

UNIVERSITY OF MICHIGAN CENTRAL STUDENT GOVERNMENT, Petitioner

v.

RACKHAM STUDENT GOVERNMENT, Respondent

11/21/2012

Central Student Judiciary

Petitioner Motion for a Preliminary Injunction

Legal Counsel: Lukas Garske

Preliminary Injunction (§ 51.351) - addendum to CSJ Form 51-1 and 51-2

1. Pursuant to CSJ Manual of Procedure § 51.20, the University of Michigan Central Student Government filed Form 51-1 and a Petitioner's Legal Brief along with this Motion for a Preliminary Injunction.

2. Since the Rackham Student Government Board did not follow its own bylaws, or the CSG Compiled Code, to properly place the referendum before the Rackham student body, the student body does not have enough notice of the referendum to make an informed decision. Since the question is of exceedingly importance, the results may be misleading. Once the toothpaste is out of the tube, it cannot be undone.

3. The Rackham Student Government will not be irreparably harmed because it can simply follow all rules and regulations and place the referendum on the spring ballot.

4. The University of Michigan Central Student Government will most likely succeed at trial for the reasons stated in "Petitioner's Legal Brief."

UNIVERSITY OF MICHIGAN CENTRAL STUDENT GOVERNMENT, Petitioner

v.

RACKHAM STUDENT GOVERNMENT, Respondent

11/21/2012

Central Student Judiciary

Petitioner's Legal Brief

Legal Counsel: Lukas Garske

Jurisdiction: Pursuant to the CSJ Manual of Procedure § 51.111 and CSG Compiled Code Art. III, § A(4), the Student General Counsel has standing to bring this case.

Remedy sought: 1) Order directing the RSG Board to fix or remove its supremacy clause; 2) Order directing RSG Board to fill RSG's vacant seats on CSG; 3) Order prohibiting RSG from placing the succession question on the fall ballot. (CSJ Manual of Procedure § 51.701)

Legal standard: Preponderance of the evidence (CSJ Manual of Procedure § 51.631)

1. The Rackham Student Government's Bylaws violate the University of Michigan

Student Body Constitution because it includes an erroneous supremacy clause.

The University of Michigan Student Body Constitution reads, "The Constitution and the Compiled Code which shall be made in pursuance thereof under the Central Student Government or the student governments on this campus shall hold supremacy over any provision of another student code, and judges and justices of student courts shall be bound thereby." UM Const. Art. 1

§ 3. This supremacy clause is a general supremacy clause that provides the central legislature

with the authority to write binding regulations to cover the entire student body. This authority is important because it provides for uniformity throughout campus and also promotes a federalist

system of governance - similar to that of the United States. The supremacy clause lets the entire

student body speak as a single voice on issues of the utmost importance.

Unfortunately, the Rackham Student Government believes that it can rewrite the University of Michigan Student Body Constitution by including its own "modified" supremacy clause. The Rackham Student Government Bylaw's state, "Any conflict or ambiguity arising between the Bylaws and any other student government code (including CSG) shall be resolved by the Central Student Judiciary on a case by case basis." RSG Bylaws, Art. 1 § F(2). Unless "on a case by case basis" means that the CSJ will always resolve conflicts between the CSG Compiled Code and the RSG Bylaws in favor of the CSG Compiled Code, then this definition is erroneous.

2. The Rackham Student Government Board continues to violate the University of Michigan Student Body Constitution by not filing its vacancies on the Central Student Government Assembly.

The University of Michigan Student Body Constitution reads, "If at any time a seat on the Assembly or University Council shall become vacant, the legislature of the inferior constituency controlling the seat shall appoint a new representative in such manner as it shall deem appropriate. The appointed representative shall serve until the next scheduled election, at which time the voters of that constituency shall fill the vacancy by election." UM Const. Art. II § 4. The operative term is shall, so an inferior legislature cannot choose not to fill its vacant CSG Assembly seats.

The Rackham Student Government has several vacant seats on the CSG Assembly, and has not filled them. This has been a problem for several years. President Michael Benson knows of the vacant seats, but has taken no action to propose that his Board fill the seats. RSG could be better represented on the CSG Assembly if it filled those seats. Representative O'Mahen is a very active and effective representative so the above statement is not meant to minimize his contributions to

the CSG Assembly.

3. The Rackham Student Government Board exceeded its authority under the CSG

Compiled Code when it voted to approve a referendum for the November CSG

election.

The University of Michigan Student Body Constitution reads, "The Constitution and the Compiled Code which shall be made in pursuance thereof under the Central Student Government or the student governments on this campus shall hold supremacy over any provision of another student code, and judges and justices of student courts shall be bound thereby." UM Const. Art. 1

§ 3. The University of Michigan Student Body Constitution also states, "The Central Student Government shall have the power to . . . regulate campaign practices on campus." UM Const. Art.

