



The Alumni Fellow Election Petition Process

Introduction

Because good governance is fundamental to Yale's ability to advance its mission, the processes by which trustees are selected to the Yale Board of Trustees (formally known as the Yale Corporation) are always of great importance to the future of the university. From time to time, the Board reviews those processes, and over the last few years through its Committee on Trusteeship it has addressed whether the university is well-served by the process that allows would-be candidates for Alumni Fellow to gain a place on the ballot by petition. Earlier this year, the Trusteeship Committee began a focused review of the petition process. It considered this question with one goal in mind: to ensure the best possible governance of an extraordinary institution.

Yale's Board includes sixteen volunteer trustees, ten of whom are selected by the trustees themselves (the Successor Trustees) and six Alumni Fellows who are elected by the alumni. While the University Charter fixes the number and terms of the Alumni Fellows, the nomination process lies within the sole discretion of the Board of Trustees. In 1929, the Corporation created two paths to the ballot: selection of candidates by the predecessor to the Yale Alumni Association (YAA) and a petition process allowing direct ballot access to alumni who gather a prescribed number of signatures.

Since about 1950, the petition process has been used intermittently, often in short spurts of activity over a few years by a particular person or group. Two groups have used this path in recent years to advance candidates with platforms promoting specific policy goals. These petition efforts have focused attention on the process, but the Board's doubts about it derive from deeper concern that a petition process is no longer consistent with good governance.

General Principles for Governance of Universities

In considering this matter, the trustees were informed by authorities on good governance of universities and other nonprofit organizations. Legal sources hold that board members, as fiduciaries, must represent the interests of the institution, not of any particular constituency.¹ They must exercise due care to make decisions in light of potentially changing facts and with contextual understanding born of experience on the board; they should not enter trusteeship with pre-existing commitments to those who selected or elected them.² They also have a duty of loyalty to the institution, which precludes them from placing their own interests or those of

¹ See, e.g., William Meade Fletcher, *Cyclopedia of the Law of Corporations* § 844.10 (2021) (discussing fiduciary duties applicable to directors of nonprofit organizations); Evelyn Brody, "The Legal Framework for Nonprofit Organizations," in Walter W. Powell & Richard Steinberg, eds., *The Nonprofit Sector* at 247 (2d ed. 2006) (same).

² Board members are subject to a "duty of care" that requires them to inform themselves about the organization's activities, participate in decisions, and exercise independent judgment. BoardSource, *The Handbook of Nonprofit Governance* at 131 (2010). Crucially, board members' primary adherence must also be to the "mission of the organization," and thus not to the agenda of another group or entity. William G. Bowen, *The Board Book* at 141 (2012); *id.* at 134 ("[C]olleges and universities . . . are . . . understandably wary about electing trustees who will feel obligated to represent a particular constituency."). See also note 3 below.

outside groups above those of the organization.³ Effective university governance depends on recruiting trustees with experience in a variety of professional sectors, such as leadership positions in the business, government, and non-profit sectors, law and medicine, higher education, research, cultural and healthcare institutions, and other complex organizations.⁴ For these reasons, governance experts emphasize the importance of vetting trustees through a nominating committee, which nominates candidates whose different and combined experiences are complementary, and as a group provide the university with appropriate oversight and leadership.⁵

Yale's Distinctive Governance Model

Yale's is the second smallest fiduciary board in the Ivy League, and among the smallest of any leading research university in the United States. Its full membership comprises the president of the university, sixteen volunteer trustees, and the governor and lieutenant governor of Connecticut *ex officio*. Unlike many boards, it does not delegate its work to an executive committee but rather convenes as a committee of the whole. Discussions and deliberations are extensive and substantive. Intentionally, board members are selected for their diverse perspectives and different points of view. They come together to listen to each other, to debate and discuss, and to sharpen collective understanding from the exchange.

