



Student Judiciary

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Jessica Ann Schober, ASM Member, Petitioner

v.

Austin Evans, Chair, Committee on Student Organizations, Respondent

JUDGMENT

Cite As: 2004 ASM SJ 14

♦
Nathaniel Romano
Chief Justice

♦
Shelton Roulhac
Chair, Student Elections
Commission

♦
Grant Collins
Vice-Chief Justice

♦
Timothy Leonard
Vice-Chair, Student
Election Commission

♦
Nicholas Fox
Associate Justice

♦
Yin-Chin Wang
Associate Justice

I

Before Romano, CJ, Collins, VCJ, and Wang, SJ

Mr. Bradley Vogel for Petitioner

Chair Evans and Mr. Fox for Respondent

CHIEF JUSTICE ROMANO announced the Judgment and delivered the unanimous Opinion of the Court.

NATHANIEL V. ROMANO, Chief Justice. Petitioner Jessica Ann Schober brings this challenge to the exercise of jurisdiction by the Committee on Student Organizations (Committee) over Registered Student Organizations (RSOs) alleged to have violated the Student Organization Code of Conduct. This petition presents a question as to the scope of the Student Judiciary's jurisdiction over RSOs, as well as the authority of the Committee.

Respondent Committee on Student Organizations is a university shared governance committee created at the initiative of the Student Council. See, *ASM Const.* Art. XVII (2004); and *ASM By-laws* §3.07(B)(V) (2004). The Committee dates back to the first session of the Student Council. *Creation of Committee on Student Organization*, SC Resolution of October 23, 1994 (*Creation Resolution*). Currently, it is comprised of representatives of the ASM, the Council, the Faculty Senate, the Dean of Students, the Chancellor, and the Student Advocacy and Judicial Affairs Office. *Id.* at ¶5; and *Resolution Expanding the Committee on Student Organizations*, SC Res. 10-0422-A.

These enabling acts further authorized the Committee to enforce the disciplinary procedures set out by the University in its *Student Organization Handbook* and to engage in other ancillary activities. *Creation Resolution* at ¶6. Pursuant to this authority, the Committee established a nineteen-step procedure of receiving, investigating, and disposing of complaints filed members of the university community against RSOs. *Conduct and Disciplinary Processes of the Committee on Student Organizations (Conduct and Disciplinary Processes)* at ¶3. This procedure is the substantive equivalent as the Student Judiciary Rules of Procedure, though of course reflects the needs and judgments of the Committee.

On or about November 8, 2004, Respondent Evans, in his capacity as Chair of the Committee issued a Finding to the UW College Republicans concerning a complaint filed against them by Lori Berquam, apparently an Assistant Dean at the University.¹ *Complaint* at 1; *Findings on Possible Code of Conduct Violation Issued by Austin Evans* (November 8, 2004); *Answer of Respondent* at 2; cf. *Conduct and Disciplinary Processes* at ¶7(g). THE CHIEF JUSTICE denied petitioner's preliminary relief, 2004 SJ Ord. 16. The Court further dismissed several portions of

¹ Neither Dean Berquam, the UW College Republican organization, nor any representative thereof are parties to the case at bar.

the complaint on the grounds that petitioner lacked standing and that those issues were not ripe for adjudication, 2004 SJ Ord. 17. This facial challenge remained and was bound for trial,² which occurred on November 23, 2004. *Id.*

II

As we have long believed, we begin our discussion with the first principles to which this Court is bound. *MCSC v. Greenbaum*, 2004 ASM SJ 9; *see also, United States v. Lopez*, 514 U.S. 549 (1995). Here, the first principles are the principles of jurisdiction, which are further, a fundamental element of the case. Jurisdiction is, ultimately, the *sine qua non* for adjudicative bodies; jurisdiction is the very font of authority for adjudicative agencies to take action and exercise any power. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816).

Jurisdiction, the authority to decide cases and to interpret and apply the law, is founded for all courts in their enabling legislation. As Supreme Court Chief Justice Marshall once wrote for that esteemed body, "courts which are created by written law, and whose jurisdiction is defined by written law, cannot transcend that jurisdiction." *Ex parte Bollman*, 4 Cranch 75, 93 (1807). This basic proposition remains a fundamental canon of the jurisprudential system of American law to which we fully subscribe. *See, They Mayor v. Cooper*, 6 Wall. 247 (1868) (the two necessary enablers of jurisdiction are constitutional capacity to take it, and a legislative act supplying it); accord. *United States v. Finley*, 490 U.S. 545 (1989); *see also, Legal Information Center v. Werner (Appeal)*, 2003 ASM SJ 18 (en banc) (while federal common law is not binding on this Court, when there is a substantial and important aspect of law involved, "we see no reason to reinvent the wheel.")

