



DIVISION OF
CORPORATION FINANCE

NO ACT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-3010

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Received SEC
MAR 11 2008
Washington, DC 20549

March 11, 2008

Diane Wood
Senior Attorney
Law Department
Pinnacle West Capital Corporation
400 North Fifth Street
Mail Station 9996, Post Office Box 53999
Phoenix, AZ 85072-3999

Act: 1934
Section: _____
Rule: 14A-8
Public
Availability: 3/11/2008

Re: Pinnacle West Capital Corporation
Incoming letter dated January 17, 2008

Dear Ms. Wood:

This is in response to your letter dated January 17, 2008 concerning the shareholder proposal submitted to Pinnacle West by the United Brotherhood of Carpenters Pension Fund. Our response is attached to the enclosed photocopy of your correspondence. By doing this, we avoid having to recite or summarize the facts set forth in the correspondence. Copies of all of the correspondence also will be provided to the proponent.

In connection with this matter, your attention is directed to the enclosure, which sets forth a brief discussion of the Division's informal procedures regarding shareholder proposals.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel

Enclosures

cc: Douglas J. McCarron
Fund Chairman
United Brotherhood of Carpenters Pension Fund
101 Constitution Avenue, N.W.
Washington, DC 20001

PROCESSED

MAR 17 2008

THOMSON
FINANCIAL



PINNACLE WEST
CAPITAL CORPORATION
LAW DEPARTMENT

RECEIVED
2008 JAN 18 PM 12:45
OFFICE OF CHIEF COUNSEL
CORPORATION FINANCE

Diane Wood
Senior Attorney
Direct Line: (602) 250-3544

January 17, 2008

VIA FEDERAL EXPRESS

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Shareholder Proposal of United Brotherhood of Carpenters Pension Fund
Securities Exchange Act of 1934 – Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Pinnacle West Capital Corporation, an Arizona corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2008 Annual Meeting of Shareholders (collectively, the “2008 Proxy Materials”) the proposal and statement in support thereof (the “Proposal”) submitted by letter dated December 17, 2007 by the United Brotherhood of Carpenters Pension Fund (the “Proponent”), with Edward J. Durkin appointed as the primary contact.

Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934 (the “Exchange Act”), we have:

- enclosed herewith six (6) copies of this letter and its attachments;
- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company files its definitive 2008 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

We would like to request that if the Proponent elects to submit a response to this letter to the Commission or the staff of the Division of Corporation Finance (the “Staff”), it concurrently send a copy of that correspondence to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) under the Exchange Act.

Basis For Exclusion

We believe that the Proposal may properly be excluded from the 2008 Proxy Materials pursuant to Rule 14a-8(i)(2) under the Exchange Act, because implementation of the Proposal would cause the Company to violate state law, and Rule 14a-8(i)(3) and Rule 14a-8(i)(6) under the Exchange Act, because the Proposal is contrary to the Commission's proxy rules in that the language of the Proposal renders it so vague and indefinite with respect to significant aspects of the Proposal that neither the shareholders voting on the Proposal nor the Company in implementing the Proposal, if adopted, would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

The Proposal

The Proposal requests that the Company's Board of Directors "initiate the appropriate process to amend the Company's articles of incorporation to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats." A copy of the Proposal, as well as all related correspondence with the Proponent, is attached to this letter as Exhibit A.

Analysis

I. The Proposal may be excluded under Rule 14a-8(i)(3) or Rule 14a-8(i)(6) because the language of the Proposal renders it so vague and indefinite with respect to significant aspects of the Proposal that neither the shareholders voting on the Proposal nor the Company in implementing the Proposal, if adopted, would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires.

The Proposal seeks to implement a majority vote standard in the election of Company directors. A critical component of any such standard is how to determine the precise mechanics of the vote required for election of each director nominee. The Proposal requires that the election be determined by a "majority of the votes cast at an annual meeting of shareholders." However, as described below, this language does not provide for a definitive standard of voting under Arizona law.

The Company is incorporated in the state of Arizona. In contrast to most states that permit a corporation to choose to apply cumulative voting in the election of directors, Arizona law mandates cumulative voting in the election of directors under all circumstances. This requirement is not only provided for in the corporate laws of Arizona, but is found in the Arizona Constitution. Article 14, Section 10 of the Arizona Constitution provides that:

In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or

managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise.

Similarly, Arizona Revised Statutes Section 10-728.B provides that:

At each election for directors, shareholders are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

The following example illustrates the uncertainty inherent in the voting standard included in the Proposal. An Arizona corporation has 1,000 shares outstanding and has four shareholders, each holding 250 shares. The corporation proposes a slate of five directors, consisting of the four shareholders and one additional nominee. This scenario would constitute an uncontested election under the Proposal and the Proposal would require that a director receive a majority of the votes cast to be elected. Therefore, it is necessary to determine how many votes have been cast in the election. Under the Arizona Constitutional and corporate law provisions described above, each shareholder may cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter (one vote for each share held -- 250 shares) multiplied by the number of directors to be elected at such election (five directors). In this scenario, assume each of three shareholders has cumulated her 1,250 votes to vote for herself, and that the remaining shareholder has cast 250 votes for each of the five directors. Thus, three directors have received 1,500 votes each, and two directors have received 250 votes each, for a total of 5,000 votes being cast. Under the Proposal, one interpretation would require a majority of the votes cast, or 2,501 votes, to elect a director, so no directors would be elected.