A distinctive feature of Yale's governance is that by long tradition *all* of the volunteer trustees are alumni. While there is no *requirement* either in the Charter or the Bylaws that the Successor Trustees be graduates of Yale, which may partially explain why an election of six Alumni Fellows was added to the Charter in 1871, it has been longstanding custom for them to be. The Yale board, more than most, is an alumni board, with the Alumni Fellows specifically chosen by the volunteer alumni association and elected by the alumni.

Yale is also distinct in the proportion of seats that may be filled by petition candidates, who can bypass the nominating process and gain access to the ballot by number of signatures. This is a function of the number of seats open to petition and the overall size of the board; six of sixteen

³ See, e.g., *The Handbook of Nonprofit Governance*, *supra* note 2, at 131 (“The duty of loyalty requires board members to exercise their power in the interest of the organization and not in their own interest or the interest of another entity, particularly one with which they have a formal relationship.”); Andrew S. Gold, “The Fiduciary Duty of Loyalty,” in Evan J. Criddle, Paul B. Miller, and Robert H. Sitkoff, eds., *The Oxford Handbook of Fiduciary Law* at 387 (2019) (basic component of the fiduciary duty of loyalty is “the requirement that the fiduciary avoid conflicts between his duty and the pursuit of others’ interests”).

⁴ See, e.g., Association of Governing Boards of Universities and Colleges, *Effective Governing Boards: A Guide for Members of Governing Boards of Independent Colleges & Universities* (2012). See also *The Board Book*, *supra* note 2, at 137-38 (“Nonprofits . . . need board members who have sufficient experience with the field in which the organization operates” as well as “professional talent” born of “deep roots in another organization or in a particular vocation”).

⁵ See, e.g., Deloitte LLP, *The Effective Not-for-Profit Board: A Value-Driving Force* at 22 (2013) (explaining that many boards of nonprofit organizations will “find it useful to have a nominating committee” to ensure that the board has “members who work well as a team, bring the necessary expertise to the board, and are able to best represent the interest of the [nonprofit organization] as a whole and not just a particular constituency.”); William L. Boyd, & Jeannie Carmedelle Frey, eds., *Guidebook for Directors of Nonprofit Corporations*, at 77–81 (3d ed. 2012) (recommended in terms of best practices and good governance that nonprofit corporations consider the establishment of a nominating committee); Zabihollah Rezaee, *Corporate Governance and Ethics* at 143 (2009) (“The nominating committee should be responsible for selecting and nominating a new director.”).

trustees are elected by the alumni, so potentially all six could be elected by petition. A review of governance of other leading universities reveals that in this regard Yale is unique: few if any of the boards we know of have as high a proportion of trustees elected by alums, and even fewer have a petition process. Notably, none of the boards of other leading private research universities (those in the Association of American Universities) that include elected alumni members are as small as Yale's board. With its system created a century ago that would allow nearly forty percent of its volunteer members to be elected through a direct petition process, Yale today stands alone, out of the mainstream of modern university governance.

Recent Use of the Petition Process

In recent years, petition candidates have been supported by well-funded organizations, sometimes with paid, professional staff, who "sponsor" petitioners, communicate on their behalf with university offices, and support public relations efforts on the candidates' behalf. Petitioners and their supporting organizations increasingly conduct themselves like political campaigns. The resulting politicization of Alumni Fellow elections is likely to discourage many alumni who might make excellent fiduciaries from agreeing to be candidates.

There is also concern that those who come to the board having won an election based on a particular platform, aimed at a specific constituency, and backed by organized campaign machinery, will feel obligated to advocate for special interests in the boardroom. Trustees who arrive with these commitments will be challenged to do the work of a fiduciary – to represent all of Yale's constituencies, to be open to changing one's mind, and to participate in the deliberative process that yields the best decisions, in the service of all of Yale. This will be true notwithstanding the sincere and good intentions of the petition candidates.