A. JURISDICTION OF THE STUDENT JUDICIARY

For the Student Judiciary, our jurisdictional authority³ is founded in two distinct grants under the tenth article of the ASM Constitution. *Const.* Art. X §3. Section 3(c) grants the Court jurisdiction "over all cases and controversies" that arise under any law of the ASM while section 3(d) gives the Court jurisdiction "over the discipline of Registered Student Organizations." *Id.* These provisions make it the exclusive jurisdiction of this Court to say what ASM law is. *Richards v. Student Council*, 1997 ASM SJ 1; *cf. Cooper v. Aaron*, 358 U.S. 1 (1958) (holding the courts have the final say on legal interpretation and the application of legal rules).

When construing any provision of law, we use that construction which enables meaning to be given to each word and phrase and that will not render any provision superfluous. *Richards v. Student Council, supra*. Each provision is given that interpretation and construction which accords with the plain meaning of the wording. *Riedl v. Student Election Commission*, 1998 ASM SJ 4. Accordingly, each provision of Article Ten, Section Three constitutes a separate and distinct grant of authority. Thus cases and controversies arising under ASM law does not include

² We further explicitly rejected a dismissal motion based on lack of standing for petitioner to bring this facial challenge itself in an unpublished decision at trial. *See*, Rule 12(a)(4), *SJRP* (2004). This Court believes that the ASM By-laws authorize a broad standing rule. *See, By-laws* §5.04(A)(1); *and* Rule 9(a), *SJRP*. Further, though there is a requirement of "actual harm", *Hiegel v. Evans II*, 2004 ASM SJ 14, this Court has long held that allegations of misconduct on the part of ASM officials is of a lasting and continuous harm to members of the ASM at large. *McCabe v. Evans*, 2004 ASM SJ 2 (Council actions done in contravention of due process are actionable harms); *Kedziara v. McCabe*, 2004 ASM SJ 1 (non-viewpoint misconduct by ASM officers is actionable); *Richards v. Student Council*, 1997 ASM SJ 1 (students have authority to protest allegedly unconstitutional action to the Student Judiciary). Here, while it is unclear whether the Committee is an ASM institution, *see*, II.B, *infra*, there was clearly an ASM action that underlies the complaint, the formation of the Committee by Resolution of the Student Council in October of 1994. That is the basis of harm, and the reason by which the facial challenge can survive a dismissal motion under Rule 12(a)(4).

³ This is separate from other power that is not jurisdictional in nature. *See*, II.C, *infra*.

discipline of RSOs and the discipline of RSOs does not include cases and controversies arising under ASM law.

Determining the full extent of our jurisdiction under section 3(c) is fairly simple. A case “arises under” the Constitution, By-laws, or other laws and rules of the ASM when those documents either create the cause of action or the case is one seeking the vindication of a right created by one of those documents; furthermore, “arising under” jurisdiction includes cases or controversies seeking enforcement of a provision of ASM law. *See, Merrell Dow Pharmaceuticals, Inc. v. Thomson*, 478 U.S. 804 (1986). This is a fairly clear command.

With regard to our disciplinary jurisdiction under section 3(d), we must engage in some form of statutory construction. Petitioner would have us believe that “jurisdiction” has an implicit exclusivity to it, while respondent would have us hold that the Student Council could define jurisdiction at its will, leaving us some, none, or all of the jurisdiction recognized by the Constitution. We disagree with both of these approaches.

Petitioner’s approach fails in that it would violate the basic canon of statutory construction we have relied upon since *Richards*. We see that in section 3(c), the Constitution specifically grants “jurisdiction over **all** cases and controversies...” (emphasis added). This modifier “all” is not present in section 3(d). If we were to give the latter provision the definition requested by petitioner, we would render that word “all” superfluous. We decline to abandon the principle laid down from the earliest days of ASM that each word in the constitution is important and has meaning. *Richards v. SC, supra*.

Respondent’s arguments fail for exactly the same reason. The Constitution grants jurisdiction. Council cannot erase that jurisdiction through fancy footwork of a complex legislative dance. If we are to remain faithful to our duty to say what ASM law is, we cannot judicially re-write “jurisdiction” to mean, “such jurisdiction as the Council deems fit to allow.” If the Constitution is to read as such, then let the Council seek amendment through the ordinary process of amendment. In the meantime, we will continue to honor each and every word, phrase, clause, and provision of the Constitution. *Id.*

This, though, leaves us the necessity to understand just what it is we have jurisdiction over. Surely, we have jurisdiction over the “discipline” of RSOs. But, by discipline, the Constitution cannot mean jurisdiction over all potentially bad acts of any RSO. Otherwise, the Constitution would purport to deprive not only the University, but also local, state, and federal governments and courts jurisdiction over acts violating their law. We must recognize that RSOs are not creatures of ASM, and that there are numerous entities, such as the University and other governmental authorities, that have an interest in controlling the “discipline” of various RSOs. We cannot hold that simply by registering with the University a group of students remove themselves from all authority but this Court. Such a broad definition of “discipline,” while the plain meaning of the term, is not neither pragmatic nor prudential.