An alternative interpretation of the Proposal could require that a director receive a number of votes equal to the majority of the shares voting in the election of directors. Since holders of 1,000 shares all voted, this interpretation would require that a director receive at least 501 votes. Under that interpretation, three of the five directors would be elected. Alternatively, it may be that the Proponent intended that the Proposal be read to require a majority vote determination on a director-by-director basis, so that for each director candidate, only votes for or against/withheld for that candidate are relevant. Under that interpretation, all five directors would be elected, even the two directors receiving the votes from only 25% of the shareholders voting. The point, however, is that the Proposal is fatally vague and uncertain on this point, which is arguably the most fundamental aspect of the entire Proposal. Note that, as we describe in Section II of this letter, we believe that the Proposal, if implemented, would violate Arizona law under any of these interpretations.

A proposal may be excluded where the meaning and application of terms or the standards under the proposal "may be subject to differing interpretations." In Exxon Corporation (January 29, 1992), the Staff concluded the proposal was vague and indefinite. The Staff reached this

finding by noting Exxon's argument that the proposal's use of such terms as "the company" and "considerable amount of money," "makes the proposal misleading since such matters would be subject to differing interpretations both by shareholders voting on the proposal and the [c]ompany's Board [of Directors] in implementing the proposal, if adopted, with the result that any action ultimately taken by the [c]ompany could be significantly different from the action envisioned by shareholders voting on the proposals." This finding by the Staff resulted in the proposal's exclusion without an opportunity to amend.

The Staff has also consistently found that a proposal may be excluded under Rule 14a-8(i)(3) where the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the Company in implementing the proposal, if adopted, would be able to determine with any reasonable certainty exactly what actions would be taken under the proposal. See, e.g., Bank of America Corporation (February 12, 2007); International Business Machines Corporation (February 2, 2005); The Procter & Gamble Company (October 25, 2002); Fuqua Industries Incorporated (March 12, 1991).

In Section B.4 of the SEC Staff Legal Bulletin No. 14B (CF) on Shareholder Proposals, dated September 15, 2004, the Staff confirmed the applicability of the foregoing standard under Rule 14a-8(i)(3).

In similar fashion, the Staff has permitted the exclusion of vague and indefinite shareholder proposals under Rule 14a-8(i)(6), which permits exclusion of proposals that a company lacks the power to implement. The Staff has acknowledged that a company lacks the power to implement a proposal where the "proposal is so vague and indefinite that a registrant would be unable to determine what action should be taken." International Business Machines Corporation (January 14, 1992).

II. The Proposal may be excluded under Rule 14a-8(i)(2) because implementation of the Proposal would cause the Company to violate Arizona law.

Rule 14a-8(i)(2) permits the omission of a shareholder proposal that would, if implemented, cause a company to violate applicable law. The Staff has recognized on many occasions that conflicts with state corporation law may be a basis for omission of a proposal. See, e.g., PG&E Corp. (avail. Feb. 14, 2006) (proposal to adopt majority voting in director elections was excludable because, if implemented, it would cause the corporation to violate California state law, which, at the time, required director elections by plurality voting); AT&T Inc. (avail. Feb. 7, 2006) (proposal to adopt cumulative voting either as a bylaw or as a long term policy was excludable because, if implemented, it would cause the company to violate Delaware law, which provides that cumulative voting is permitted only when it is authorized in the corporation's certificate of incorporation); HealthSouth Corp. (avail. Dec. 9, 2005) (proposal calling for "per capita" voting by shareholders to approve the number of directors was excludable because, if implemented, it would cause the company to violate Delaware law, which requires that any deviation from the "one share, one vote" standard appear in the company's certificate of incorporation); Sara Lee Corp. (avail. July 15, 2005) (proposal calling for "per

capita" voting by shareholders was excludable because, if implemented, it would cause the company to violate the "votes cast" standard under Maryland law.)

For the reasons set forth below and in the legal opinion regarding Arizona law from Snell & Wilmer L.L.P. attached hereto as Exhibit B, the Proposal, if implemented, would cause the Company to violate the Arizona Constitution and the Arizona Revised Statutes. Arizona law mandates cumulative voting in the election of directors under all circumstances. There is no provision in Arizona law that permits an Arizona corporation to opt out of cumulative voting. Cumulative voting applies even in uncontested elections. Indeed, as noted above, Article 14, Section 10 of the Arizona Constitution provides that:

In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise. (Emphasis supplied.)

It is generally acknowledged that cumulative voting and majority voting are not compatible. The incompatibility is clear when looking at the policy behind each standard. The policy behind majority voting is to give the majority control. The policy behind cumulative voting "is to make it possible for [a minority shareholder] to have 'a member on the board so that he knows what is going on,'" Bohannon v. The Corporation Commission of Arizona, 82 Ariz. 299, 302, 313 P.2d 379, 382 (Az. Supreme Ct. 1957), even if the majority does not agree with the minority shareholder's nominee of choice.

