WESTBROOK, J. Plaintiff filed a complaint alleging that defendant violated Article IV section 1 (Nondiscrimination) of the ASM constitution by taking membership in protected categories into account in its selection of appointees to various committees. Plaintiff requests that tainted appointments be voided.

Though we find no pattern of intentional discrimination we do find that the process of selection was so flawed as to violate Article IV section 2 of the constitution (Due Process). We therefore order the implementation of a new interview and deliberation process for all future appointments. Additionally we order that the three appointments made without any process whatsoever be voided and the seats re-opened.

In one specific case we find the evidence that political ideology was taken into account, and therefore that Article IV section 1 was violated, is too great to allow the appointment to stand. Accordingly, we order that the Affirmative Action committee appointments be voided and the seats re-opened.

I. Factual Background
The evidence presented did not prove a pattern of intentional discrimination on the part of any individual, nor a conspiracy among several members of the SGC to discriminate in selection.

Selectors did not use the mission statements of the committees to which they were recommending appointees and in many cases were oblivious as to the function of those committees.

Interview sheets were often incomplete and in several instances only recorded information pertaining to membership in protected categories.

Question 2 of the interview sheet was often used to record the candidate’s political ideology.

The people involved in deliberations were not necessarily the same as those who conducted the interviews.

Three appointments were made without any process whatsoever due to lack of candidates: Noah Stein (Plan 2008 steering committee), David Muhammad (Plan 2008 steering committee), Geneva Finn (UW Federation of Labor committee). In the case of the Affirmative action seat an otherwise acceptable candidate was not given a fair chance of appointment due to Ms. Quinn’s objections which were based solely on the candidate’s
political ideology. It is most likely that this was the case because the other two interview sheets were favorable and Ms. Quinn did not respond to our subpoena and therefore gave no evidence to the contrary.

II. Issues
- Plaintiff raised issue as to whether the consideration of experience resulting from membership in a protected category constituted discrimination in violation of Article IV section 1. Plaintiff alleges that consideration of such experience could necessarily be discriminatory.

We find that the consideration of experience resulting from membership in any of these protected categories, including “known relationship to anyone in any of these protected classes” is not necessarily discrimination. Such consideration is acceptable as long as the candidate clearly explains how their membership gives them experience and how that experience is relevant to the position applied for. Interviewers may then take such experience into account but they may not assume experience solely because the candidate is a member of a protected category.

Thus, to note only the candidate’s membership under the experience question (question 1), regardless of whether this was proffered information, is suspect and insufficient. On its own membership is insufficient proof of experience and may not be taken into account.

- Defendant raised the issue that selectors only took into account categories of experience, background, leadership, and ability to express ideas. Defendant claims that the use of these categories is not discriminatory and that they are acceptable criterion for selection.

We find that selection was necessarily arbitrary and subjective because selectors did not use the committees’ mission statements in their process. Though experience, leadership and ability to express ideas are all acceptable considerations, the decisions of the selectors were necessarily arbitrary and subjective in how above qualities applied to each committee. Therefore, the selection process violated Article IV section 2. The determination of the level of ‘background’ of a candidate must have been particularly arbitrary and subjective as, without the use of mission statements, it is difficult to ascertain on what basis selectors decided a person’s ‘background’ was particularly suited to a specific committee. An additional concern with regards to ‘background’ is that at least one interviewer considered ‘cultural background’ as a part of ‘background.’ We find that cultural background may not be taken into account, only experience deriving therefrom. Accordingly we find that consideration of background is too vague and subjective and contains no attributes that are not covered by the category of experience. Experience, leadership and ability to express ideas may be taken into account but background may not.

III. Conclusion/Remedy
Since we found that selection was necessarily arbitrary and subjective, and therefore in violation of Article IV section 2, SGC selectors must in future implement the following procedure for all interviews and deliberations:

1) A standardized description of the committee, such as a mission statement or charge of the committee must be available to the applicant, and the interviewers.
2) Question 2 on the interview sheet must be eliminated as it pertains too closely to candidates' political ideology.
3) Question 1 on the interview sheet must be rephrased to avoid the use of “background.”
4) The same people who do the interviews must also be involved in the deliberations.
5) All candidates must be subject to the same process. If there are no candidates for remaining seats notice must be given for further interviews.

The Affirmative Action appointments must be voided and the seats re-opened, reinterviewed and re-deliberated. The same must be done for those three appointments where process was abandoned * (see factual background). For all these new interviews and deliberations the above procedure (stipulations 1-5) must be followed.

* Since the Plan 2008 committee is currently meeting, we will allow these three appointees to serve temporarily. Replacements must be made within 3 weeks of the date of this opinion.

It is so ORDERED.

___________________________________
Justice Hughes

___________________________________
Justice Stein

___________________________________
Justice Westbrook