Thus, we must look to the general policy goals served by this provision. *Reidl v. SEC, supra*. The ASM Constitution applies only to ASM institutions. We have long recognized that ASM institutions serve only to further the goals of ASM and the student body, not to work on behalf of other institutions; we are not arms of anyone other than ourselves. *Egan & Benishek v. Halamish & Kumar*, 2003 ASM SJ 22; *Hopp v. Bauch*, 1996 ASM SJ 2 (VANCE, J. concurring). Accordingly, by “discipline” we hold that the ASM Constitution refers to disciplinary regulations established by the ASM itself.

B. JURISDICTION OF THE COMMITTEE ON STUDENT ORGANIZATIONS

Under a plain and fair reading of the enabling legislation of the Committee on Student Organizations, *Reidl v. SEC, supra*, there is not a specific grant of “jurisdiction” as such. Rather, the enabling legislation speaks of the “functions” assigned to the Committee. *Creation Resolution* at ¶6 (“Be it further resolved that this committee have the following functions...”). Jurisdiction is, as we have noted, the authority to say what the law is; a function is, in essence a job. Just because a function resembles jurisdiction, they are not the exact same. As we have noted above, words have meaning that we must enforce and apply. *Richards v. SC, supra*.

What authority is granted to the Committee, is the power to “carry out” disciplinary procedures established by the *Student Organization Handbook*. *Id.* Essentially, this comes down to the power to act on allegations of conduct, which violates the *Student Organization Code of Conduct, Conduct and Disciplinary Process* at ¶¶4, 7. The Committee acts on these allegations via the procedures it establishes for itself.⁴ *Id.*

Indeed, as Respondent indicated at the hearing, the Committee has absolutely no authority to act in any matter outside the *Code of Conduct*. That this is so is further borne out by the processes established by the Committee and is recognized in our own by-laws. Under the process set out by the Committee, “[i]f any student organization, registered student, or other concerned party has a complaint against an RSO for reasons other than a Student Organization Code of Conduct violation, they should contact the Student Judiciary directly.” *Id.* at ¶3. Further, the Committee expressly requires that if a complaint falls “under the direct and original jurisdiction” of this Court, then the Chair must forward the complaint to the Court. *Id.* at ¶11, 12. Finally, our own by-laws themselves only recognize the Committee’s authority when dealing with questions of the Code of Conduct.⁵ *By-laws* §5.04(A)(IV), (V). Ultimately, we see that the Committee has authority to utilize the University’s disciplinary procedures to remedy alleged violations of the Code of Conduct as promulgated by the University.

C. INTERACTION OF THESE AUTHORITIES

Understanding the nature of the jurisdictions and authorities discussed above, we find the case becomes much clearer. Ultimately, it is clear to us that this Court and the Committee are functioning in two distinct spheres. There is some overlap, but there is also a much larger area of independent activities. As respondent noted, the proper test is whether, in creating this University committee, the jurisdiction of the Student Judiciary was in any manner circumscribed or hindered.

Both this Court and the Committee have authority to discipline RSOs; the difference is the reason for discipline. As a creature of ASM, this Court disciplines pursuant to regulations promulgated by appropriate ASM bodies. As a creature of the University⁶, the Committee disciplines pursuant

⁴ As respondent noted, the methods by which the Committee investigates and resolves allegations are not the same as the Rules of Procedure followed by this Court. Indeed, respondent indicated that the Committee was not a primarily judicial system resolving “cases and controversies” but, rather, a quasi-administrative institution dedicated to resolving problems found with the conduct of RSOs.

⁵ Petitioner would have us believe that there must be some “quanta” of legal provisions before jurisdiction is appropriate. Petitioner is, of course, correct. However, the only “quanta” needed is one mention, one clause. Petitioner misreads our decision in *Evans v. Roulhac*, 2004 ASM SJ 10, when arguing that “vague” by-laws are less than needed. A vague or conflicting resolution is only invalid when it runs afoul of the Constitution and we cannot reasonably find it to be an actual amendment of that document. The doctrine of that case is a simple application of the concept of hierarchy of laws. See, *Evans v. Roulhac, Denial of Appeal*, 2004 SJ Ord. 15.

⁶ It is true, of course, that ASM participated in the creation of this committee. However, the Committee is a university committee. Such committees are part of the university and have a life independent of the ASM. Because they are an aspect of the shared governance envisioned by Wis. Stat. 36.09(5), however, multiple entities participate in their creation

to University policy. It is possible, of course, for an activity to run afoul of both sets of rules. In such a case, it is entirely proper and appropriate for both this Court and the Committee to exercise such jurisdiction as they have.

