

ASUO Constitution Court

REVIEW OF PROPOSED BALLOT MEASURE FOR THE SPRING 2014 ELECTION

[Decided February 27, 2014]

OPINION By Associate Justice Chaney.
Joined by Chief Justice Apana and Associate Justice
Bush.

Associate Justices Huegel and Hoffman abstaining.

I

On February 20, 2014, ASUO member Lamar Wise (hereinafter “Petitioner”) submitted a ballot measure to the Constitution Court for review and placement on the ballot for the Spring 2014 ASUO Election. Past rulings on proposed ballot measures have typically included the proposal as an attachment. In this case however, in spite of past custom and the indications of the ASUO Constitution Court Rules and Procedures to the contrary, Petitioner submitted his proposal to the Court in a very brief email. It read, in pertinent part:

“Would you like to increase graduate student representation on the ASUO Senate?”

2 years ago there was a designated graduate seat on the ASUO senate but was removed based upon the constitutional courts reapportionment of the seats. This ballot measure aims to restore and add more designated graduate seats on the ASUO senate in proportion to the amount of graduate students there are at the University of Oregon.

A “YES” vote would: allow there to be 4 unique graduate seats on senate, to be reapportioned by the ASUO constitutional court based upon the number of graduate students and their respective majors. (This will not add additional

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seats to senate)

A “NO” vote will keep the status quo.”

The reapportionment of seats in the Senate is governed by Article 16 of the ASUO Constitution Court Rules and Procedures, which is based in turn on Article 13 § 10 of the ASUO Constitution. In brief, under Article 13 § 10 it is the Court's duty to reapportion the Academic seats once every two years. Article 16 of the ASUO Constitution Court Rules and Procedure and case precedent, also provide that the Court may reapportion of its own motion if the Court considers it necessary. A member of the ASUO can petition the Court, requesting that it take action; therefore, any member of the ASUO can petition the Court to reapportion of its own motion at any time.

Initially, the Court found Petitioner's language facially ambiguous; the use of the word “allow” in the “YES' vote” section led the Court to be unsure whether Petitioner meant the measure to be binding or non-binding. In the interests of efficiency, Chief Justice Apana emailed Petitioner for clarification. He replied, in so many words, that the measure was to be binding.

II

Pursuant to Article 15 § 5 of the ASUO Constitution, the Constitution Court has jurisdiction to review and approve all proposed ballot measures. This provision of the Constitution stipulates that “[t]he wording of all proposals to be placed on the ballot must be reviewed and approved by the Constitution Court.” The proposed ballot measure must consist of two parts: a brief question and a separate statement. Both the question and the statement are subject to all requirements of this review.

III

Petitioner's language states that passage would “allow there to be 4 unique graduate seats on senate.” 'Allow' typically means that the described action *may* be taken, not that it *must* be. However, this Court feels that most voters, confronted with this language on the ballot,

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would think it binding. Furthermore, Petitioner confirmed that he intended it to be binding, suggesting that any petition to put it on the ballot and any eventual campaign to pass it would describe it as binding. However, the Court would not consider itself bound by this language, if passed. The language *allows* the Court to cause there to be four graduate seats by reapportionment; it does not require the Court to do so. Indeed, the Court was already allowed to do this at any time by the provisions of Article 16 of the ASUO Constitution Court Rules and Procedures and pursuant to Article 13 § 10 of the ASUO Constitution. The language of the proposed measure purports to require the reapportionment of four Senate seats for graduate student representation; in fact it merely reconfirms powers the Court already has.

IV

As noted in section I of this ruling, Article 13 § 10 of the ASUO Constitution lays out a clear procedure under which Academic Senate seats are to be reapportioned. Article 13 § 10 provides for 10 Academic Senate seats, and requires that they be reapportioned according to the population of academic constituencies, within a permissible 15% margin of variance. Petitioner's language, therefore, contains the potential for direct conflict with the Constitution.

The ASUO Constitution lays out a clear method for the reapportionment of the Academic Senate seats. Where the ASUO Constitution provides a mechanism, it must be used; there are no alternatives unless the ASUO Constitution explicitly provides them. In this case, the appropriate method provided by the ASUO Constitution would have been proposal of a constitutional amendment; Petitioner could also have petitioned the Court requesting that it reapportion of its own motion, including explanation of his concerns.

Ballot measures that attempt to directly over-rule the ASUO Constitution without amending the ASUO Constitution violate Article 15 § 5.5 of the ASUO Constitution, which requires that ballot measures must be “consistent with the ASUO Constitution.”

V

The Court would also like to reiterate its expectations of submissions to the Court by ASUO members, pursuant to the Constitution Court's Rules and Procedures, the ASUO Constitution, and past custom. The ASUO runs according to the letter of its voluminous governing documents, which are freely available; it behooves members of the ASUO to review these and work to craft proposals according to their strictures. The guidance of the ASUO Constitution Court Rules and Procedures, and the custom of past Courts, has been that business is to be brought before the Court in properly formatted and reasoned attachments; procedural questions are to be directed to the Chief Justice. When crafting documents for the Court, members of the ASUO are advised to utilize the Green Tape Notebook, the Constitutional Court's Rules and Procedures, and the procedural guidance of the Chief Justice. If documents do not meet the Court's procedural guidelines, the Court reserves its right, as stated in the Court rules, to immediately dismiss any deficient documents without prejudice.

VI

For the above reasons, the Court finds this proposed measure in violation of Article 15§ 5.3 of the ASUO Constitution, which requires that ballot measures must be "worded in a clear and objective fashion." Therefore, the proposed reapportionment ballot measure is not approved for placement on the Spring 2014 Election ballot. Furthermore, members of the ASUO are abjured to refer to the Green Tape Notebook when crafting ballot measure proposals.

It is so ordered.