Review of AU 2022 Election

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Introduction. In many ways the AU 2022 Election is a tale of two elections: certain members argue that a range of election and balloting flaws require the AU 2022 Election to be overturned and re-run (even if they won their individual races); while other members emphasize that this election was essentially run in the same fashion as it has been for decades and that as a practical matter none of the irregularities are likely to have resulted in a different outcome.¹ Both are passionate in their positions. Overturning an election is a serious matter, not least because you are nullifying the votes of all the participants—in this case approximately 900 AU members. On the other hand, the integrity of the AU elections is of critical importance to the legitimacy of the organization and to ensuring that the leadership of the AU reflects the will of the AU membership. In some ways, the issues that came up in the 2022 election were always there, but not relevant because it has been rare for the AU to have multiple candidates in a race. With multiple candidates comes the prospect of election challenges, as we have here.

Election Challenge Procedure. The process for challenging an AU election is very simple and only requires written notification to the AU.² The AU Bylaws set forth who determines the outcome of an election contest:

¹ The latter group notes that even Biz 6, which was a group of six AU members who ran on a reform platform, five of whom (“Biz 5”) retained legal counsel to challenge the election, ran a banner across its website alerting viewers that the ballot was in the AU Spring Update, a seemingly implied endorsement of the process (see www.theBiz6.com, “The election ballots have been mailed inside the AU Update Publication. If you have not received yours, call the AU at 405-848-5801.”).
² It is not necessary to retain legal counsel to send a letter indicating an intent to sue and demanding the release of sensitive documents, such as certain AU membership records and the AU executive director’s contract, among other items. Nor is it necessary to both retain legal counsel, as one member did, and file a separate complaint alleging criminal conduct by the AU Executive Committee and/or the AU Executive Director and calling for their expulsion or suspension from the AU. For the record, there is no evidence that any criminal activity took place in the conduct of this election.
5.11 Rulings on Eligibility. If the eligibility of any person to stand for or hold office, vote, or protest or contest any election is raised, or the results of any election are contested or questioned, the Union Constitution, By-Laws, and Policy Advisor shall make a timely determination of the issue(s) and that decision shall be final and binding on all parties, including the Union. If the Constitution and By-Laws Chairman is not able or willing to act, or is disqualified from consideration of the issue because of personal involvement or other reason, the Union Legal Advisor shall then assume that duty.

In this case, the position of Constitution, By-Laws, and Policy Advisor, aka the Constitution and By-Laws Chairman, is vacant and, in accordance with Section 5.11, the contest is decided by the Union Legal Advisor and his decision is “final and binding upon all parties, including the Union.” The AU’s long-time legal and lobbying advisor is Gregory Smith, the author of this finding.

The decision whether or not to overturn this election is a very close call. It is not justifiable to overturn an election just because there are irregularities—all elections have irregularities—rather, those irregularities must be so substantial that it is reasonably possible that the outcome could have been different if the irregularities had not occurred. In this election, there clearly were irregularities. Upon review of the evidence submitted by the complainants, information received through the dedicated AU Election review email account (AUElectionReview2022@gmail.com), as well as various other calls and communications, I have decided that the election must be re-run in accordance with the various requirements outlined below. I must add, however, that the evidence that the irregularities was so great as to justify a new election was barely sufficient and, indeed, the outcome of this review may have been different if a major Bylaws requirement with regard to the delivery of ballots—that they be mailed First Class—had been followed. Under the same set of facts, if the mailing had gone out First Class, the likely outcome of this review would have been that although there were other election irregularities, they were not of sufficient magnitude so as to require the running of a new election.

In conducting this review, I have concluded that the AU staff made every effort to address irregularities brought to their attention such as issues with the mail house, issues with the AU membership database (many of which are a result of AU members and club secretaries not providing current or accurate addresses), as well as issues with the Postal Service. None of the complainants alleged that the AU staff sought to affect the outcome of the election, but some AU members have made that allegation on the internet. There is no evidence that the AU staff attempted to tamper with the outcome of the election in any fashion; allegations to that effect appear to be entirely fabricated.

