IN THE SUPREME COURT FOR THE
ASSOCIATED STUDENTS OF THE UNIVERSITY OF ARIZONA

MEMORANDUM

To: Paul Thorn
CC: Jordan Miller, ASUA Elections Commissioner
    ASUA Senate, via Patrick Cook, Chairman, ASUA Senate;
From: Jennifer Baker, Chief Justice, ASUA Supreme Court
Date: March 22, 2006
Re: Request for Opinion of the ASUA Supreme Court

We received your request for an opinion interpreting the Initiative Provisions of the ASUA Constitution, Art. VII, § II. Your questions appear in bold below. Our answers follow each question.

1. In the case where proposed legislation is placed on the ballot of an ASUA election by the processes described by Article VII Section II of the ASUA Constitution, and a majority of all votes cast in the election affirm the proposed legislation, is the result the direct enactment of the proposed legislation?

   An initiative measure that is affirmed by the majority of all votes cast in an election is effective upon proclamation by the ASUA President. The ASUA Constitution does not provide procedures for enacting approved initiative measures, so the Court has looked to the procedures in the Arizona Constitution and held they are authoritative in this context.

   Article IV, Part 1, Section 1 of the Arizona Constitution states:
   (5) Effective date of initiative and referendum measures. Any measure or amendment to the constitution proposed under the initiative, and any measure to which the referendum is applied, shall be referred to a vote of the qualified electors, and shall become law when approved by a majority of the votes cast thereon and upon proclamation of the governor, and not otherwise.

   The Arizona Constitution specifically states that the governor cannot veto an initiative or referendum (Art. IV, pt. 1, § 1(6)(A)), and the legislature does not have the authority to repeal an initiative or referendum measure. (Art. IV, pt. 1, § 1(6)(B)).

   Applying these provisions to ASUA, we hold that if an initiative measure is approved by the majority of voters, it becomes effective upon proclamation of the ASUA President, and neither the ASUA President nor the ASUA Senate have the power to veto or repeal initiative measures.
2. Are the statements that may be petitioned for under Article VII Section II of the ASUA Constitution limited to statements which the ASUA Legislative Branch can enact?

The student body is unable to enact legislation that the ASUA Senate would not be able to enact. However, the student body does not have the exact same legislative authority as the ASUA Senate. Initiative measures are limited to “legislation concerning a question of student policy.” ASUA Constitution, Art. VII, § II (2). The powers of the ASUA Senate, pursuant to Article II, Section IV, are broader. The Initiative Provisions do not state that the student body has the same powers as the Legislative Branch, rather it limits the initiative power to measures concerning a question of student policy.

The Elections Commissioner is responsible for general elections and special elections of initiative measures. To the extent that the Commissioner can exercise discretion over initiative measures, it is solely to determine if a measure is legislation related to student policy. The Commissioner does not have the discretion to withhold initiatives from the ballot based on merit or perceived worthwhileness.

3. Can Article VII Section II of the ASUA Constitution be applied to compel the ASUA to include a ballot item that invites students to voice their support for a student fee (in the case where the ASUA lacks the authority to enact the fee)?

If the ASUA Senate does not have authority to enact something, then students do not have the authority via initiative measures. As stated above, the power of student initiative is narrower than that of the ASUA Senate.

These questions posed by Mr. Thorn indicate that there is confusion amongst the student body related to the procedures for initiatives. While his questions solely relate to initiatives, it is likely the process for constitutional referendum is also unclear. The right of legal initiative and referendum is an important one that the student body maintains.

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1 ASUA Constitution, Art. II, Sec. 4: Power of the Senate
1. The Senate shall propose and consider all legislation, including, but not limited to Senate policies and appropriations.
2. The Senate shall be responsible for approving a balanced operating budget to be submitted by the Student Body President in accordance with the Constitution.
3. The Senate may establish and be responsible for any official ASUA programs, services, committees, projects or task force to further the stated goals of Associated Students subject to Presidential approval, and to all rules and procedures as stated in this Constitution, its Bylaws and Operating guidelines.
4. The Senate shall approve all official ASUA programs, services, Judicial Rules of Procedure, committees, projects or task forces prior to their functioning.
5. No individual Senate project shall be considered an official ASUA project without ASUA senate approval.
6. The Senate shall approve all ASUA appointments.
7. All powers incidental to the proper functioning of the legislative branch shall be vested in the Senate unless otherwise stated herein.
8. All official ASUA policy must be approved by the Executive Branch and passed by the Senate.
The Court urges the ASUA Senate and the Elections Commissioner to work together to adopt policies to govern initiative and referendum procedures that protect this right.

Chief Justice Jennifer Baker

on behalf of the ASUA Supreme Court