



# 2023 Election

## Proposed Bylaws Amendments

AMS members: please review these proposed bylaws changes and vote! AMS bylaws may be changed or suspended on recommendation of the Council and with the approval of society membership.

Three proposals are being brought by Council to a membership vote: 1) proposal to remove residual language that became meaningless with a bylaws change in 2022; 2) proposal to adjust the quorum for Council meetings to mandate sufficient representation of members at large; 3) proposal to remove impractical time restrictions on the replacement of a Council member or president elect.

Read the full bylaws at <https://www.ams.org/bylaws>.

### Proposal 1

*Remove references to deputies in Article IV Council, Sections 1 and 4.*

Until 2022 the bylaws specified that “the chair of each of the editorial committees specified in Article III” serves on the Council ex officio and that “The chair of any committee designated as a Council member may name a deputy from the committee as substitute.” After a 2022 change to the bylaws, the corresponding stipulation now is that “one representative from each of the editorial committees specified in Article III” serves on the Council. Since any member of that committee can serve as a representative, no deputy is ever needed.

The specific change proposals are as follows.

#### Article IV Council, Section 1

##### Current

**Section 1.** The Council shall consist of fifteen members at large and the following ex officio members: the officers of the Society specified in Article I, one representative from each of the editorial committees specified in Article III, any former secretary for a period of two years following the terms of office, and members of the Executive Committee (Article V) who remain on the Council by the operation of Article VII, Section 4.

**The chair of any committee designated as a Council member may name a deputy from the committee as substitute.**

##### Proposed

**Section 1.** The Council shall consist of fifteen members at large and the following ex officio members: the officers of the Society specified in Article I, one representative from

each of the editorial committees specified in Article III, any former secretary for a period of two years following the terms of office, and members of the Executive Committee (Article V) who remain on the Council by the operation of Article VII, Section 4.

**~~The chair of any committee designated as a Council member may name a deputy from the committee as substitute.~~**

#### Article IV Council, Section 4

##### Current

**Section 4.** All members of the Council shall be voting members. Each member, **including deputies**, shall have one vote. The method for settling matters before the Council at any meeting shall be by majority vote of the members present. If the result of a vote is challenged, it shall be the duty of the presiding officer to determine the true vote by a roll call. In a roll call vote, each Council member shall vote only once (although possibly a member of the Council in several capacities).

##### Proposed

**Section 4.** All members of the Council shall be voting members. Each member, ~~including deputies~~, shall have one vote. The method for settling matters before the Council at any meeting shall be by majority vote of the members present. If the result of a vote is challenged, it shall be the duty of the presiding officer to determine the true vote by a roll call. In a roll call vote, each Council member shall vote only once (although possibly a member of the Council in several capacities).

**Rationale for both:** The last sentence of Section 1 is a vestige from the 2022 bylaws and no longer makes sense after the 2022 update, which places “representatives” rather than

“chairs” of editorial committees on the Council; it should have been removed at the time of those revisions. The removal of the last sentence in Section 1 makes the reference to “deputies” in Section 4 meaningless. (The terms “deputy” and “deputies” appear nowhere else in the bylaws.)

*The Council recommends that the AMS membership adopt these revisions to Sections 1 and 4 of Article IV of the bylaws.*

## Proposal 2

*Replace “five members” as a quorum for the Council by “five members at large” in Article IV Council, Section 5.*

**Rationale:** “Members at large” are elected members of the Council<sup>1</sup> (as opposed to those appointed ex officio) and together with the president, vice presidents, and immediate president elect/past president, elected members constitute a slender majority (of the 37 members of Council, 15 are members at large). Although no recent Council meeting has lacked in participation from members at large, this change emphasizes the central role of members at large. Five members as the designated quorum is a small number given the overall size of the Council. Requiring a quorum to consist of members at large retains the original intent of the Society in setting this quorum while adapting to the addition of ex-officio-members since. Again, the Council has always met this low quorum by a large margin and this is not expected to change.

### Article IV Council, Section 5

#### Current

**Section 5.** Any five members of the Council shall constitute a quorum for the transaction of business at any meeting of the Council.

#### Proposed

**Section 5.** Any five members **at large** of the Council shall constitute a quorum for the transaction of business at any meeting of the Council.