5.10 Election contests. Any person lodging a protest to, or contesting the results of, any election of the Union must notify the Executive Director of the protest or contest in writing, received by the Executive Director not later than 5:00 o'clock p.m. CST by the fifteenth (15th) day following the date of certification of the election results by the auditing agency. If any person contesting an election shall request a recount of ballots cast, the Executive Director may condition compliance with that request by requiring the contestant to deposit with the Union, an amount sufficient to defray the reasonable and necessary costs of a recount. No person shall be entitled to protest or contest the results of a Union election unless eligible to vote in that election.
Challenges to the Legitimacy of the 2022 Election. The 2022 AU election was largely run in a manner similar to that of prior AU elections, except that the tallying of votes was done by the AU’s auditor, and not by the AU’s staff as with previous elections, because there were multiple candidates in some of the races. As done previously, the ballots were delivered to AU members in the AU Spring Update, which is shipped bulk mail to AU members. Some members asserted that including the ballot in the Update was an election violation; however, the AU Bylaws expressly allow shipment of the ballots in the Update, but also require that mailed ballots be sent First Class.

The AU received four challenges to the legitimacy of the 2022 election, focusing mostly on the delivery of ballots, but also expressing concern about ballot security, such as the potential for duplicate ballots to be submitted. First, the AU received a demand letter threatening litigation from legal counsel representing AU members C.L. Gage, Terry Finnerty, Al “Crazy Al” Christeleit, Dave Wilson, and Martha Stork. All five of these AU members (referred to herein as “Biz 5”) ran in the 2022 election as part of a slate called “Biz 6” on a reform platform (see www.thebiz6.com) and two of them prevailed according to the audited but not yet certified returns.

Of the additional three challenges, two of them were also brought by members of Biz 5, and the final one was brought by the spouse of one of the Biz 5. Specifically, current AU board member Terry Finnerty submitted an AU Complaint Form alleging, among other things, misappropriation of funds for expenditure of AU resources on an election process that was not in accordance with the AU Constitution and Bylaws and calling for either the AU executive director and/or the AU Executive Committee to be expelled from the AU or suspended. Al (Crazy Al) Christeleit filed an AU Complaint Form alleging that the 2022 AU elections failed to follow the AU Constitution and By Laws regarding the election process. Finally, Joan Christeleit filed a Board Action Request asking that the Board “[d]eclare the 2022 Election of Officers and Directors invalid.”

Threatened Lawsuit. Legal counsel for Mr. Gage, Mr. Finnerty, Mr. Christeleit, Mr. Wilson and Ms. Stork sent a demand letter dated August 11, 2022 to the AU stating, among other things:

You are hereby given notice that the above named individuals intend to commence a lawsuit against the AU for declaratory and injunctive relief due to

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3 5.05 Notice of Candidacies. The Executive Director shall publish, or cause to be published, in the Union Publication a list of candidates and the resume provided by each candidate not later than thirty (30) days prior to the election. This may be combined with the ballot, as long as it is mailed no later than 30 days prior to the election.

4 5.08 Balloting for Elections. The use of mail ballots for election of officers and directors is permitted. The Executive Director shall supervise the preparation of ballots to be provided members, which shall be sent directly to the last known address of each eligible voter via First Class mail. The deadline for the receipt of ballots cast by members shall be prominently displayed on the member’s ballot. Any ballot not received by the Executive Director, or a person designated for that purpose by the Executive Director, prior to the deadline or which is otherwise invalid shall be disregarded. All completed ballots, shall be stamped with the date of receipt and retained by the Executive Director for not less than thirty (90) days after the deadline for receipt of ballots. (revised 7-97)
the egregious deficiencies in its mail ballot procedure for the election just
concluded (but not yet certified).

This particular letter did not detail the deficiencies, but the same law firm, at that time
only representing Mr. Gage, had previously sent a letter dated June 28, 2022, which
raised the following concerns:

As you are fully aware, the AU’s mail ballot procedure for the upcoming hotly
contested election is in controversy due to the AU’s failure to send the ballots out
“via First Class mail” as required by Section 5.08 of the Constitution & Bylaws.
Many eligible voters who have reported not receiving ballots have been advised
the ballots were sent to their last known address, the AU has no responsibility for
the U.S. Post Office’s handling thereafter, and no additional ballots will be sent
out. The AU’s ill-advised use of bulk mail is further complicated by its complete
omission of a method for verifying the mail ballots, e.g., a numbering system,
signature requirement or requirement to provide a copy of an identification
document or to have the mail ballot witnessed or notarized. Under these
conditions, the potential for election irregularities necessitating an election contest
and/or possible litigation are foreseeable and likely.

