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October 1, 2018

BY EMAIL

William L. Monts III, Esq.
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Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

Re: Proposed Sunshine Amendment

Dear Tripp:

On behalf of Karen Smith, I am responding to your September 20 letter regarding the Proposed Sunshine Amendment, which enjoys the support of more than 725 Academy members.

We respectfully disagree with your analysis and characterizations.¹ Without conceding the legitimacy of the issues you raise concerning Ms. Smith's submission, Ms. Smith supplements her submission to address these issues as follows.

1. Number of Supporters.² You say that 92 Sunshine Amendment supporters listed "have e-mail addresses that do not appear in the Academy's membership database." While presumably the *names* of these supporters appear in that database, we are nevertheless enclosing Exhibit A and Exhibit B, which include both additional requestors and supplemental identifying information for many requestors. Exhibit A includes paper, DocuSign, and online requests. Exhibit B contains paper and DocuSign requests.

Shortly after receiving your letter of September 20, Ms. Smith asked new requestors and prior requestors to supply their mailing address. Additionally, she asked requestors to supply additional information that may be helpful to the Academy in identifying them, such as firm, year of birth, Continuing Education Number, secondary email, and/or any additional identifying information. Lastly, she has asked requestors to use an email address that the Academy will recognize. Not all requestors have chosen to supply this information, but many have.

¹ We continue to disagree with your characterizations of Ms. Smith's statements, actions, and motives. Because these characterizations are not germane to the issues at hand, we will not address them here.

² Ms. Smith has removed one previously submitted requestor who does not appear to be a member of the Academy based upon the Actuarial Directory. Additionally, Ms. Smith has removed the requestor who she has identified as having passed away after having indicated support of the Sunshine Amendment. Ms. Smith has no knowledge of the members you say have advised the Academy of their wish to withdraw their support of the Sunshine Amendment.

Additionally, to deal with email addresses that did not match the Academy's records, Ms. Smith contacted select signers and asked them to confirm their email address. Please see Exhibit C. The Academy did not provide a list of the 92 supporters whose email address did not match the Academy member database. Thus, we are unable to address these individuals person by person. However, we believe with the additional requestors and the supplemental information, the Academy will be able to identify significantly more than 3% of the Academy's membership of 20,035 as of September 13, 2018, and the number of members the Academy is believed to have as of today.

2. Proof that Supporters Favor Vote on Sunshine Amendment. As indicated in Ms. Smith's submission, each of the identified supporters expressed support for the Sunshine Amendment by making a written request (i) on the Sunshine Amendment website (www.ASBCoQSunshine.com), (ii) by signing a paper form, or (iii) by electronically signing a form with DocuSign.

The Academy seems to be challenging the MAAA requests made at ASBCoQSunshine.com. The website is clear that it is in support of the Sunshine Amendment and that its purpose is to collect requests for a membership vote on the Sunshine Amendment. The navigation to the text of the Sunshine Amendment is prominently displayed in the main menu of the site.

As indicated on the website, in making their request through the website, supporters would be sending an email to the Academy indicating their support for the Amendment. The WordPress plugin SpeakOut! was used to collect the requests. SpeakOut! displays the title of the petition and one-click ability to view the complete language of the email that is about to be generated. At all times, the email generated included a request that there be a vote on the Sunshine Amendment. Additionally, SpeakOut! provided a click box where the member could choose to be blind-copied on the email.

Additionally, some supporters agreed to have their name displayed on the website publicly as a supporter of the Sunshine Amendment. See <http://asbcoqsunshine.com/supporters-of-2018-sunshine-bylaw-amendment/>. The names of these supporters have been displayed continually on the website since these requestors submitted their request, so it is clear they intended to support the Sunshine Amendment.

