ASUM Constitutional Review Board Opinion

Board Called: March 20, 2012.

Opinion:

Issue: Does Article 5, § 1(A)(5) of ASUM Bylaws unnecessarily infringe upon rights otherwise vested in the ASUM Constitution?

Holding:

Article V, § 1(A)(5) of the ASUM Bylaws unconstitutionally infringe upon rights otherwise vested in the ASUM Constitution. Article 13, § 1 of the ASUM Constitution states that "In the event of a conflict between this Constitution and the Bylaws . . . the Constitution shall be considered superior." The language of Art. V, § 1(A)(5) directly conflicts with the first sentence of ASUM Const. Art. 10, § 2 and Art. 11 § 3. Due to the conflict, Art. 13 § 1 requires that the Constitution be considered superior.

The first sentence of ASUM Const. Art. 10, § 2 states that "Upon the petition of five percent (5%) of the membership of the ASUM, or an ASUM policy calling for the support of a new University of Montana or ASUM fee, the ASUM Senate shall be obligated to conduct a referendum (emphasis added). The disjunctive language of this clause necessitates that upon 5% of membership support of ASUM any petition must be voted upon by the ASUM student body in the form of a referendum. Similarly, the initiative language in ASUM Const. Art. 11, § 3, states that the ASUM Senate may initiate a vote with 5% membership support. The language in both clauses is clear in that only a 5% membership is required to bring any constitutional amendment or change to ASUM Bylaws or ASUM policy to a vote. The policy behind this clause is well rooted in the principles of the U.S. Constitution and the Montana Constitution. The principle of direct democratic rule allows the people to continue to exert their collective voice and power over those that govern them.

The "opt-in" language of Art. V, § 1(A)(5) attempts to put limits on ASUM Const. Art. 10, § 2 and Art. 11, § 3. As written, Art. V, § 1(A)(5) states “A non-ASUM agency or non-recognized student group may utilize the ASUM election process to institute only an opt-in fee.” It is feasible, in theory, to adopt language in either a referendum or initiative that could circumvent this “opt-in” language. Any circumvention would be in violation of Art. V, § 1(A)(5) of the Bylaws. However, with 5% ASUM membership support, the ASUM Senate would be required, under the Constitution, to conduct a student vote on the issue. This presents a direct conflict between the language of the Bylaws and language of the Constitution. In the event of a conflict, ASUM Const. Art. 13, § 1 requires that the Constitution reign supreme, and therefore ASUM Bylaws Art. V, § 1(A)(5) is unconstitutional.
An issue of concern was raised that ASUM Const. Art. 3, § 4(B), gives the Business Manager responsibilities “to keep[] accurate records of the accounts of ASUM and all organizations receiving funds from ASUM.” However, this is not an issue of concern here because it is plausible for funds to be distributed that are outside ASUM’s control but still voted upon by the ASUM student body. Additionally, “accurate records” is an open-ended term and construed broadly can be read to include only documentation of the collection and disbursement amounts from the ASUM treasury. Therefore, it does not require ASUM to conduct full accounting oversight of the organization, ASUM affiliated or otherwise, receiving ASUM funds.

In reviewing this issue, the Constitutional Review Board took notice of SB 41, the constitutional amendment to be voted on by the ASUM student body in the spring of 2012. The amendment, if passed, would amend the Constitution in a way that would accomplish what the unconstitutional Bylaw sought to achieve. Since the amendment would amend the Constitution, it would thereby become part of the Constitution, and it could not be found unconstitutional. It should be recognized that the Constitutional Amendment proposed in SB 41 would make the Bylaw constitutional because the Bylaw would be enforcing language of the Constitution. However, without the constitutional language that SB 41 proposes, the Bylaw conflicts with the Constitution. Finally, if the Constitutional Amendment is passed, the ASUM Senate will then be within its bounds to pass further Bylaws, not in conflict with the Constitution, to clarify the amendment.

It is so ordered.

The decision of the Constitutional Review Board was unanimous.

Board Members:

Keif Storrar (author)
Clayton Flammond
Angela Hasquet
Donald Stuker
Nicolas McCutheon

Dated March 28, 2012