The AU legal counsel responded:

Thank you for your letter dated June 28, 2022 regarding the American Racing
Pigeon Union (AU) election. I would like to draw your attention to the AU
Bylaws which allow the lodging of an election protest for up to 15 days after the
auditing agency certifies the election results (Bylaws, Section 5.10). The
tabulation usually occurs around August 1, in order to leave time for ballots
mailed and postmarked by July 15th to come in. As your client, Mr. Gage, is
running in this election, he will be provided with notice of the certification by
certified mail, return receipt requested (Bylaws, Section 5.09). If Mr. Gage has
concerns regarding the election, he should lodge his protest in accordance with
the bylaws. All records are routinely preserved through final verification of the
election by the AU Board of Directors.

The August 11, 2022 demand letter, in addition to asking the AU to preserve all relevant
documents and records, which the AU has done, further asked the AU to release a list of
all AU members including addresses, telephone numbers, and email addresses. The
demand letter also requested copies of all employment agreements between the AU and
the AU Executive Director. It is not clear how these contracts would be relevant to a
ballot procedure dispute.

In response to the demand letter, AU legal counsel advised the Biz 5 legal counsel that
the AU Board would meet to discuss a response and the request for the release of various
documents. They also informed the Biz 5 legal counsel that the election would not be
certified without advance notice to the challengers following a ruling on the challenge to
the election, and that all documents would be preserved.
Finnerty Complaint. Terry Finnerty, a member of the AU board and Biz 5, separately filed a complaint on the AU Complaint Form that there had been a “Failure to follow the AU Constitution and Bylaws regarding elections and Misappropriated AU Funds.”

Mr. Finnerty expressly complained:

Section 5.08 of the AU Constitution and Bylaws requires all election ballots to be mailed by first class mail. In violation of the said Constitution and Bylaws, the ballots were mailed by bulk mail, otherwise known as Third Class mail, by inserting them in the Spring 2022 AU Update, not authorized by the AU Constitution and Bylaws which are the governing laws for the organization. If Karen Clifton, executive director, made this decision by herself, then she did so in violation of the AU Constitution and Bylaws. If the executive committee members made this decision, then they did so in violation of the AU Constitution and Bylaws. If, when said executive committee members found out of this violation they failed to properly object to this procedure, then they, in dereliction of their duties, allowed the violation of the AU Constitution and Bylaws by Clifton. Also by using and/or allowing the use of AU funds for a specifically non-authorized election procedure, violators have misappropriated AU funds. These acts constitute willful violations of the AU Constitution and Bylaws and as such are a willful misappropriation of AU funds in violation of the Constitution. The Prohibited election procedure used should be declared null and void, a new election should be properly conducted, the violators should be expelled from the AU and/or suspended, and, additionally, should be required to reimburse the AU for the misappropriated funds to print the ballots and then insert them into Spring 2022 AU Update.

I find that there is no basis for expelling or suspending any AU employees or board members. The accusation that they engaged in a misappropriation of funds for following a process that has been in place for years and about which everybody, including most especially board members, had full knowledge, is wholly unwarranted. If anything, these employees and board members have been exemplars of high moral conduct.

Al Christeleit Complaint. Mr. Christeleit’s complaint concerns the “2022 AU Elections and the failure to follow the AU Constitution and By Laws regarding the election process”. He states: “Ballots were not sent by First Class mail (5.08); ballots not sent to all eligible voters (5.07); ballots were not secured against fraud (no voter identification required and ballots could easily be duplicated).” He concludes that the AU rules were violated due to: “The failure to follow the AU Constitution and By Laws concerning the election process for officers and directors; the failure to keep updated and correct records on file for eligible voting members; not allowing another ballot to be mailed when the problem of a wrong address or wrong qualification was discovered and allowing easily duplicated and unsecured ballots to be used.”

J. Christeleit Board Action Request. Ms. Christeleit filed a Board Action Request asking that the Board “Declare the 2022 Election of Officers and Directors invalid.” She stated that she “believe[s] that the election process was not in accordance with the AU Constitution and By Laws and that the handling of the ballots was improper and denied eligible members their right to vote.” She asks the board to adopt the following
resolution: “I move that the 2022 AU Election of Officers and Directors be reheld in accordance with the AU Constitution and By Laws.”

