

**Minutes**  
**USA Triathlon Board of Directors**  
**Teleconference**  
**Special Meeting Regarding the State of Incorporation of USA Triathlon and the Voting**  
**Issues of the Ex Officio Board Member**  
**October 15, 2012**

**Present:**

Charles Baker  
Brian Harrington  
Dave Kuendig  
John Lines  
Melissa Merson, ITU Ex Officio  
Vince O'Brien  
Victor Plata  
Barry Siff  
Kevin Smeltzer  
Kevin Sullivan  
Bob Wendling, President  
Jack Weiss

Steven Sexton joined the call late

Call to Order 5:03 PM PST

**Staff:** Rob Urbach, CEO

**Motion** to allow the ITU Ex Officio member to participate in the meeting (Weiss/Seconded)

**Point of Order** - that the motion is in violation of California State Law because the Ex Officio member has the right to vote (Merson).

Chair did not accept the point of order. Rationale for finding against the point of order was that the USAT bylaws control. The USAT bylaws state that the Ex Officio member may only participate in a Board meeting by invitation, and may not vote.

**Motion** to appeal the finding of the Chair (Plata/Seconded)

Discussion regarding the ex officio member's right to vote.

The bylaws are in conflict with California State Law.

The bylaws are not in conflict with State Law. When the Ex Officio member is invited, then the member has full rights. The member must first be invited.

In 2007 the members voted to change the State of Incorporation to Colorado. The Bylaws have been amended to reflect incorporation in Colorado. The California law is inconsistent with Colorado law. There was never a membership vote to allow Ex Officio members to vote. Ex Officio members are non-voting in the USAT Bylaws. Membership never authorized Ex Officio members to vote.

USAT is incorporated in the State of CA. Under California law all members of the Board have the right to vote. Where Bylaws conflict with State Law, State Law controls. USAT's outside

counsel advised the Board that the Ex Officio member has the right to vote under California State Law. Membership in the ITU requires ITU Board Members serve on their National Federation Board. Voting against giving the right to vote to the Ex Officio member is in violation of State Law.

Roll Call Vote

Charles Baker n

Brian Harrington y

Dave Kuendig y

John Lines y

Melissa Merson y

Vince O'Brien n

Victor Plata y

Barry Siff n

Kevin Smeltzer n

Kevin Sullivan n

Bob Wendling, President

Jack Weiss n

5y 6n - the motion to appeal the Chair failed.

Discussion on the motion to invite the Ex Officio member to the meeting.

There is not a definitive opinion from counsel concerning the membership vote to create the Ex Officio position. There is no Ex Officio position at all.

Statement by the Ex Officio member urging the Board to rectify the conflict between the Bylaws and State Law. There is no legal justification to deny the Ex Officio member the right to vote, or the right to vote of an additional Athlete Director. Member stated that she was legally entitled to participate by California State Law.

Requested that it be on record that they considered all the facts and are voting in consideration of all the athletes.

**Motion** to strike the last word (Merson) Not seconded.

Smeltzer: seconded Weiss' statement.

Roll Call Vote

Charles Baker n

Brian Harrington y

Dave Kuendig y

John Lines y

Melissa Merson y

Vince O'Brien n

Victor Plata y (Plata requested that it be on record that the vote was unnecessary because all Board members had the right to vote under California State Law).

Barry Siff n

Kevin Smeltzer n

Kevin Sullivan n

Jack Weiss n  
Steve Sexton y

6y 6n President cast tie-breaking vote and voted against inviting the ITU Ex Officio Member to participate in the meeting.

6y 7n

President asked the Ex Officio member to leave the meeting. The Ex Officio member acknowledged the request.

**Motion** to Adjourn (Weiss/Seconded)

Motion passed by unanimous voice vote.