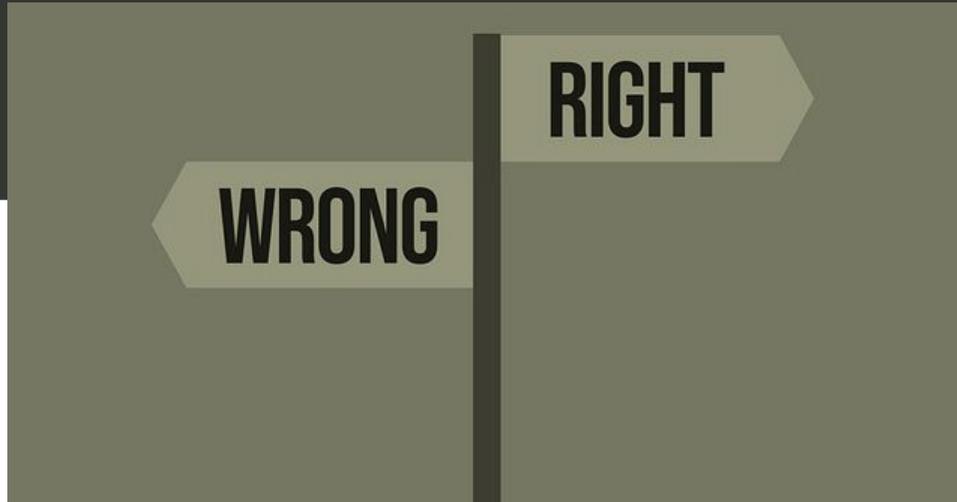


# Memberships in a 501(c)(3) Nonprofit: What Could Possibly Go Wrong?

09.26.16 | Linda J. Rosenthal, JD



Lots of 501(c)(3) charities around the nation issue “memberships.”

For certain groups – like parishioner-controlled churches – a voting membership form of governance is commonplace. For community institutions – museums and arts organizations, for instance – having a cadre of supporters makes sense, and offering certain perks helps forge long-term relationships with these fans and donors.

But it’s not always a good idea. Authorizing memberships may seem routine and benign, but it can “complicate the governance of a nonprofit corporation.” And it “can also be fickle”; there may be unexpected and devastating consequences sometime down the road.

A recent case from Washington State illustrates this point.

## *Coup D’etat in Puget Sound*

Vashon Island is rural and picturesque, home to some 10,000 residents. In 1995, a small band of locals joined together to form a 501(c)(3) called Island Landmarks. The mission: To “preserve the historic architecture and landscape” there.

The bylaws of this Washington nonprofit corporation provide that “membership shall be open and unlimited to all persons who have an interest in promoting historic preservation” on the islands; “in order to qualify for membership, a member shall pay annual membership dues which shall initially be \$25.”

This genial group of preservation enthusiasts undoubtedly never imagined that – some fifteen years or so down the line – there would be a coup d’etat and four years of ugly, protracted litigation.

In the early years, there was “widespread community support” for Island Landmarks. The membership roster grew to a few hundred individuals. A major milestone was reached in 2000, when the group purchased a landmark – a farmhouse of historical significance – with \$300,000 in county, state, and federal grant funds. The stated purpose was to “make it into a cultural and educational resource center.”

After this point, the momentum dwindled. In 2002, there were just 10 members, and the leadership “struggled to manage grant money and to maintain the site.” Organizational records indicate that, by 2010, there were only 5 member-directors and 3 other [non-director] members.

In 2012, one of the original directors, Ellen Kritzman, became “frustrated with the lack of activity.” She “began meeting with community members about regaining control of the corporation” from another founder, Mary Matthews (who was still nominally operating the organization), and about “rescuing” the property.”

Taking advantage of the simple and easy requirements for voting membership rights, Ms. Kritzman drafted a new membership form for prospective new members to declare “interest in historic preservation” in the community. Her recruitment efforts were successful; some 60 people filled out forms and wrote dues checks of \$25. Without telling Ms. Matthews, Ms. Kritzman deposited the checks into the Island Landmarks bank account.

This set the stage for the insurgents to (lawfully) wrest control from the tiny remaining Matthews faction. Eleven of the new members called a special meeting, removed the old board, and installed a new slate of directors. Then they filed suit in court for a declaration confirming their status as the legitimate directors of Island Landmarks.

The litigation dragged on for four years, including two trips to appellate court, before final resolution in favor of the new leaders. This case was decided under Washington state law; the court decision was issued in April 2016.

Under the governing Washington statute, a nonprofit corporation may adopt articles of incorporation or bylaws that authorize voting memberships and specify the “manner of election or appointment and the qualifications and rights of the members of each class.” Alternatively, the organization may choose to have no members and be governed by a board of directors alone.

Since the bylaws of Island Landmarks unambiguously offer “open and unlimited” membership to anyone who shares an interest in historic preservation and pays the \$25 dues, it was a straightforward matter of numerical superiority. The few remaining members in good standing from the earlier period were legitimately outvoted by the newcomers – who won ownership and control of the assets including the historic property.

Was this the outcome the founders could – or should – have expected?

### *Language Makes a Difference*

Had there been a different governing law or a different bylaws provision, the insurgents may have lost the battle. The rights, if any, of “members” in nonprofit corporations, vary from state to state,

and can also depend on subtle nuances of language chosen for the bylaws.

California law, for instance, is significantly different than the Washington model. We'll discuss the Golden State's rules in an upcoming post.

## *Conclusion*

The custom in the philanthropy sector of having so-called "members" may well work under certain circumstances. But there are alternatives available to giving out full voting rights to any and all supporters.

What's clear is that a casual and uninformed decision to issue memberships can sometimes go badly wrong.

– *Linda J. Rosenthal, J.D., FPLG Information & Research Director*