It is clear to us that an institution must have authority to enforce its own rules and regulations. Likewise, other institutions generally have no authority to lend their own authority to enforcing the authority of others.⁷ It is indeed “good and proper to limit an institution to its legitimate boundaries, to say that [such institutions] cannot enforce the rules [they] set is a proposition” most troublesome. *Egan & Benishek v. Halamish & Kumar, supra*, (ROMANO, J. concurring in the judgment). Because it is the University’s policies that the Committee enforces, and because the Committee is a university committee, and, as such, operates independently of whatever jurisdiction this Court may have.

Accordingly, we further reject petitioner’s contention that the Committee is merely acting under authority “devolved” or otherwise delegated to it by the Student Judiciary. The analogy to the Student Election Commission is a flawed one. The Constitution vests the Judiciary with oversight of ASM elections, not simply jurisdiction. *Const. Art. X, §3(a)*. To oversee is undoubtedly broader than an ordinary grant of jurisdiction. Oversight implies authority not only to settle disputes about and to apply the rules, but also to set the rules and to manage. If we had “oversight” over the discipline of RSOs, then we could say that this university committee is potentially exercising devolved power, but we do not have oversight in this matter, we have jurisdiction. Just as we will not allow the Student Council to unduly limit that authority rightfully given us by the Constitution, we will not unreasonably expand our authority beyond that actually granted. To do so would be to violate basic canons of due process and statutory construction. *See, Const. Art. IV, §2, Richards v. SC, supra*.

Indeed, the situation at bar more closely resembles the situation of GSSF funding than it does that of student elections. In both the discipline of RSOs and their funding there are concurrent interests of ASM and the University. In both, the mere fact the University has some say in the matter does not deprive the ASM of its constitutionally protected voice. Perhaps we can view RSOs in general as occupying a special place in our community. They are subject both to ASM and to the University in a variety of ways. Both sets of interests, those of ASM and those of the University must be protected and are protected by the procedures and institutions recognized by the authority of the respective groups.

It is clear that the situation here is that of two distinct institution functioning in a similar environment and close proximity, but in no way usurping or interfering with each other’s jurisdiction. This Court retains jurisdiction granted it by the Constitution, without any hindrance or interference from the Committee. The Committee acts in such a way as to protect interests that ASM does not.⁸ While there may be some overlap and concurrent jurisdiction in some cases, it

and functioning. The ASM Constitution does not give ASM authority over these institutions, merely the ability to act as the student voice in their creation and functioning. They have been and remain creatures of the university.

⁷ We do note that both the By-laws and the Committees own procedures recognize an appellant jurisdiction of the Court over actions of the Committee. *See, Conduct and Disciplinary Process at ¶18; and By-laws §5.04(A)(IV)*. Such jurisdiction was not challenged by the petitioner and so is not before us. We simply note, though, that there is a possibility that our jurisdiction may not encompass the ability to enforce University policies. At this point, it is still an open question as to whether we could exercise such jurisdiction consistent with the Constitution. *See, Hopp v. Baruch, supra*, (VANCE, J. concurring) (believing that the Judiciary has neither authority to modify University policy nor enforce it).

⁸ For example, in the situation motivating the instigation of this lawsuit, an assistant dean filed the complaint originally filed against the UW College Republicans. *Complaint at 1*. Non-members of ASM have no rights to bring suit in this Court, *cf. Rule 9(a) SJRP* (only members, or groups of members, of ASM may file suits by right). Surely, at the very least, in instances where persons having no remedy before us, the Committee cannot be said to be exercising jurisdiction that is rightfully ours.

cannot be said that this Court loses any of its authority merely because an institution outside the scope of ASM also has some say in what will happen.

III

We thus hold that the Committee has not acted in any manner outside its legitimate activities. It is possible, of course, that at some future point, the Committee entertain complaints against RSOs that are legitimately under the jurisdiction of this Court. In such instances, we of course will act promptly and speedily to assert our authority. However, as facial challenges can only be sustained when there is no situation in which the challenged activities can be legally sound, *Murty v. ASM*, 1998 ASM SJ 14, and we can see that are surely situation in which the Committee is acting within its authority, the petitioner's complaint cannot be sustained.

We hold that the Committee on Student Organization was founded and has its authority consistent with the ASM Constitution's requirements for due process. Accordingly, for the reasons stated herein:

IT IS ORDERED that Judgment be entered on all counts for the Respondent and;

IT IS FURTHER ORDERED that the petition by DISMISSED.

By the Court, IT IS SO ORDERED

Nathaniel V. Romano, CJ

Grant Collins, VCJ

Yin-Chin Wang, SJ

Posted: 11/29/04, 7:15PM
Attest: /s/ NVR