), p. 347 states:

"In the absence of a quorum, any business transacted (except for the procedural actions noted in the next paragraph) is null and void."

The procedural exceptions listed in the above section of Roberts Rules were irrelevant to this instance. A meeting that fails to make quorum must "adjourn immediately."  The only actions a meeting may take in the absence of a quorum are to determine if there is a quorum, to recess, or to adjourn.  No other action is permitted. So therefore, Senator Macko's point of order was, as Robert's puts it, "null and void" as well as incorrect and irrelevant to the motion and election. As such, and since the motion of October 23 called for an electronic vote immediately after the November meeting and the candidates’ statements were posted on the Senate’s webpage, the election should have continued after the adjournment of the meeting as specified by the Motion of October 23. As of this date the election has been improperly halted and there are objections being raised thorugh a variety of means.

Conclusion

The AAUP Chapter concludes that the Senate can easily comply with Faculty Senate bylaw A.ii.b and with provision 2.22 of the BOV Manual. In other words, there was, and is, no basis to block the election that was supposed to, by previous majority vote, have taken place on November 15 other than it seems likely that there are certain members of the Senate leadership who did not to want the election to proceed because they felt that it would be an embarrassment to the BOV or perhaps were complying with the wishes of the BOV, the motivations are unclear.

In the investigative report conducted by the AAUP national office,of the UVa 2012 governance crisis at the AAUP concluded:

*“The investigating committee met with person after person, vainly striving for some explanation for the board’s action and the process it had followed that would give direction to what otherwise appears to be nothing more than a crude exercise of naked power…” (AAUP Report Governance Crisis UVA, 2012)*

We are compelled to question whether that instead of the Board acting in such a manner, it is the Senate itself that appears to be engaging in such behavior but we cannot rule out the possibility that the Senate may be acting in compliance with the interests of the Board on the matter of the election for the Faculty Member of the BOV.

The AAUP objects to these actions of the Board and the Senate Leadersip based on 1) the principle that “‘[f]aculty representatives should be selected by the faculty according to procedures determined by the faculty” and “that the faculty should select its own representatives; 2) obstruction or suppression of a duly voted on motion calling for an election undermines the very foundations of shared governance. Therefore, we call on the presiding officers of the Faculty Senate to immediately conduct the election mandated by the October 23 motion without further delay.

The AAUP chapter considers this an urgent matter of shared governance as well as of the propriety and ethics of governance in general.

1. *The AAUP’s Statement of Government of Colleges and Universities identifies decision-making areas in which the faculty should have primary responsibility, such as matters of curriculum and faculty status, and areas in which the faculty does not have primary responsibility but nevertheless should participate jointly and meaningfully with the governing board and the administration. In major areas of decision-making, regardless of whether the faculty’s responsibility is primary, the Statement on Government calls for the establishment of ‘[a]gencies for faculty participation in the government of the college or university, such as a ‘faculty-elected senate or council,’ for which ‘[f]aculty representatives should be selected by the faculty according to procedures determined by the faculty. … Administrations, rather than faculty senates, have tended to appoint ad hoc groups to make decisions in these areas, despite the admonition of the Statement on Government that the faculty should select its own representatives. (*Confidentiality and Faculty Representation in Academic Governance , AAUP, 2013) [↑](#endnote-ref-1)