Mr. Durkin, the primary contact for the Proponent, recognized this inherent conflict in the *"Effects of Contested Elections and Cumulative Voting on Companies Electing Directors by Majority Vote"* (available at www.cii.org) (the "Durkin Analysis"), when he stated that majority voting and cumulative voting are incompatible and that "[y]ou shouldn't mix cumulative voting and a majority vote standard."¹ Many commentators, states and companies who have considered the issue agree. For example, under amendments to the Model Business Corporation Act adopted in 2006, only corporations whose articles of incorporation do not provide for cumulative voting may elect to be governed by the newly adopted majority voting provisions of the act. *MBCA § 10.22(a)*. In this regard, Washington recently revised its statutes governing the election of directors to allow public companies to use the majority vote standard, but only as long as their articles of incorporation do not allow cumulative voting. *Rev. Code Wash. § 23B.10.205*. Similarly, California has revised its statutes regarding director elections to allow a publicly-

¹ In the Durkin Analysis, Mr. Durkin stated that "[i]f the hypothetical is a contested election, you should have a plurality vote standard and cumulative voting rights would be compatible if provided for. If the hypothetical is an uncontested election, you should have a majority vote standard and cumulative voting is not applicable." As a result of Arizona's unique Constitutional provision, however, Arizona corporations must apply cumulative voting in all director elections, even uncontested elections.

traded corporation to amend its articles of incorporation or bylaws to adopt a majority vote standard in uncontested elections, but only if it has eliminated cumulative voting. *Cal. Corp. Code § 708.5(b)*. See also Section 16-10a-1023 of the Utah Revised Business Corporation Act and Section 10-35-09.2 of the North Dakota Century Code.²

In addition to the incompatibility of majority voting with cumulative voting, in Arizona, a majority voting standard also violates the director removal statutes. A.R.S. § 10-808(C) provides that “[i]f less than the entire board is to be removed, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director’s removal.” Statutes such as this protect the results of cumulative voting by precluding majority overrule through the removal process. As a result, even if a director receives more than a majority of “withhold” votes in a director election, it would be a violation of the Arizona Constitution to permit the “removal” of the director (i.e., by failing to seat the director or requiring the director to resign) if the shareholder votes cast “against removal” (in this case, in favor of the director’s election) would have been sufficient to elect the director under cumulative voting. *Bohannon*, 82 Ariz. at 302, 313 P.2d at 380-81 (“Since the provisions of the Constitution are mandatory unless expressly declared to be otherwise . . . , any scheme, plan or device which completely denies the effectiveness of cumulative voting must necessarily fail.”)

The following example further illustrates the potential consequences under Arizona law if both cumulative voting and majority voting were to apply. This scenario demonstrates how cumulative voting may apply in an uncontested election and postulates a case in which shareholders may, in fact, want to cumulate their votes in favor of one or more candidates merely because a majority voting standard would otherwise be applied. Assume there is a 5-member board and 10 million shares are voted. Three groups of shareholders vote: (1) the dissident shareholders (holding 4 million shares), who support a “withhold” campaign for Nominee 1 and Nominee 2; (2) the “regular” shareholders (holding 3.5 million shares), who vote in favor of each nominee; and (3) the “cumulators” (holding 2.5 million shares), who cumulate their votes in favor of Nominee 1. The voting results in this example are as follows:

Nominee	N1		N2		N3		N4		N5	
	For	Withhold	For	Withhold	For	Withhold	For	Withhold	For	Withhold
Dissidents		4		4	4		4		4	
Regulars	3.5		3.5		3.5		3.5		3.5	
Cumulators	12.5									
TOTAL	16	4	3.5	4	7.5		7.5		7.5	

If the applicable majority vote standard is that the director nominees must be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, the first

² Many companies have also recognized the inconsistencies between majority voting and cumulative voting and some have taken steps to eliminate cumulative voting to address the issue. See, e.g., Avon Products, Inc., Kroger Co., Mattel, Inc., Merck & Co., Inc., Northern Trust Corporation, PPG Industries, Inc., and Qualcomm Incorporated. Because cumulative voting is required by Arizona law, the Company does not have this option.

question is what number of votes has been cast? As we described in Section I above, arguably 50 million votes have been cast, and no director is elected because no director has received a majority of the votes cast (25,000,001).

However, even if we assume that we look at the number of votes cast on the basis of a majority of the shares voted or on a director by director basis, we would conclude that Nominee 2 would not be elected because Nominee 2 did not receive a majority of the shares voted or of the votes cast for him. However, Nominee 2 did receive votes from a number of shareholders that would be sufficient to elect him under cumulative voting if such shareholders had cumulated their votes for Nominee 2³ and, therefore, his election should be given effect. Failure to seat Nominee 2 would violate the Arizona Constitution and could also constitute an impermissible removal of Nominee 2 under the provisions of A.R.S. § 10-808(C).

