Goldstein, V.C. Austin Evans and Trent Krupp complain that the SEC is illegally preventing them from running in the Fall for the ASM SC by determining them ineligible. They ask the SJ for preliminary relief by requesting a ruling ordering the SEC to allow them to run for the Freshman seats on SEC. I deny the request because I see no likelihood of success on the merits.

Both complainants are in their first year at the University of Wisconsin-Madison. However, both students entered the University with over 24 credits due to credits from Advanced Placement exams. They cite a University policy that defines a sophomore as someone having “at least 24 credits and 48 credit [author’s note- should be grade] points.” They argue that since they only have the 24 or more credits but not the grade points (since AP exams yield only credits and not grades) that they should be allowed to run for the two Freshman seats on SC.

The two complainants argue that the SEC’s ruling that first-year students with 24 or more credits not being able to run for Freshman seats violates the spirit of the election bylaws. They claim the purpose of the bylaw is to prevent people with prior University experience from running for the Freshman seats. They cannot believe, “...that ASM would not want to include excellent students with AP credits as part of their council.” They also claim that considering all first-year students to be freshman, “...is not only our will, but also the will of students, faculty, advisors, and deans of this University.”

The bylaws list four requirements that must be met for an injunction to be granted:
1. The complainant requests the preliminary relief; and
2. It is unlikely that the complainant will be able to receive an effective final remedy without the order, and
3. The complainant is likely to win on the merits; and
4. The defendant will not be severely harmed by the granting of the relief.

With respect to this request, the complainants obviously meet criteria one since they specifically ask for preliminary relief. They also satisfy criteria two for without the preliminary relief they would not be able to run in the election and it would surely be a significant amount of time before a panel could be assigned and the case heard and the elections would already have been completed before that process could take place. There also would seem to be no harm to the SEC by allowing the two complainants to run for the two seats.

However, I find it extremely unlikely that the complainants would win on the merits of the case. To begin with, the exact same issue has previously been disposed of by the SJ in Gibson v. SEC (97-09-26-01-E). In that case, the panel ruled that, “A ‘freshman’ is one who has achieved less than 24 credits. Anyone with 24 credits or more is not a ‘freshman,’ regardless of the length of time they have spent on the campus…” Both of the complainants
have in excess of 24 credits and therefore are not freshmen by the definition used by the
University.

However, the complainants point out that the verbatim text refers both to “24 credits”
and “48 credit points” and since their credits are AP credits, they have no “credit points”
(grade points). To clarify this point, I contacted the Registrar’s Office of the University and
was offered the clarification that any student with 24 or more credits, regardless of the amount
of grade points associated with those credits, is not a freshman student. The SEC is therefore
not in violation of the University policy. As further evidence of that point, come election time,
the two complainants would find that the election program would not allow them to vote for
the freshman seats since the University’s data does not consider the two complainants to be
freshmen (see below).

Additionally, the complainants’ contention that they are in some sort of limbo in
which they have no class standing of any kind is not true. According to University policy,
they are sophomores. The complainants’ interpretation of the credit v. grade points issue is
therefore fundamentally mistaken. In making this decision, I accessed both complainants’
standing from University records and in both cases, they are classified as sophomores.

While it may very well be true that many freshmen now enter the University with
sophomore standing, that does change the fact that neither the University nor ASM define
freshman in any manner other than number of credits when it comes to actual class standing.
If the complainants do not find that policy to their satisfaction, they are entitled to take the
issue up with the University administration or to try and convince ASM to change their
policy. Until then, all SC seats are apportioned on academic units, as the University delineates
them. Although “freshman” may mean one thing in colloquial usage in the University
community, when it comes to “freshman” as it relates to being an academic unit, it is crystal
clear that that refers to a student with less than 24 credits.

As for the claim that the rules were designed to allow all first-year students to run and
the spirit of the bylaws are being violated, this point is irrelevant. Oftentimes bylaws and
other rules and regulations do not actually do as they are intended. It is not at all uncommon
for legislation at any level ranging from city councils to the UN Security Council to have
unintended effects. It seems to be the case here that a rule was created having an intention to
do one thing, and in reality the practical application of that rule over time has led to a situation
where the intended effect is no longer possible. While that situation may potentially be
unfortunate, it does change the fact the current rules do not allow the two complainants to run
for the freshman seats.

To interpret “freshman” as those who are in their first year of college and in their first
year at the University is problematic for a couple of reasons. First, it is not an academic unit
as no academic unit is based solely on time on campus. Further, from a logistical point of
view, it would be impossible, based on the election software currently used, to define
“freshman” in the manner requested by the complainants.

The complainants argue that the SJ has jurisdiction to amend the election bylaws in
this particular situation and they cite Part 4, Article 3, Section 2, D, i of the ASM bylaws
which reads that, “[Amendments to the Student Judiciary and Election Bylaws] ...may be
proposed by any sitting Justice.” The complainants seem to have misinterpreted this rule by
suggesting that, “any sitting justice can amend the election bylaws.” That is clearly not what
is stated in the rule. The bylaw being referred to by the complainants means that any sitting
Justice may propose an amendment to the bylaws. For the amendment to actually happen, it
would ultimately need to be approved by a 2/3-majority vote of the SC at two of their consecutive regular meetings, the requirement for altering the bylaws. Further, I refer to Part 5, Article 1, Section 6, b which requires that election rules are only valid if they, “...are published at least two weeks prior to the filing date of the candidacy declarations at the start of the election period during which they will operate.” In essence, the complainants are asking the SJ to change the election rules *en media res*, and that is clearly not permitted pursuant to the above-cited rule. Even if such a rule would not exist, I would still be hesitant to change the rule in the middle of the election period for that would seem to be a classic example of a due process violation. Also, while the SJ may suspend, “in the interest of justice” Part 4 of the ASM Bylaws (which regulate the SJ), Part 5 of the ASM Bylaws (which regulate the elections), may not be suspended.

Finally, it is a general principal of elections that one should only be able to run for positions that they are eligible to vote for. Since the software used to run the elections uses University data, and since that data classifies both complainants as sophomores, they would not even be able to vote for themselves if they were on the ballot! While all of these circumstances are less than fortunate, the legal issues are still clear. As someone who also entered the University as a sophomore due to advanced standing credit and was also denied certain opportunities as such, I do sympathize at some level with the complainants. However, in the words of parliamentary master Henry M. Roberts, “Where there is no law, but every man does what is right in his own eyes, there is the least of real liberty.”

For the reasons stated above, the request for a preliminary injunction is **DENIED.**

Adam Goldstein, VC
(Note: the VC disposed of this matter due to the fact that it needed to be addressed immediately and the CJ was unavailable)