**Collection of Additional Evidence.** The AU provided a dedicated email address for members to provide evidence with regard to election irregularities (AUElectionReview2022@gmail.com). In addition, the Biz 5 were asked, through their attorney, to provide evidence beyond what little was contained in their complaints, but they declined. Finally, the AU Executive Director, who oversaw the election, and a number of AU members were interviewed.

Here are key excerpts from the email submissions (names are deleted):

Please redo election. Some of my club/combine members didn't receive a ballot. The ballots that were received, there was no verification of who was voting by simply using an AU id # or signature & could've easily been copied and mailed by one individual multiple times. Very disappointed that the AU didn’t fix situation when brought to their attention before ballots were even mailed out. Only proper thing to do at this point is redo votes the proper way, with verified ballots. I also suggest that **ALL** votes be tabulated by an independent source that can be agreed upon with AU & group contesting previous unsecured election.

I HAVE SENT AN EMAIL TO THE AU HEADQUARTERS TWICE REQUESTING WHEN THE AU ELECTION IS BEING POSTED.

NOBODY REPLIED!

NOW I HAVE WORD THAT THE AU ELECTION HAS BEEN POSTED AND IS BEING CONTESTED.

I DID NOT GET A BALLOT: I SPOKE WITH ... BY PHONE IN EARLY JUNE. SHE TOLD ME MY BALLOT WAS MAILED TO AN OLD ADDRESS IN TEXAS.

MY CURRENT CLUB IS ... CLUB. MY DUES WERE PAID IN MARCH. THE CLUB’S MEMBERS LIST AND DUES WERE MAILED INTO THE ON MARCH 20TH. THERE WAS AMPLE TIME TO UPDATE MY ADDRESS.

I ASK ... TO RESEND MY BALLOT AS I WANTED TO VOTE. SHE REFUSED STATING THAT SHE COULD NOT REMAIL A BALLOT UNTIL THE ORIGINAL ONE WAS RETURNED.

AT A LATER DATE I WAS INFORMED THAT A CLUB IN THE PHOENIX AREA COMPLAINED THAT NO BALLOTS HAD ARRIVED TO IT'S MEMBERS. ABOUT TWO WEEKS LATER NEW BALLOTS ARRIVED TO ALL CLUB MEMBERS. THEN A WEEK OR TWO AFTER THAT THE ORIGINAL BALLOTS ARRIVED. THIS STORY WAS TOLD TO ME BUY AU MEMBER ....

AU MEMBER ... FROM THE ... CLUB IN ILLINOIS TOLD ME HE DID NOT RECEIVE AN AU BALLOT.
I WISH TO PROTEST THE OUTCOME OF THE AU VOTING. WHY IS NOT MY REQUEST ASKING WHEN THE AU BALLOTS WERE TALLIED AND MADE FINAL. I HAVE SENT TWO EMAILS IN THE PAST TWO WEEK ASKING IS THE VOTING RESULTS HAVE BEEN PUBLISHED. NOBODY IN THE AU REPLIED. THIS WILL ONLY RESULT IN A LAWSUIT BEING FILED AS I HAVE DONE PREVIOUSLY.

I DO NOT ACCEPT THE AU INVESTIGATING ITS SELF IN THE VOTING RESULTS. THERE IS TOO MUCH CORRUPTION IN THE AU WITH THE MANY SECRET MEETINGS WHICH IS ILLEGAL BY THE STATUTES OF THE OKLAHOMA ARTICLE OF INCORPORATION. THE AU CALLS IT "EXECUTIVE SESSION."

I AM REQUESTING THAT SOMEONE CALL ME! [This member was called and interviewed.]

BELOW IS A COPY OF THE EMAILS SENT TWICE TO THE AU WITHIN THE LAST TWO WEEKS:

WHEN WILL THE ELECTION RESULTS BE PUBLISHED? PLEASE SEND ME THE MINUTES OF THE EXECUTIVE SESSION MEETINGS, THAT IS ALL MEETINGS FOR THE PREVIOUS FOUR YEARS.

PLEASE SEND ME THE PER WORD SPOKEN MINUTES OF THE MOST RECENT LAST FOUR AU BOARD MEETINGS, AS PER REQUIREMENT OF THE OKLAHOMA ARTICLE OF INCORPORATION BYLAWS.