The fact that the Proposal requests that the specific action be taken, instead of requiring the action, does not change the above analysis. See, e.g., RadioShack Corp. (avail. Feb. 28, 2005) (concurring that a proposal recommending amendment of the company's bylaws to require certain limitations on executive compensation was excludable under Rule 14a-8(i)(2) as it would violate Delaware law if implemented). See also General Electric Co. (avail. Jan. 12, 2005) (same result under New York law); Gencorp Inc. (avail. Dec. 20, 2004) (concurring that a proposal requesting amendment of the company's governing instruments to require implementation of all shareholder proposals receiving a majority vote was excludable under Rule 14a-8(i)(2)).

Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2008 Proxy Materials. We would be happy to provide you with any additional information and answer any questions that you may have regarding this letter. In addition, the Company requests that the Commission's decision in this matter be transmitted to the Company by facsimile at 602-250-3393. The Proposal states that correspondence relating to the Proposal can be sent to Mr. Durkin via facsimile at (202) 543-4871. The Company agrees to promptly forward to the Proponent any response from the Staff to this no-action request that the Staff transmits by facsimile to the Company only.

³ The formula for cumulating votes most effectively is: $X = [(Y \times R) / (N + 1)] + 1$. X equals the number of shares needed to elect a given number of directors. Y equals the total number of voting shares at a meeting. R equals the number of directors desired to elect. N equals the total number of directors to be elected. In the example above 1.67 million shares are required to elect a director under cumulative voting $1.67M = [(10M \times 1) / (5 + 1)] + 1$. Harry G. Henn and John R. Alexander, Laws of Corporations and Other Business Enterprises, 495 n. 11 (West Group 1983).

U.S. Securities and Exchange Commission
January 17, 2008
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If we can be of any further assistance in this matter, please do not hesitate to call me at (602) 250-3544.

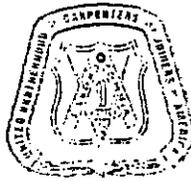
Very truly yours,



Diane Wood

EXHIBIT A

(see attached)



UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

Douglas J. McCarron

General President

[SENT VIA MAIL AND FACSIMILE 602-250-3002]

December 17, 2007

Nancy C. Loftin
Vice President - General Counsel and Secretary
Pinnacle West Capital Corporation
400 North 5th Street
Mail Station 9068
Phoenix, Arizona 85004

Dear Ms. Loftin:

On behalf of the United Brotherhood of Carpenters Pension Fund ("Fund"), I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Pinnacle West Capital Corporation ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal relates to the issue of the vote standard in director elections. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission proxy regulations.

The Fund is the beneficial owner of 1,554 shares of the Company's common stock that have been held continuously for more than a year prior to this date of submission. The Fund intends to hold the shares through the date of the Company's next annual meeting of shareholders. The record holder of the stock will provide the appropriate verification of the Fund's beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you would like to discuss the Proposal, please contact Ed Durkin at edurkin@carpenters.org or at (202)546-6206 x221 to set a convenient time to talk. Please forward any correspondence related to the proposal to Mr. Durkin at United Brotherhood of Carpenters, Corporate Affairs Department, 101 Constitution Avenue, NW, Washington D.C. 20001 or via fax to (202) 543-4871.

Sincerely,

Handwritten signature of Douglas J. McCarron in cursive.

Douglas J. McCarron
Fund Chairman

cc. Edward J. Durkin
Enclosure

Director Election Majority Vote Standard Proposal

Resolved: That the shareholders of Pinnacle West Capital Corporation ("Company") hereby request that the Board of Directors initiate the appropriate process to amend the Company's articles of incorporation to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

Supporting Statement: In order to provide shareholders a meaningful role in director elections, our Company's director election vote standard should be changed to a majority vote standard. A majority vote standard would require that a nominee receive a majority of the votes cast in order to be elected. The standard is particularly well-suited for the vast majority of director elections in which only board nominated candidates are on the ballot. We believe that a majority vote standard in board elections would establish a challenging vote standard for board nominees and improve the performance of individual directors and entire boards. Our Company presently uses a plurality vote standard in all director elections. Under the plurality vote standard, a nominee for the board can be elected with as little as a single affirmative vote, even if a substantial majority of the votes cast are "withheld" from the nominee.

In response to strong shareholder support for a majority vote standard in director elections, an increasing number of the nation's leading companies, including Intel, General Electric, Motorola, Hewlett-Packard, Morgan Stanley, Wal-Mart, Home Depot, Gannett, Marathon Oil, and recently Pfizer have adopted a majority vote standard in company bylaws or articles of incorporation. Additionally, these companies have adopted director resignation policies in their bylaws or corporate governance policies to address post-election issues related to the status of director nominees that fail to win election. Other companies have responded only partially to the call for change by simply adopting post-election director resignation policies that set procedures for addressing the status of director nominees that receive more "withhold" votes than "for" votes. At the time of this proposal submission, our Company and its board had not taken either action.

We believe that a post-election director resignation policy without a majority vote standard in company bylaws or articles is an inadequate reform. The critical first step in establishing a meaningful majority vote policy is the adoption of a majority vote standard. With a majority vote standard in place, the board can then consider action on developing post-election procedures to address the status of directors that fail to win election. A majority vote standard combined with a post-election director resignation policy would establish a meaningful right for shareholders to elect directors, and reserve for the board an important post-election role in determining the continued status of an unelected director. We feel that this combination of the majority vote standard with a post-election policy represents a true majority vote standard.