The SpeakOut! plugin was set to generate an email to Ms. Downs and Mr. Alpert. However, there are three known instances when this did not occur. First, prior to the official launch of the campaign, the emails were sent to Ms. Smith only and then forwarded to Mr. Alpert and Ms. Downs when the campaign launched. Second, during the period there was a "private" version of the petition that generated an email to Ms. Smith only so that Ms. Smith could forward that email to Mr. Alpert and Ms. Downs when the requisite number of signatures was collected. Third, it appears that during the period August 2, 2018 to September 10, 2018, there was a technical issue that prevented emails from being sent. Ms. Smith believes this issue was caused by an update to the site's software.

To supplement the emails that Mr. Alpert and Ms. Downs have received, we have enclosed Exhibit E containing the email requests and supplemental email requests in Ms. Smith's possession. Exhibit E may contain emails from non-MAAAs. Before including individuals in the summary Exhibit A, Ms. Smith would check that these individuals were listed in the Actuarial Directory as an MAAA. However, non-MAAA emails were not necessarily deleted from Ms. Smith's records.

3. Support for Specific Version of the Sunshine Amendment. The language of the proposed Sunshine Amendment supported by more than 725 members has not changed since February 12, 2018. The text of the Sunshine Amendment was finalized on February 10, 2018, before any member made a request for a vote. On February 12, 2018, a single typographical error was corrected: the "of" in the title of "Actuarial Board of Counseling and Discipline" was changed to "for."

While the *format* of the requests may have varied over time and member by member, the *text* of the Sunshine Amendment has not. There is no requirement in the Bylaws that the format of the requests be the same. If the Academy has received a request containing a purported Sunshine Amendment that differs from the version posted currently at <http://asbcoqsunshine.com/2018-sunshine-bylaw-amendment/>, we request that the Academy produce it. Furthermore, we agree that a request that has different language than shown at <http://asbcoqsunshine.com/2018-sunshine-bylaw-amendment/> should be excluded from the count of members requesting a vote on the Sunshine Amendment.

Attached as Exhibit D is documentation establishing that the content of the link to the text of the Sunshine Amendment referenced in the members' requests has not changed since their requests were made. ASBCoQSunshine.com is a WordPress website that tracks changes to its pages. The documentation included in Exhibit D establishes that the language of the Sunshine Amendment has not changed since February 12, 2018. However, as further support, the Academy may review (i) the PDF form Ms. Smith posted on the ActuarialOutpost.com on February 13, 2018, (ii) <https://archive.org/web/>, an independent third-party website that records webpages and documents the wording of the Sunshine Amendment on select dates since August 29, 2018, and (iii) the PDF attached to any of the emails from Karen Smith that members have forwarded to the Academy.

While we do not agree it is necessary, Ms. Smith has updated the standard emails generated by ASBCoQSunshine.com and the PDF form to include the complete text of the Sunshine Amendment. In the very short time since the Academy raised this issue, more than 400 MAAAs have submitted a supplemental or initial request containing the complete Sunshine Amendment text.

Conclusion

Ms. Smith continues to be more than willing to address any further questions or concerns regarding the Sunshine Amendment written requests on behalf of more than 725 Academy members. Neither the Bylaws nor posted policies on the Academy's website provide detailed requirements for the collection of written MAAA requests for a membership vote on a Bylaw

Amendment. Ms. Smith and the other supporters of the Sunshine Amendment have acted in good faith using available technology to submit their requests. The Academy has known about this effort since February 2018 and has rejected multiple offers from Ms. Smith to discuss the Sunshine Amendment. The Academy's imposing arbitrary requirements now is inappropriate and not consistent with the intention of the Bylaws.

Ms. Smith renews her request that the Sunshine Amendment, supported by written requests of more than three percent of Academy members, be presented to the Board for action at its upcoming October 4-5, 2018 meeting, in accordance with Article XV of the Academy Bylaws. If the Academy disagrees, we request that the Academy provide a detailed list of requests that the Academy has rejected and the reason why.

Ms. Smith hopes that the Academy will respect the wishes of the more than 725 MAAs who have requested a vote on the Sunshine Amendment. Further delay in putting the Sunshine Amendment to a member vote distracts from the important work that the Academy does.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'David S. Wachen', with a long horizontal stroke extending to the right.

David S. Wachen