PLEASE PROVIDE THE AUTHOR OF THE ARTICLE IN THE DIGEST THAT STATE MEMBERSHIP IN THE AU IS GROWING. PLUS, SHOW ME THE DEPOSIT SLIP (S) INTO AN AU BANK ACCOUNT OF THE TOTAL MEMBERSHIP OF THE AU MEMBER FOR 2022, TO THE CURRENT DATE.

PLEASE PRESENT TO ME THE COMPLETE LIST OF LEGAL MATTERS FILED AGAINST THE AU IN THE PREVIOUS 10 YEARS, LISTING THE PLAINTIFF AND DEFENDANTS WITH LOCATION OF THE COURT WHERE LITIGATION WAS FILED.

PLEASE PRODUCE TO ME THE AMOUNTS PAID BY THE AU FOR EACH LEGAL DISPUTE INVOLVING THE AU TO AN ATTORNEY OR LAW FIRM FOR THE PREVIOUS TEN YEARS.

PLEASE PROVIDE TO ME THE LAWFUL NUMBER OF VOTERS IN THE 2022 ELECTIONS. THIS MEANS THE NUMBER OF BALLOTS MAILED TO AU MEMBERS. HOW MANY BALLOTS WERE RETURNED AND FILED STAMPED RECEIVED. HOW MANY BLANK BALLOTS WERE RETURNED TO THE AU?

PLEASE IDENTIFY THE MONTH, DATE, YEAR THE ... CLUB’S DUES WERE PAID AND DEPOSITED INTO THE AU’S BANK ACCOUNT. PLEASE PRODUCE THE DEPOSIT SLIP FOR MY VIEWING.
We were never sent 1 ballot and I called and was told two were shipped to this address (2 paying members at same address not a family membership). Would not send another?

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Normally I am WAY behind the au board and the way things are handled

Not so much with the majority of the election process.

Normally you know I do not Stand up "with" … but alot of what they post on the accountability group rings true or at least merits alot of OPEN explanations.

I would love to personally discuss my concerns. [This member was called and interviewed.]

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To re-run with a first class mailing I would bet would cost about $4k just in postage.
Maybe $5K total not counting labor.
…. can the bylaws be changed by the current board members or does it take a vote of clubs?
If it can be changed by the exciting board I suggest:
A] Change so mailings can be bulk not first class.
B] Or change so the elected club Presidents vote for AU officers.
C] Change the terms to 2 yrs.

   We as a country are NOT a Democracy, we are a Republic.

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**Ballot Requirements.** The AU Bylaws provide conflicting guidance on how ballots are to be handled. As noted above, Section 5.08 provides that ballots should be sent out by First Class mail:

**5.08 Balloting for Elections.** The use of mail ballots for election of officers and directors is permitted. The Executive Director shall supervise the preparation of ballots to be provided members, which shall be sent directly to the last known address of each eligible voter via First Class mail….

Confusingly, Bylaws Section 5.06 provides discretion to the AU Executive Director with regard to how ballots are delivered:

**5.06 Mailing or Delivery of Ballots.** The Executive Director shall supervise the preparation and mailing of ballots to members, which shall be mailed or otherwise delivered to each member eligible to vote not later than June 30 of each election year….

The “mailed or otherwise delivered” language probably would allow for delivery by pigeon. The actual practice of the AU, going back decades, has been to include the ballots
in the AU Spring Update, which, as noted above, is expressly authorized in the AU Bylaws, although they should have been mailed First Class. Everyone involved in this election is fully aware of this historic practice, which makes it very ironic that some parties are calling for severe sanctions against AU employees and board members for doing what has been an accepted, though incorrect, practice for years.

*In the end, by far the best reading of the Bylaws is that ballots must be mailed First Class.* The mode of delivery of ballots is a fundamental component of the election process which the AU Bylaws address with specificity.

**Summary of Issues with the election:**

- **Failure to Send the Ballots by First Class mail.** The AU Bylaws expressly provide that mailed ballots must be sent First Class. This is a security measure, as well as an important part of ensuring that the ballots reach the membership. Failure to mail the ballots First Class is a fundamental problem with the election, even if using bulk mail has been the practice for many years. Further, given recent performance issues with the U.S. Postal Service, it was that much more critical that the ballots go out by First Class mail.