One West Monroe
Chicago, Illinois 60603-5301
Fax 312/267-8775



[SENT VIA FACSIMILE 602-250-3002]

Nancy C. Loftin
Vice President - General Counsel and Secretary
Pinnacle West Capital Corporation
400 North 5th Street
Mail Station 9068
Phoenix, Arizona 85004

December 20, 2007

Re: Shareholder Proposal Record Letter

Dear Ms. Loftin:

AmalgaTrust serves as corporate co-trustee and custodian for the United Brotherhood of Carpenters Pension Fund ("Fund") and is the record holder for 1,554 shares of Pinnacle West Capital Corporation common stock held for the benefit of the Fund. The Fund has been a beneficial owner of at least 1% or \$2,000 in market value of the Company's common stock continuously for at least one year prior to the date of submission of the shareholder proposal submitted by the Fund pursuant to Rule 14a-8 of the Securities and Exchange Commission rules and regulations. The Fund continues to hold the shares of Company stock.

If there are any questions concerning this matter, please do not hesitate to contact me directly at 312-822-3220.

Sincerely,

Lawrence M. Kaplan
Vice President

cc. Douglas J. McCarron, Fund Chairman
Edward J. Durkin



PINNACLE WEST
CAPITAL CORPORATION
LAW DEPARTMENT

Diane Wood
Senior Attorney
Direct Line: (602) 250-3544

January 10, 2008

VIA FACSIMILE 202-543-4871 AND U.S. MAIL

United Brotherhood of Carpenters
Corporate Affairs Department
101 Constitution Avenue, NW
Washington D.C. 20001
Attn: Edward J. Durkin

Re: Director Election Majority Vote Standard Proposal

Dear Mr. Durkin:

Pinnacle West Capital Corporation ("Pinnacle West") received your letter dated December 17, 2007, and the accompanying shareholder proposal regarding the election of directors using a majority vote standard (the "Proposal"). We would like to thank you for your interest in Pinnacle West and its corporate governance practices. We do have some concerns, however, about the implications of the Proposal under Arizona law, which we wanted to bring to your attention.

In contrast to most states that permit a corporation to choose to apply cumulative voting in the election of directors, Arizona law mandates cumulative voting in the election of directors under all circumstances. This requirement is found in the Arizona Constitution, Article 14, Section 10, and in Arizona Revised Statutes ("A.R.S.") § 10-728. There is no provision in Arizona law that permits an Arizona corporation to opt out of cumulative voting. Cumulative voting applies even in uncontested elections. Indeed, Article 14, Section 10 of the Arizona Constitution provides that:

In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise.

Mr. Edward Durkin

January 10, 2008

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We agree that giving shareholders a meaningful vote and representation on the Board is important, and both cumulative voting and majority voting advance that goal in different ways. However, it is generally acknowledged that cumulative voting and majority voting are not compatible. The incompatibility is clear when looking at the policy behind each standard. The policy behind majority voting is to give the majority control. The policy behind cumulative voting "is to make it possible for [a minority shareholder] to have 'a member on the board so that he knows what is going on,'" Bohannon v. The Corporation Commission of Arizona, 82 Ariz. 299, 302, 313 P.2d 379, 382 (Az. Supreme Ct. 1957), even if the majority does not agree with the minority shareholder's nominee of choice.

You recognized this inherent conflict in the "*Effects of Contested Elections and Cumulative Voting on Companies Electing Directors by Majority Vote*" (available at www.cii.org) (the "Durkin Analysis"), when you stated that majority voting and cumulative voting are incompatible and that "[y]ou shouldn't mix cumulative voting and a majority vote standard." Many commentators, states and companies who have considered the issue agree. For example, under amendments to the Model Business Corporation Act adopted in 2006, only corporations whose articles of incorporation do not provide for cumulative voting may elect to be governed by the newly adopted majority voting provisions of the act. *MBCA § 10.22(a)*. In this regard, Washington recently revised its statutes governing the election of directors to allow public companies to use the majority vote standard, but only as long as their articles of incorporation do not allow cumulative voting. *Rev. Code Wash. § 23B.10.205*. Similarly, California has revised its statutes regarding director elections to allow a publicly-traded corporation to amend its articles of incorporation or bylaws to adopt a majority vote standard in uncontested elections, but only if it has eliminated cumulative voting. *Cal. Corp. Code § 708.5(b)*. See also Section 16-10a-1023 of the Utah Revised Business Corporation Act and Section 10-35-09.2 of the North Dakota Century Code.¹

In the Durkin Analysis, you stated that "[i]f the hypothetical is a contested election, you should have a plurality vote standard and cumulative voting rights would be compatible if provided for. If the hypothetical is an uncontested election, you should have a majority vote standard and cumulative voting is not applicable." As a result of Arizona's unique Constitutional provision, however, Arizona corporations must apply cumulative voting in all director elections, even uncontested elections.