*The Council recommends that the AMS membership adopt this revision to Section 5 of Article IV of the bylaws.*

## Proposal 3

*Remove “at the next annual meeting” and make other changes in procedures for filling unexpected vacancies in Article VII Election of Officers and Terms of Office, Sections 6 and 8.*

The “annual meeting” of the Society is effectively the Joint Mathematics Meetings, and the present bylaws do not allow the Society to fill certain vacancies at any other

time, no matter how impractical that may be. Further, where currently it is “the Society” which takes action, the proposed changes implement the long-standing interpretation that in the situations at hand this means that “the Council” takes action.

**Rationale:** Article VII Election of Officers and Terms of Office, Sections 6 and 8 include provisions for filling untimely vacancies on the Council and in the office of president elect. These provisions are currently unclear as to who specifically takes action and impose undesirable constraints on when needed action can be taken. Specifically, the term “the Society at the next annual meeting” is ambiguous and restricts the timing of the needed decision. The Council’s proposed revision results from consultation with outside legal counsel. A legal analysis underlying this recommendation is provided at the end.

The current language is ambiguous as to who makes the decision to fill an unexpected vacancy. In both sections, the proposed revision places the decision with the Council, subject to approval of the Board of Trustees. This follows a recommendation from external counsel in that it makes the actor explicit in a way which aligns both with current practice and with bylaws provisions for similar situations. In analogous situations the ambiguity of the term “the Society” was resolved by letting Council make the decision.

The current language imposes a problematic timing constraint by placing the decision with “the Society...at the next annual meeting.” (The “annual meeting” refers to the Joint Mathematics Meetings, at which Council meets.) If the president elect were to resign between the Joint Mathematics Meetings and the end of January (the end of the predecessor’s term), then the current version of the bylaws would leave the presidency vacant for over 11 months as it mandates that the replacement be chosen during the (next) Joint Mathematics Meetings.

Similar concerns about timing arise with Section 8. For instance, if a Council member were to resign 53 weeks before the end of the term, i.e., just after the Joint Mathematics Meetings, then Section 8 of the current version of the bylaws would leave the position vacant for over 11 months by mandating that the replacement be chosen during the next Joint Mathematics Meetings; the replacement would then serve only for three January weeks during which Council typically transacts no business.

With respect to both authority and timing, the proposed revision says: “If the president of the Society should die or resign when no president elect is in office, the Council, with the approval of the Board of Trustees, shall designate one of the vice presidents to serve as president for the balance of the regular presidential term.” This mirrors the preceding sentence of the same bylaws section and also aligns with subsequent provisions, such as: “If the immediate past president should die or resign before expiration of the term

<sup>1</sup><https://www.ams.org/member-council>

of office, the Council, with the approval of the Board of Trustees, shall designate a former president of the Society to serve as immediate past president during the remainder of the regular term of the immediate past president."

The proposed revisions have been vetted to avert unintended consequences. Notably, the role of the president elect is well defined and in particular includes the assumption of the office of the president at the correct time, so the provision provides for a president of the Society when this is needed. And the functioning of the Council is ensured even in the absence of a president by provisions in the standard code of parliamentary procedure.

### Article VII Election of Officers and Terms of Office, Section 6

#### Current

**Section 6.** If the president of the Society should die or resign while a president elect is in office, the president elect shall serve as president for the remainder of the year and thereafter shall serve the regular two-year term. If the president of the Society should die or resign when no president elect is in office, the Council, with the approval of the Board of Trustees, shall designate one of the vice presidents to serve as president for the balance of the regular presidential term. **If the president elect of the Society should die or resign before becoming president, the office shall remain vacant until the next regular election of a president elect, and the Society shall, at the next annual meeting, elect a president for a two-year term.** If the immediate past president should die or resign before expiration of the term of office, the Council, with the approval of the Board of Trustees, shall designate a former president of the Society to serve as immediate past president during the remainder of the regular term of the immediate past president. Such vacancies as may occur at any time in the group consisting of the vice presidents, the secretary, the associate secretaries, the treasurer, and the associate treasurer shall be filled by the Council with the approval of the Board of Trustees. If a member of an editorial committee should take temporary leave from duties, the Council shall then appoint a substitute. The Council shall fill from its own membership any vacancy in the elected membership of the Executive Committee.

