Constitutional Review Board Convened: April 30th, 2010 at 4pm

Members: Eric Fullton, Sean Schilke, John Blake, Ali Tabibnejad, & Dean Koffler

ASUM Constitutional Review Board (CRB) was convened to address the question of whether or not the recent election including referenda language concerning an introduction of a fee for MontPIRG was constitutional.

The Review Board broke the question up into three parts:

1) Do you believe that ASUM followed Article 10, Section 2 of the ASUM Constitution to the letter in regards to the MontPIRG referendum?
2) Do you believe that the issue was that of notice or of the existence of referenda language in the Montana Kaimin in four consecutive issues prior to the election.
3) Was the student body adequately informed of the referenda language and the issues associated.

Findings of Fact:

The CRB defines an issue of the Kaimin as stated in Article 10, Section 2 as: a publication of the Kaimin that is a numbered volume.

Did four issues of the Kaimin include “notice of the referendum,” as stated in Article 10, Section 2?

All agreed that four issues of the Kaimin did not include “notice of referendum” and thus, the letter of Article 10, Section 2 was violated.

The Constitutional Review Board found that while the specific provisions of Article 10, section 2 of the ASUM constitution were not followed, the intent of notice to students was met and the referendum regarding MontPIRG’s fee is constitutional. The Board found that in cases which, due to negligence, notice of a referendum does not appear in four consecutive issues of the Kaimin preceding the referendum, an ad hoc committee, consisting of five students at large shall decide whether proper notice to students had occurred.

The CRB instructs the ASUM senate to create a committee made up of Students-at–large in the event that a violation due to negligence occurs.

Letters to the editor, discussion on internet social networking sites, sidewalk chalking, ads in printed publications, flyers, etc. are ways in which proper notice to students may be gauged by such a committee.

The Constitutional Review Board found, with unanimous consent, that Senate had knowledge of a violation of the Constitution. Further The CRB found that the
Senate had two opportunities to take up this issue, and no action was taken to ensure the constitutionality of the election. The CRB further highlights the responsibility of Senator Patrick Rhea, who's Initial constitutional challenge resulted in the calling of a Special Session, the constitutionality of which is in question. The Agenda item taken up by the Senate, at the Request of Senator Rhea, was still in the jurisdiction of the CRB when the senate convened the special session to address the issue.

President Matthew Fennel is also being highlighted for responsibility, as he was responsible for the proceedings as the chair of the special session.

All senators are individually and collectively responsible for upholding the constitution. Knowledge of a constitutional violation requires immediate action. Not taking action on a violation of the constitution is impeachable.

The vote on whether adequate notice was the intent of the constitution was a vote of three in the affirmative and two in dissent.

The Vote on whether adequate notice occurred to inform the University Community of the referendum was also on a vote of three in the affirmative and two in dissent.

In the affirmative was Chair Ali Tabibnejad, Dean Koffler, John Blake.
In the dissent was Eric Fulton and Sean Schilke.

Writing the Affermitive controlling opinion: Chair Ali Tabibnejad & John Blake
Writing the Dissenting opinion: Sean Schilke & Eric Fulton

Minority Opinion:

It was found that Article 10, Section 2 of the ASUM Constitution was found unconstitutional in regards to SB 28 being on the ballot by all members of the Constitutional Review Board.; however the majority decided to take the action of allowing the unconstitutional election results to stand, and misapplication of the board’s power and an action outside the scope of the question at hand. The action of this committee should have followed one of these routes:
1. To declare that though the four notices of referendum were not met, it is not in the purview of the Constitutional Review Board to declare an election invalid or valid, and instead send the decision to the election board to make this choice.
2. To declare election itself invalid being that it should not have been on the
ballot, thus nullifying the election results; there were a number of alternative and constitutional routes the board could have taken:

a. Due to the proximity of the end of ability to continue elections this semester, instruct the Senate, in an emergency meeting to hold a referendum in the next week. Furthermore, to instruct the Board on Budget and Finance to allocate appropriate funds to the Kaimin to run an additional issue so the four notice of referendum requirement could be met. (Being that Wed, Thus, Fri of this week notice of the referendum was given.) This election could occur at one two dates:
   i. Monday-Tuesday during the current upcoming Special Election, providing the Kaimin would be willing to publish a special Monday edition before 8am on Monday; or,
   ii. Wednesday-Thursday in a separate election, with the Kaimin publishing a special edition anytime in the week before the polls open on Wednesday.

b. Alternatively, the Board could instruct that the election be held in the fall after the Kaimin begins publishing, with four notices of referendum to be published.

During the course of conversation the idea of a situation rose where the Kaimin may not publish normally; in this situation if ASUM were still running and able to conduct elections, it would be the job of the ASUM President to instruct relevant boards, agencies and staff to delay elections to such a degree that the Kaimin could be published in some form, even if ASUM were to have to assume printing itself, so that four notices of referendum were printed before the election.

Four advertisements in the Kaimin is a rather low standard to be followed, however it provides a certain baseline of notice to ensure students are informed with upcoming elections. This is a way that the language of the referendum can be communicated to all students for certain. No matter what is being done above and beyond by interested parties, this standard must be followed. While a majority of students may use Facebook or similar social networking sites, there is a significant minority who do not. Rallies, fliers, chalking and the like assume that such students are on Campus in the hours and places in which they happen and
it is unlikely such events would contain the full referendum language.

In the future it is recommended the following advice be followed to avoid such an issue: the ASUM President, or his designee, follow up with the Kaimin in person to assure publication in the appropriate part of the paper; and, if the Kaimin were to refuse or otherwise fail to publish the “Notice of Referendum,” the Publication Board be immediately called and actions taken to ensure that such a failure not be repeated; and, if so repeated again, the Board take full authority in publication until the issue is resolved. Additionally, for each day of non-publishing: ASUM immediately print fliers containing the "notice of referendum" using any available printing source--in the amount of whatever number of Kaimin Issues are normally printed--and distribute such notice at all Kaimin stands with all due urgency; notification placed as prominently on the University website as allowed as quick as possible; and, other conspicuous notices placed on campus. It is the duty of all of the ASUM Senators and especially the ASUM Executives to try to ensure the language of the constitution is followed as closely as possible. It would be reasonable to assume that such fliers would serve the same purpose as an insert to the Kaimin, especially if such a large force of people could be assembled as to insert them into any Kaimin issues still on the stands.