In addition to other concerns about the conflict or incompatibility of majority voting with cumulative voting, in Arizona, as in other states when cumulative voting applies, how majority voting standards and policies interact with the director removal statutes is an area of significant uncertainty. A.R.S. § 10-808(C) provides that "[i]f less than the entire board is to be removed, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal." Statutes such as this protect the results of cumulative voting by precluding majority overrule through the removal process. As a

¹ Many companies have also recognized the inconsistencies between majority voting and cumulative voting and some have taken steps to eliminate cumulative voting to address the issue. See e.g., Avon Products, Inc., Kroger Co., Mattel, Inc., Merck & Co., Inc., Northern Trust Corporation, PPG Industries, Inc., and Qualcomm Incorporated. Because cumulative voting is required by Arizona law, Pinnacle West does not have this option.

result, even if a director receives more than a majority of “withhold” votes in a director election, it would be inconsistent with the Arizona Constitution to permit the “removal” of the director (i.e., by failing to seat the director or requiring the director to resign) if the shareholder votes cast “against removal” (in this case, in favor of the director’s election) would have been sufficient to elect the director under cumulative voting. Bohannon, 82 Ariz. at 302, 313 P.2d at 380-81 (“Since the provisions of the Constitution are mandatory unless expressly declared to be otherwise . . . , any scheme, plan or device which completely denies the effectiveness of cumulative voting must necessarily fail.”)

The following example will better illustrate the potential consequences under Arizona law if both cumulative voting and majority voting were to apply. This example also demonstrates how cumulative voting may apply in an uncontested election and provides a scenario in which shareholders may, in fact, want to cumulate their votes because a majority voting standard will be applied. Assume there is a 5-member board and 10 million shares are voted. Three groups of shareholders vote: (1) the dissident shareholders (holding 4 million shares), who support a “withhold” campaign for Nominee 1 and Nominee 2; (2) the “regular” shareholders (holding 3.5 million shares), who vote in favor of each nominee; and (3) the “cumulators” (holding 2.5 million shares), who cumulate their votes in favor of Nominee 1. The voting results in this example are as follows:

Nominee	N1		N2		N3		N4		N5	
	For	Withhold	For	Withhold	For	Withhold	For	Withhold	For	Withhold
Dissidents		4		4	4		4		4	
Regulars	3.5		3.5		3.5		3.5		3.5	
Cumulators	12.5									
TOTAL	16	4	3.5	4	7.5		7.5		7.5	

If the applicable majority vote standard is that the director nominees must be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, the first question under this scenario is, what number of votes has been cast? However, if we assume that we look at the number of votes cast on a director-by-director basis, we would conclude that Nominee 2 would not be elected because Nominee 2 did not receive a majority of the votes cast for him. However, Nominee 2 did receive a number of votes sufficient to elect him under cumulative voting² and, therefore, his election should be given effect. In addition, failure to seat Nominee 2 or a binding requirement for his resignation if he is an incumbent director would be inconsistent with the Arizona Constitution and could be an impermissible removal of Nominee 2 under the provisions of A.R.S. § 10-808(C).

This example is only one illustration of the confusion and complications that the use of both cumulative voting and majority voting could cause. In light of the unique circumstances affecting Arizona corporations, including Pinnacle West (i.e, the Arizona Constitution requires

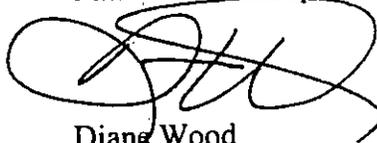
² The formula for cumulating votes most effectively is: $X = [(Y \times R) / (N + 1)] + 1$. X equals the number of shares needed to elect a given number of directors. Y equals the total number of voting shares at a meeting. R equals the number of directors desired to elect. N equals the total number of directors to be elected. In the example above 1.67 million votes are required to elect a director under cumulative voting $1.67 = [(10 \times 1) / (5 + 1)] + 1$.

Arizona corporations to employ cumulative voting in all director elections), we respectfully request your withdrawal of the Proposal. We would appreciate the opportunity to discuss the Proposal with you and the Arizona law issues we have described above, particularly if you disagree with our analysis or if you believe we have overlooked anything that might change our conclusions. If you would like to do so, I ask that you contact me at (602) 250-3544 or via e-mail at diane.wood@pinnaclewest.com on or before Wednesday, January 16, 2008. If you do not agree to withdraw the Proposal, we intend to request a no-action letter from the SEC to exclude the Proposal from Pinnacle West's proxy statement, which request may include, as a basis for such exclusion, additional matters not addressed in this letter.

Thank you for your prompt attention to this matter.

Very truly yours,

Pinnacle West Capital Corporation



Diane Wood
Senior Attorney

DW:bd

cc: Eric Robinson, Wachtell, Lipton, Rosen & Katz
Matthew Feeney, Snell & Wilmer
Nancy Loftin, Pinnacle West Capital Corporation
Senior Vice President, General Counsel and Secretary

EXHIBIT B

(see attached)

January 17, 2008

Pinnacle West Capital Corporation
400 North Fifth Street
Phoenix, AZ 85004

Re: Stockholder Proposal Submitted by the United Brotherhood of Carpenters
Pension Fund

Ladies and Gentlemen

We have acted as Arizona counsel to Pinnacle West Capital Corporation, an Arizona corporation (the "Company"), in connection with a proposal (the "Proposal") submitted by the United Brotherhood of Carpenters Pension Fund (the "Proponent"). The Proponent intends to present the Proposal at the Company's 2008 annual meeting of shareholders (the "Annual Meeting"). In this connection, you have requested our opinion as to certain matters under the laws of the State of Arizona.