#### Proposed

**Section 6.** If the president of the Society should die or resign while a president elect is in office, the president elect shall serve as president for the remainder of the year and thereafter shall serve the regular two-year term. If the president of the Society should die or resign when no president elect is in office, the Council, with the approval of the Board of Trustees, shall designate one of the vice presidents to serve as president for the balance of the regular presidential term. **If the president elect of the Society should die or resign before becoming president, the Council, with the**

**approval of the Board of Trustees, shall designate by affirmative vote one of the vice presidents to serve as president elect.** If the immediate past president should die or resign before expiration of the term of office, the Council, with the approval of the Board of Trustees, shall designate a former president of the Society to serve as immediate past president during the remainder of the regular term of the immediate past president. Such vacancies as may occur at any time in the group consisting of the vice presidents, the secretary, the associate secretaries, the treasurer, and the associate treasurer shall be filled by the Council with the approval of the Board of Trustees. If a member of an editorial committee should take temporary leave from duties, the Council shall then appoint a substitute. The Council shall fill from its own membership any vacancy in the elected membership of the Executive Committee.

### Article VII Election of Officers and Terms of Office, Section 8

#### Current

**Section 8.** If any member at large of the Council should die or resign more than one year before the expiration of the term, the vacancy for the unexpired term shall be filled **by the Society at the next annual meeting.**

#### Proposed

**Section 8.** If any member at large of the Council should die or resign more than one year before the expiration of the term, the vacancy for the unexpired term shall be filled **by affirmative vote of the Council.**

*The Council recommends that the AMS membership adopt this revision to Sections 6 and 8 of Article VII of the bylaws.*

#### Legal analysis by external Counsel

The bylaws do not define "Society" and all bylaws references to the "Society" refer to the Society as an entity. See, for example, Art. II, § 2 (Board of Trustees administers the funds of the "Society"), Art. IV, § 8 (Council shall have the power to speak in the name of the "Society"). In Article VII, § 6, the Society cannot itself fill a vacancy without action by some agent(s), so another reading of "filled by the Society" is necessary, and the bylaws do not support one single interpretation. There is latitude to interpret it as either "the Council," "the members of the Society" or some other group/agent.

Given the ambiguity of the term "Society," we agree with the Council's current practice of having the Council fill vacancies for two primary reasons. First, it is not practical for the organization to operate with vacancies on the Council, which could be for more than a year if the vacancy occurs after the deadline for notification of the ballot ahead of the annual meeting. Where there is a single vacancy, it may not have a material impact on the organization's ability to

conduct business, but in the event of multiple vacancies, it could have a significant impact. By interpreting the bylaws to allow the Council—which may transact business without approval of the agenda in advance by the Board and notice to the membership—the Council is ensuring that the organization cannot be incapacitated by resignation of Council members.

Second, although at-large members of the Council are elected by the membership, this is not alone reason to prevent the Council from temporarily filling vacancies. Indeed, the president elect, vice presidents, and trustees are all elected by ballot sent to the membership (Art. VII, § 2), but the Council has the authority to fill vacancies in the office of vice president and the trustees have the authority to fill a vacancy left by another trustee. Thus, the bylaws elsewhere recognize the value in filling vacancies in a manner other than by a vote of the members in the same way they were initially elected. Further, the Council is empowered to select Council members in the event a plurality is not secured by any candidate (Art. VII, § 2), so it is not as though the Council is wholly without authority in electing Council members. It is true that the bylaws clearly specify that vacancies in other offices may be filled by the Council (arguably indicating an intent for a different process in the case of Council and president elect vacancies) but there is not a clear principled reason for such a distinction. Although the Council wields significant authority over the business of AMS, so too do the Trustees and the Executive Committee, for example, vacancies in both of which may be filled by the Council.

Finally, we do not think the bylaws prevent this reading. References in the bylaws to “annual meeting” are not confined to mean “business meeting” at which the members vote; the Council must also meet at the annual meeting. In addition, it is true that the term “Council” is used elsewhere to indicate specific authority of the Council (which may, by canons of construction, be interpreted to exclude an interpretation of “Society” to mean “Council”). But the bylaws also use a different term when they intend an action by the membership. See, for example, Art. VII, § 2 (“The secretary shall send notification to each member of the Society about the slate of candidates...”); Art. X, § 1 (“The annual meeting of the Society shall be held....Notice of the time and place of this meeting shall be sent...to each member of the Society”); Art. X, § 2 (“a majority of members present and voting is required...”). Thus, the use of the more specific term “Council” or “members” elsewhere is not reason to interpret “Society” to mean one or the other.

**Resolution:** Although we believe the Council’s interpretation of this provision is defensible, it is advisable to formalize it in some manner to avoid questions about the Council’s authority. Ultimately, the interpretation will have the most strength if codified in the bylaws and doing so makes sense given that the procedure for filling vacancies is addressed in the bylaws already.