



August 26, 2020

VIA EMAIL ONLY

Michael J. Pfeiffer
ICC Vice President, Codes and Standards
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**RE: 2019 Group B Development Cycle Appeals – Impact of Online Voting,
Cost Impact, Voting Guides and Voter Eligibility, Validation Process**

Dear Mike:

We (Thomas Zaremba & Nick Resetar) hope this letter finds you well. We are writing to you on our own behalves in support of the appeals taken by Leading Builders of America (“LBA”) and National Association of Home Builders (“NAHB”) concerning the validation of 2019 Group B Code Changes.

Not only have LBA and NAHB set out how the flawed 2019 code changes conflict with the International Code Council’s (“ICC”) Council Policies and Bylaws, but they have also identified the root cause of how these changes were achieved, namely, through an unfair exploitation of the Online Governmental Consensus Vote (“OGCV”). Specifically, the evidence overwhelmingly indicates that a Non-Governmental Stakeholder recruited numerous on-line governmental voters to vote on energy issues in accordance with its published “Voting Guide,” which, ultimately, changed the outcome of some twenty (20) code change proposals from “disapproved” at the Technical Committee Hearings and the Public Comment Hearings to “as submitted” in the OGCV.

Stated more simply, the effort of a non-Governmental Stakeholder to successfully recruit on-line governmental voting members to move its twenty (20) code change proposals from “Disapproved” to “As Submitted” has, literally, rendered the hearings conducted by the Energy related Technical Committees and the Energy related Public Comment Hearings as to these twenty (20) proposals, totally meaningless. This is completely unfair to all those that spent time, energy and client funds to attend and participate in those hearings.

Prior to the 2019 Group B OGCV, no code change proposal defeated at both the Committee Action Hearings and Public Comment Hearings had ever been approved “As Submitted” in the OGCV, not even once. However, during the current Group B cycle, twenty

(20) defeated proposals were approved “As Submitted” by a two-thirds vote apparently made up of voters recruited specifically to vote in lock-step with the Voting Guide of a single non-Governmental Stakeholder.

All twenty (20) reversals match “recommendations” made in the “Energy-Efficient Codes Coalition 2021 IECC Voters Guide” (“EECC Voting Guide”). Had only a few reversals occurred, it would be possible to chalk them up as an anomaly or some extraordinary circumstance. Yet, when all twenty (20) reversals match the EECC Voting Guide and the fact that this phenomenon only occurred in the IECC Commercial and Residential Codes, with not even one instance in the IBC, IEBC, or IRC, it is obvious that the outcome was the result of a vote that had been predetermined by voters recruited by EECC to move its energy code agenda forward.

The unfair toll that EECC’s successful recruiting efforts have had on those that spent their time, energy and client funds to attend the Technical Committee and Public Comment Hearings and opposed EECC’s agenda on these twenty (20) proposals is, literally, incalculable.

ICC’S MANDATE IN ITS BYLAWS AND ITS COUNCIL POLICY

ICC’s Bylaws define a “Governmental Member” as a “governmental unit, department or agency engaged in the administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.” *See* Bylaws at 2.1.1. Each Governmental Member is permitted 4, 8, or 12 votes based upon the size of its representative population. *Id.* at 2.1.1. Of these allotted votes, the Governmental Member may designate its employee(s) as voting representatives provided that the employee(s) are “actively engaged either full time or part time in the administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.” *Id.*

The Governmental Member representatives are then permitted to vote in the OGCV under Council Policy #28-05. After the OGCV is complete, the ICC Validation Committee and Board are charged with ensuring that no voting irregularities occurred. *See* C.P. #28-05 at 10.2. If voting irregularities are present, the ICC Board “***shall*** take whatever action necessary to ensure a ***fair and impartial*** Final Action vote on all code change proposals...” *Id.*

The Board’s duty to act is mandatory. If voting irregularities are present, the ICC Board is ***required*** to: (1) set aside the OGCV and conduct a new vote; (2) set aside the OGCV and declare the result of the Public Comment Hearings final; or (3) any other action as determined by the Board. *Id.* at 10.2(1)-(3). Although the Board is required to act, the Board is given wide latitude to remedy voting irregularities.

Although the terms “voting” and “irregularities” are not defined in ICC’s governing documents, they clearly refer to the vote taken at the OGCV. Moreover, Merriam-Webster defines the root word “irregular” as “not being or acting in accord with laws, rules, or established custom,” ... “not conforming to the usual pattern of inflection,” ... “not following a usual or prescribed procedure”, or “lacking continuity or regularity especially of occurrence or activity.”

TWENTY REVERSALS OF ENERGY CODE PROPOSALS BASED ON THE VOTING GUIDE OF A SINGLE NON-GOVERNMENTAL STAKEHOLDER IS A VOTING IRREGULARITY

As noted above, prior to now, no code change proposal, defeated at both the Committee Action Hearings and Public Comment Hearings, was ever resurrected on an “As Submitted” basis in the OGCV. The fact that this never happened before and didn’t happen in any codes other than the energy codes in this cycle clearly indicates that this is the norm. It is what is “regularly” expected in the ordinary course of an OGCV. Accordingly, the twenty (20) vote reversals this cycle is clearly a voting “irregularity.”