1 § 4. The CSG Compiled Code states, "Any ballot question to be placed on the ballot must be submitted . . . at least 25 days before the election." CSG Compiled Code Art. VI § H(2).

Furthermore, the Rackham Student Body Bylaws states, "RSG general elections shall be held on dates determined by CSG. The election timetable and rules are found in Article V [sic] of CSG's Compile Code." RSG Bylaws, Art. V § A. CSG has the authority to regulate election practices across the campus because it promotes uniform rules and prevents smaller organizations from adopting unfair election rules. The 25 day requirement allows students to be informed on the all ballot issues and prevents organizations from sneaking issues onto a ballot.

On November 15, 2012, the Rackham Student Government voted 12-1-1 to place a referendum on the November 27-29, 2012 CSG election. Unfortunately this vote commenced only twelve days before the start of the CSG election. Even though CSG has plenary authority to

regulate petition deadlines, the RSG Bylaws reinforces that the CSJ should look to the Compiled Code to determine filing deadlines. Since this deadline was not met, RSG was out of order when it attempted to place the question on the ballot.

4. The Rackham Student Government's Bylaws violates the CSG Compiled Code because it erroneously permits the RSG Board to appoint members to university committees.

The University of Michigan Student Body Constitution reads, "The Constitution and the Compiled Code which shall be made in pursuance thereof under the Central Student Government or the student governments on this campus shall hold supremacy over any provision of another student code, and judges and justices of student courts shall be bound thereby." UM Const. Art. 1 § 3. The CSG Compiled Code states, "The President shall also appoint student representatives to university-wide committees. These appointments shall be made with the advice and consent of the Assembly, and to be determined by a majority vote." It makes sense that the body that represents the entire student body should place student representatives, both graduate and undergraduate, on university committees. This increases the bargaining strength of the student body against the university administrators and faculty, but it also provides a convenient central location for the bodies to seek student input.

Unfortunately, the Rackham Student Government believes it can divide the voice of the student body by providing itself with the authority to appoint graduate student to committees.

RSG Bylaws Art. II § G ("RSG shall be the sole appointer of Student [sic] representatives for all University committees requesting graduate student views and input). This completely contradicts the CSG Compiled Code and the Supremacy Clause of the Student Body Constitution, and is out

of order. RSG can recommend candidates to CSG to appoint to University committees, but in no way can RSG do this directly. Rackham has many seats on the CSG Assembly so there is always a conduit for its voice to be heard. Patrick O'Mahen is an excellent example of such a Representative from Rackham who is vocal and effective. Overall, this clause in RSG's Bylaws is out of order because it violates the CSG Compiled Code and is unnecessary to ensure graduate student have a voice in who is appointed to these committees.

5. In the alternative to #3, the Rackham Student Government Board exceeded its authority under the Rackham Student Government Bylaws when it approved a referendum for the November CSG election.

The Rackham Student Government Bylaws read, "Petitions, amendments, and ballot questions may be submitted to the Student body during a general election for campus vote. The Board must approve all such items by majority vote no later than 14 days prior to the general election. Questions to be placed on a general election ballot may not be approved during a first reading." RSG Bylaws, Art. V § F(1).

On November 15, 2012, the Rackham Student Government voted 12-1-1 to place a referendum on the November 27-29, 2012 CSG election. Unfortunately this vote commenced only twelve days before the start of the CSG election. Furthermore the question was approved on its first read. This blatant disregard for its own rules is uncalled for and should not be tolerated. All students should have the ability to speak at an RSG Board meeting on the resolution before the Board puts it on the ballot.

6. In the alternative to #3 and #5, the Rackham Student Government Board exceeded

its authority under the UM Student Body Constitution when it approved a referendum for the November CSG election.

The UM Student Body Constitution reads, "Each such democratically constituted government . . . shall conduct its elections so as to insure that its constituents are given ample opportunity to cast their ballot, and that the election is free from fraud and that open campaigning can take place." The Central Student Government requires all proposed referenda to be submitted to the election director 25 days before the scheduled election. CSG Compiled Code Art. VI § H(2). Twelve days is simply not enough time for adequate campaigning to take place. The RSG Minutes and approved referendum language are still not online, so Rackham students will not have anywhere enough notice to be informed enough to have an ample opportunity to cast their vote. Furthermore, this smoke and mirrors approach by the RSG Board to place the language on the ballot on its first read, while violating the deadlines, almost amounts to election fraud.