We have reviewed copies of the Proponent's letter to the Company dated December 17, 2007, and the accompanying Proposal and supporting statement. We have also reviewed copies of the Restated Articles of Incorporation of the Company as filed with the Arizona Corporation Commission on May 23, 2007 (the "Articles of Incorporation"), the Bylaws of the Company, as amended, and such other documents as we have deemed necessary or appropriate as a basis for the opinions expressed herein. We have assumed the conformity to authentic originals of all documents submitted to us as copies.

The Proposal provides as follows:

Resolved: That the shareholders of Pinnacle West Capital Corporation ("Company") hereby request that the Board of Directors initiate the appropriate process to amend the Company's articles of incorporation to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders, with a plurality vote standard retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats.

The amendment to the Company's Articles of Incorporation that is requested in the Proposal will be referred to herein as the "Proposed Amendment."

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You have asked our opinion as to whether the Proposed Amendment, if implemented in accordance with the Proposal and the processes required by law, would violate Arizona law. For the reasons set forth below, in our opinion the Proposed Amendment, if so implemented, would violate Arizona law.

The Company is incorporated in the state of Arizona. Article 14, Section 10 of the Arizona Constitution provides that:

In all elections for directors or managers of any corporation, each shareholder shall have the right to cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter multiplied by the number of directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more such candidates; and such directors or managers shall not be elected otherwise.

In addition, Arizona Revised Statutes (“A.R.S.”) Section 10-728.B provides that:

At each election for directors, shareholders are entitled to cumulate their votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and casting the product for a single candidate or distributing the product among two or more candidates.

By these provisions, Arizona law mandates that shareholders be allowed to cumulate their votes in the election of directors under all circumstances. There is no provision in Arizona law that permits an Arizona corporation to opt out of cumulative voting. Cumulative voting applies even in uncontested elections.

The following example illustrates the potential consequences under Arizona law if both cumulative voting and majority voting were to apply. This example also demonstrates how cumulative voting may apply in an uncontested election and provides a scenario in which shareholders may, in fact, want to cumulate their votes because a majority voting standard will be applied. Assume there is a 5 member board and 10 million shares are voted. Three groups of shareholders vote: (1) the dissident shareholders (holding 4 million shares), who support a “withhold” campaign for Nominee 1 and Nominee 2; (2) the “regular” shareholders (holding 3.5 million shares), who vote in favor of each nominee; and (3) the “cumulators” (holding 2.5 million shares), who cumulate their votes in favor of Nominee 1. The voting results in this example are as follows (in millions of shares):

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Nominee	N1		N2		N3		N4		N5	
	For	Withhold	For	Withhold	For	Withhold	For	Withhold	For	Withhold
Dissidents		4		4	4		4		4	
Regulars	3.5		3.5		3.5		3.5		3.5	
Cumulators	12.5									
Total	16	4	3.5	4	7.5		7.5		7.5	

This scenario would constitute an uncontested election under the Proposed Amendment and the Proposed Amendment would require that a director receive a majority of the votes cast to be elected. Therefore, it is necessary to determine how many votes have been cast in the election. Under the Arizona Constitutional and corporate law provisions described above, each shareholder may cast as many votes in the aggregate as he shall be entitled to vote in said company under its charter (one vote for each share held) multiplied by the number of directors to be elected at such election (five directors). In this scenario, a total of 50 million votes have been cast. See Schwartz V. State, 10 Ohio Cir. Dec. 413 (1900), affd. by 61 Ohio St. 499,505 (Ohio 1900) (“A stockholder who owns one share, and casts a vote for each of nine candidates, votes as if he had nine shares; so also does he vote if he casts nine for one candidate.”) Under the Proposed Amendment, literally read, a majority of the votes cast, or 25,000,001 votes would be required to elect a director. None of the director candidates in this scenario would be elected, nor could any director ever be elected under this standard unless the director is the recipient of a significant number of votes cumulated in his favor. The provisions of Arizona law mandating cumulative voting described above are not intended to require that a shareholder cumulate his votes in favor of one or more candidates in order to allow for election. A shareholder is also expressly allowed to distribute his votes among the various candidates with an expectation that a candidate can be elected in that way.

If, alternatively, the majority of the votes cast required in the Proposed Amendment is determined on the basis of a majority of the shares voted or on a director by director basis, we would conclude that Nominee 2 in the Scenario above would not be elected because Nominee 2 did not receive a majority of the shares voted or of the votes cast for him. However, Nominee 2 did receive votes from holders of a number of shares that would be sufficient to elect him under cumulative voting if such shareholders had cumulated their votes for Nominee 2¹ and, therefore, his election should be given effect under Arizona law. Failure to seat Nominee 2 would, therefore, violate the Arizona Constitution and A.R.S. Section 10-728.B.

¹ The formula for cumulating votes most effectively is: $X = [(Y \times R) / (N + 1)] + 1$. X equals the number of shares needed to elect a given number of directors. Y equals the total number of voting shares at a meeting. R equals the number of directors desired to elect. N equals the total number of directors to be elected. In the example above 1.67 million shares are required to elect a director under cumulative voting $1.67M = [(10M \times 1) / (5 + 1)] + 1$. Harry G. Henn and John R. Alexander, Laws of Corporations and Other Business Enterprises, 495 n. 11 (West Group 1983).