The experts who sit on the technical committees are in the best position to make initial findings and recommendations. The technical committee members are specifically selected for their expertise and experience. Not only are their decisions publicly reported, their decisions are supported by written reasons. At the Public Comment Hearings, engaged Governmental Member representatives, many of whom have likely attended the Committee Action Hearings, cast their votes from an enforcement, formulation, or implementation perspective, with the benefit of actually hearing the testimony and seeing the witnesses that made presentations at the hearings.

The I-Codes are presumed to be correct as written. Accordingly, the Committee Action Hearings and the Public Comment Hearings are two important filters designed to disallow code change proposals that do not improve the Code or are technically flawed, unreasonable, or cost prohibitive and to only allow technically sound and reasonable proposals to move forward in the process.

The twenty (20) proposals at issue in these appeals should NEVER have been allowed to advance to the OGCV after being disapproved TWICE by the applicable Technical Committees and at the Public Comment Hearings. Had they NOT advanced to the OGCV, there would likely be no claims of vote manipulation, no appeals and no unfairness to anyone. Every one of these twenty (20) proposals could have been re-submitted by their proponents in the next code change cycle.

Significantly, there have been efforts to manipulate the ICC voting process before. In 2011, voters were offered “scholarship” payments by Stakeholders to attend what were then known as “Final Action Hearings” and to vote in favor of that Stakeholder’s specific agenda as evidenced in a Voting Guide. Predictably, appeals from those voting “irregularities” were taken in 2011 and, as predictably, the practice of paying voters “scholarship” money to attend and vote a specific agenda at the Final Action Hearings was effectively outlawed and the OGCV was implemented.

Given this historical perspective, it should be obvious that the use of a Stakeholder’s Voting Guide, **FOR A SECOND TIME**, to change 20 “disapproval” decisions by two Technical Committees and the votes taken at the Public Comment Hearings, represents an “irregular” manipulation of ICC’s OGCV.

As stated before, this manipulation of the OGCV has rendered the hearings held by the Technical Committees and at the Public Comment Hearings as to these twenty (20) code change

proposals, irrelevant. Unbeknownst to the participants at those hearings, it appears that the outcome of these twenty (20) proposals were actually, and unfairly, pre-determined before anyone even arrived for the hearings in Albuquerque or Las Vegas. The evidence suggests this was accomplished through recruiting single issue voters concentrated in a few geographic areas.¹

Keeping in mind the events of 2011 and the plain definition of irregular, it is clear that the outcome of the twenty (20) proposals at issue here are, in fact, the result of voting “irregularities.” These twenty (20) reversals do not represent a true consensus and that too renders them “irregular.” In fact, the only true consensus occurred when the “Disapproval” votes taken at the Public Comment Hearings matched the “Disapproval” decisions recorded by the two Technical Committees that considered the proposals.

, This Appeals Panel should reinstate the true consensus evidenced by the votes and decisions made by the Technical Committees and Public Comment Hearings. It should recommend to the Board that it declare all twenty (20) code change proposals “Disapproved.” The Board should then adopt this recommendation in order to ensure a *fair and impartial vote*.

**LBA AND NAHB’S VOTER VALIDATION OBJECTIONS ARE REAL, NOT
PERCEIVED**

LBA and NAHB have set forth that many Governmental Member representatives were ineligible to participate in the OGCV and thus the results are invalid. Even a cursory review of the underlying evidence reveals that the issue of eligibility has merit.

A review of voter data shows that there are multiple Governmental Member representatives who may not be “actively engaged either full time or part time in the administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.” For example, the following non-exhaustive list of voter titles highlights some of the questionable qualifications and/or eligibility: (1) “Engineer Intern”; (2) “Equity, Diversity, and Inclusion Fellow”; (3) “Controller”; (4) “Chief of Office Administration”; (5) “Director of Intergovernmental Affairs”; (6) “Curriculum Developer”; (7) “Partner”; (8) “Grants Administrator”; (9) “GIS [Geographical Information Systems] Specialist”; (10) “IT Specialist III; (11) “GIS Coordinator”; (12) “Manager of Distribution”; (13) “Chief Clerk of Works”; and (14) “Showroom Manager.” Even the most generous reading of Section 2.1.1 would hardly conclude that an intern, an inclusion fellow, an office administrator, an IT specialist, or a logistics manager are “actively engaged either full time or part time in the administration, formulation, implementation or enforcement of laws, ordinances, rules or regulations relating to the public health, safety and welfare.” If it appears that these individuals were recruited, regardless of their qualifications, to pack the ballot box, it’s because they were.

It would be nearly impossible to recertify every voter on these twenty (20) outlier issues. Because there are serious concerns about the legitimacy of some portion of the voters, even the

¹ In reviewing the “Energy Voter Tabulation Data” supplied by ICC, out of the 1,551 representatives that voted, 259 were from Massachusetts, i.e. 16.6%. Massachusetts total population is approximately 2% of the United States’ population. Of those representatives from Massachusetts, 51 were affiliated with the City of Newton, which has a population of approximately 88,000.

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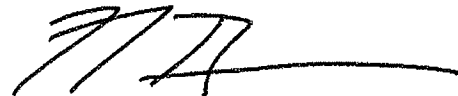
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smallest taint cannot be permitted to remain. As such, the Board should set aside the OGCV relative to the twenty (20) code changes and reinstate the outcomes from the Public Comment Hearing.

Very truly yours,

Thomas S. Zaremba

Thomas S. Zaremba

A handwritten signature in black ink, appearing to read 'NPR', with a long horizontal line extending to the right.

Nicholas P. Resetar

NPR