In this way, board service for a complex, private non-profit organization differs from election to political office. Elected officials are expected to represent and advocate for constituents with certain partisan positions. Trustees, by contrast, need to consider the overall interests of the institution. Legislative bodies enact laws based on majority vote, and the majority may disregard the opposing opinions of the minority. A small non-profit board, by contrast, follows a deliberative process and resolves issues through discussion and persuasion in an atmosphere of collegial and vigorous debate.

For these reasons, a process that resembles a political campaign appears distinctly poorly suited to the selection of Yale trustees. A non-profit board needs trustees who can bring different perspectives, work with others, listen and consider different views, and always focus on the overall best interests of the university.

The Alumni Fellow Nominating Committee

Since 1929, candidates for Alumni Fellow have been selected by the university's main alumni volunteer leadership group or its designated committee. In 1972, the YAA (then known as AYA) became the body responsible for candidate selection, and it entrusts this function to the Alumni Fellow Nominating Committee of the YAA board of governors. The AFNC includes members of the YAA board of governors, a Yale Corporation member (who is an alum), the

University Council president (also an alum), the Secretary of the university (also an alum), and the Vice President for Alumni Affairs and Development. The committee currently has fourteen members, twelve of whom are alumni volunteers.

An important part of the nominating process, in place since the first Alumni Fellow election in 1871, has been the ability of alumni to propose candidates for the ballot. In keeping with that tradition, the YAA annually calls for nominations from alumni, and these are reviewed by the AFNC. Over the past three years, the frequency of the YAA's calls for nominations has significantly increased, and the AFNC now accepts suggestions throughout the year via the Yale Alumni Association website, <https://alumni.yale.edu/alumni-fellow-nomination-form>. Nominations are also solicited in all Alumni Fellow election materials, and each year the chair of the YAA Board of Governors sends an email to the YAA's roughly 3,000 alumni leaders around the world, asking them for names. There are no barriers to participation in this process, and in recent years the number of nominations has increased. Moreover, there is no limit to the number of people who can nominate a person for Alumni Fellow, nor is there a limit to the number of alumni a person may nominate.

For the 2021 ballot, the AFNC received approximately eighty new nominations, along with duplication and further endorsement of previous names. In all, the AFNC considered over 100 potential candidates for the 2021 ballot, including nominees carried forward from previous years. Staff researches each individual, and the AFNC reviews a short bio on each. The AFNC considers how a nominee's professional expertise complements and expands the areas of expertise of the current trustees and the person's past and current volunteer service to Yale. After initial review and decision-making, a short list is developed, and the AFNC conducts a deeper review based on more detailed information before identifying finalists for further vetting. The rigor of the AFNC research and vetting processes has resulted in the selection of outstanding individuals from diverse backgrounds as candidates on the Alumni Fellow ballot each year.

Looking Forward

With the foregoing considerations in mind, and based on the deliberations of the Trusteeship Committee over the past two years and the focused review conducted this year, [the Board voted on May 18, 2021](#), to amend the university's Miscellaneous Regulations to remove the petition process as an avenue to the Corporation.

This change means that all Alumni Fellows will be selected by vote of the alumni on a ballot determined by the AFNC nominating process, thus ensuring uniform consideration and vetting of all candidates. It will also ensure that voters have comparable information available about every candidate without requiring that any candidate spend financial resources or exceptional amounts of time campaigning.

The Board's decision was made with great respect for our fellow alumni who have stood as petitioners and those who have supported them. The issue at hand is one of process and governance structure, and after careful study we concluded that a petition process is no longer in the best interests of the university.

Yale is an extraordinary institution. To be so, its governance practices have had to evolve over time; to remain so, its governance must continue to adapt, aligning with best practice and supporting the needs of a complex organization in a higher education landscape whose pace of change is accelerating.

As trustees of Yale, we are entrusted with positioning the university for a future as bright as its past. With the decision described here, we seek to advance that vital goal.

Yale Board of Trustees
May 2021