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In addition, failure to seat Nominee 2 could also be an impermissible removal of Nominee 2 under the provisions of A.R.S. § 10-808(C), which provides that that “[i]f less than the entire board is to be removed, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director’s removal.” Statutes such as this protect the results of cumulative voting by precluding majority overrule through the removal process. As a result, even if a director receives more than a majority of “withhold” votes in a director election, it would be inconsistent with the Arizona Constitution to permit the “removal” of the director (i.e., by failing to seat the director) if the shareholder votes cast “against removal” (in this case, in favor of the director’s election) would have been sufficient to elect the director under cumulative voting. See Bohannon v. The Corporation Commission of Arizona, 313 P.2d 379, 380-81 (Ariz. 1957) (“Since the provisions of the Constitution are mandatory unless expressly declared to be otherwise . . . , any scheme, plan or device which completely denies the effectiveness of cumulative voting must necessarily fail.”)

It is generally acknowledged that cumulative voting and majority voting are not compatible. As stated by Vincent Falcone in Majority Voting in Director Elections: A Simple, Direct, and Swift Solution, 2007 Colum. Bus. L. Rev. 844, 847, cumulative voting “makes sense only under a plurality voting system.” He also noted that “[i]n enacting plurality voting statutes, legislatures were apparently concerned about the possibility of failed elections, in which no candidate receives an outright majority of the votes cast.”² *Id.* See also *Id.* at n. 8. Moreover, in Lutterby v. Herancourt Brewing Co., 12 Ohio Dec. 67, 72 (1901), the court acknowledged this incompatibility in interpreting a statute ostensibly providing for both cumulative voting and majority voting, which provided as follows:

At the time and place appointed, directors shall be chosen by ballot, by the stockholders who attend for that purpose either in person or by lawful proxies; at such election and at all other elections of directors, every stockholder shall have the right to vote in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and such directors shall not be elected in any other manner. A majority of the number of shares shall be necessary for a choice, but no person shall vote on any share on which any installment is due and unpaid....

² Under plurality voting, nominees for available positions who receive the highest number of votes are elected. See Model Bus. Corp. Act Ann. §7.28 official cmt. (Supp. 2005).

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After determining that the majority standard in this provision should be interpreted as referring to a majority of votes present at the meeting, the court also held that the majority standard could not apply when the shares are voted cumulatively. The court stated that:

Of course, when the shares are voted cumulatively, it is not necessary that a candidate, in order to be elected, should receive the votes of a majority of the shares present, because one of the main purposes in allowing cumulative voting is to give the holders of less than a majority of the shares a right to select one or more representatives

In this regard, in Lutterby, 12 Ohio Dec. at 73, the court cited Schwartz, 61 Ohio St. at 505, which, in construing the same statute, held that:

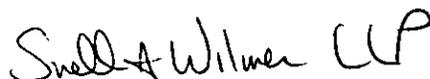
The requirement of a majority of shares must, in order that the clearly defined purpose of the legislature be not defeated, be regarded as applying only when the shares are voted without cumulating.

The opinions herein are limited solely to the laws of the State of Arizona and we express no opinion on the laws of any other jurisdiction. The opinions expressed herein are based upon the law and facts in effect on the date hereof, and we assume no obligation to revise or supplement this opinion should such law be changed by legislative action, judicial decision, or in any other manner, or otherwise to notify you of any changes in law or fact relevant to the opinions expressed herein. The foregoing opinions are limited to the matters specifically set forth therein and no other opinion shall be inferred beyond the matters expressly stated.

The foregoing is rendered solely for your benefit in connection with the matters addressed herein. We consent to inclusion of this opinion with a request by you to the Securities and Exchange Commission concurrence with your decision to exclude the Proposal from the proxy material for the Annual Meeting. Except as stated in this paragraph, this opinion may not be relied upon by any other person or for any other purpose and may not be disclosed, quoted, filed with a governmental agency or otherwise, without our prior written consent.

Very truly yours,

Snell & Wilmer L.L.P.



**DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the Company in support of its intention to exclude the proposals from the Company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes administered by the Commission, including argument as to whether or not activities proposed to be taken would be violative of the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversary procedure.

It is important to note that the staff's and Commission's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly a discretionary determination not to recommend or take Commission enforcement action, does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the management omit the proposal from the company's proxy material.

March 11, 2008

**Response of the Office of Chief Counsel
Division of Corporation Finance**

Re: Pinnacle West Capital Corporation
Incoming letter dated January 17, 2008

The proposal requests that the board initiate the appropriate process to amend the company's articles of incorporation to provide that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting.

There appears to be some basis for your view that Pinnacle West may exclude the proposal under rule 14a-8(i)(3). Accordingly, we will not recommend enforcement action to the Commission if Pinnacle West omits the proposal from its proxy materials in reliance on rule 14a-8(i)(3). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which Pinnacle West relies.

Sincerely,



Peggy Kim
Attorney-Adviser

END