- **Database Problems.** The membership database has a significant number of errors. These are not necessarily the AU’s fault; rather, they are generally due to members failing to update their addresses or making entry errors. This cannot be held against the AU, but the AU must renew its efforts to encourage members to confirm and update their contact information.

- **Software Problems.** Due to software issues, some addresses did not transmit properly to the mail house database. While known occurrences were corrected, this issue needs to be addressed more comprehensively.

- **Mail House Issues.** The mail house identified a number of undeliverable addresses. Part of this issue has to do with the database problems, but mail houses also eliminate duplicate addresses, which is a problem where there is more than one individual AU member at the same address. The AU staff sought to correct these issues as they were identified, but doubt remains about the mail house’s performance.

- **Ballot Security.** The AU’s only security measure to minimize the chance of duplicate ballots—using a special paper—was insufficient. In future elections, better measures need to be adopted. Notably, there is no method in place to verify the mail ballots when they come in or to provide for provisional ballots, if needed.

- **Insufficient Notification of Ballots.** It was not clear from the exterior of the bulk mailing that the ballots were enclosed. This could have easily led to members discarding the bulk mailing and with it their ballots.

- **Undelivered Ballots.** Some ballots just did not arrive. When the AU was notified, they only resent ballots if they determined that the address in the database was incorrect so as not to send two ballots to the same person. Although this was a measure to prevent duplicate voting, it had the effect of denying ballots to some individuals who did not receive one for whatever reason.
Confusion about Family Memberships. Some AU members have family memberships, which only allow for one vote per membership, while others, living at the same address, have multiple individual memberships each with the right to vote.\(^5\) Both the mail house and individual AU members were confused about this distinction which may have led to some homes receiving only one ballot, when they should have received more than one.

Conclusions and Next Steps. As the Union Legal Advisor, I find:

1. There were substantial irregularities in the conduct of the election.
2. A critical requirement in the Bylaws, that ballots be mailed First Class, was violated.
3. AU staff responded responsibly to members who called in complaining that they had not received a ballot, but the very fact of those calls, numbering in the dozens, illustrated problems in the delivery of the ballots, election software, and services of the mail house, among other issues.
4. The election shall be re-run
5. The Union Legal Advisor shall exercise oversight of the election through its completion and shall be responsible for approving final procedures.
6. The AU shall retain a consultant or company that specializes in non-profit elections to advise in the administration of a new election, and possibly to run the new election, if the Union Legal Advisor so decides.
7. An advisory committee shall be established to provide input into the election process. This committee only has an advisory role and cannot direct the election in any fashion.
8. The Union Legal Advisor shall give due regard to the input from the advisory committee, as well as the non-profit election advisor, with the intent of creating a secure process that gives every AU member an equal chance to participate.
9. Bylaws shall be modernized with regard to election procedures for future elections.
10. The election shall be rerun with the same candidates. No additions will be permitted.
11. The new election shall be run as quickly as reasonably possible, even if the date falls after the date of the annual convention.
12. The new election shall be run in as economical a way as possible, while still putting in place standard protections for non-profit elections, subject to the requirements of the existing Bylaws.
13. Prior elections, even if subject to similar issues, remain valid, both because they have not been challenged and because the deadlines have passed to do so.

\(^5\) 2.08 Class F memberships. "Class F members are families, who would qualify for any of the above classes but have more then (sic) one member of the family that is active in the sport. The family classification is limited to immediate family members, living in the same physical address and includes one adult, spouse, and any number of participating dependant [sic] children under the age of 18. Voting is limited to one vote per membership.
14. The current board members shall remain in place until the completion of the new
election and the seating of the winners.

**Final Thoughts.** The AU is an extraordinary organization. In an age dominated by high
resolution flat screens, the AU harkens back to a simpler time when people enjoyed the
company of family and friends, and through outdoor activities built strong, in-person
bonds. As such, the AU is a national treasure and AU values of sportsmanship and
comradery are to be celebrated. For the AU to remain strong, it must have an election
process that is above reproach. The challenges to the AU 2022 Election have had the
beneficial effect of forcing to the surface deficiencies in that process that can now be
corrected going forward. Hopefully, this will encourage more AU members to become
actively involved in the organization and to participate in that election process.