BECKLIN, J.  At a regular Student Council meeting on October 31st, 2002, the ASM-SC adopted through an amendment bill 09-1031-K, which called for the addition of three new Justices to the Court – the ASM minutes reflect what had occurred. "Representative Presberry objected to the consideration of the motion, which passed by a voice vote. Representative Presberry moved to approve amendment #1 to the agenda. Representatives Nichols and Evans spoke in debate, which focused on the need to add the legislation to the agenda. The question was to amend, which passed by a voice vote; the agenda was amended to add 09-1031-K to a new X.F.1.. Representative Camacho moved to adopt the agenda. Representative Helmrick objected to the consideration of the motion, which failed by a voice vote. The question was to adopt, which passed by a voice vote; the agenda was adopted.” -October 31st, 2002

Clearly, the Student Council had adopted the agenda that added bill 09-1031-K on October 31st, 2002. However, the Council failed to take up the motion during this meeting. At the next meeting on November 14th, 2002, Mr. Evans forgot to include 09-1031-K to the agenda under old business. To correct this, the Chair of the ASM-SC Bryan Gadow, added it to the agenda under old business with acclimation. The resolution was then debated and passed. Later in the meeting, 2/3rds of the Council voted to approve bill 09-1031-K. “Representative Presberry moved to approve 09-1031-K. Representative Helmrick spoke in debate, which focused on the need for new Justices. Representative Helmrick moved to the previous question. The question was to end debate, which passed by an 18-9-0 hand vote. The question was to approve, and those in favor of the question were Representatives Abdelrahman, Camacho, Christenson, Dogs, Evans, Gadow, Hoffmann, Jenkins, McWilliams, Mehta, Nemec, Otten, Presberry, Rahman, SanMiguel, Schlicht, Shereda, Sieb, Thelen, Thompson and Xavier and those against was Representative Weiss. By a roll call vote of 21-1-6, the question was approved; 09-1031-K was enacted by the Council. Representative Helmrick rose to a point of order that the Chair could not vote in the matter, which was not well taken by the Chair. No appeal to this ruling was entertained. Representative Evans asked for unanimous consent to allow for Representative Santi to speak on his vote, which was granted by the Council.” –November 14th, 2002

During the next meeting of the Student Council on November 25th, 2003 there was a motion to reconsider made by Representative Jenks due to the fact that the agenda on November 14th, 2002 did not originally have the motion to approve bill 09-1031-K. The Student Council then decided whether or not to reconsider the motion – they voted to vote to reconsider, but then did not follow up and actually reconsider the nominations at the November 25th, 2002, meeting.
“Representative Jenks rose to a point of order that the motion to ratify 09-1031-K was out of order under the Bylaws, which was not well taken by the Chair. Representative Jenks moved to appeal the decision of the Chair. Representative McWilliams took the chair. Representatives Weiss, Nichols, Camacho and Helmrick spoke in debate, which focused on the error of an officer in regards to the agenda. Representative Helmrick moved to end debate, which passed by a 14-4-0 hand vote; debate was ended. The motion to appeal the decision of the Chair failed by a 10-9-5 hand vote.” –November 25 th, 2002

The ASM bylaws do allow for this procedure to occur; however, the Court questions the selective use in this particular instance when enforcement has been extremely rare. Citing the ASM Bylaws:

Part One: General
Article II: Open Meetings.
Section 2: Public Notice
(c) Every public notice of a meeting of an ASM body shall set forth the time, date and place of the meeting, in such form as is reasonably likely to apprise ASM members thereof. Every public notice must identify all bills, resolutions, main motions, or other legislation that will receive a vote at the meeting by number, if any, and a brief description of content or effect.
(d) If an emergency or difficulty not engendered by the failure of an ASM officer, appointee or employee to comply with this section requires that a matter be considered without public notice at a meeting of an ASM body, then any action taken must be submitted for ratification at the next regular meeting of that body.

The Court does agree with the defense’s argument that the ASM should strive at all times and in all places to make all information as available to the student body as possible. Clearly, the intent of Part One, Article II, Section 2(c) of the ASM bylaws is to see that this goal is achieved. We therefore uphold the ruling of the Chair as legal and appropriate under the circumstances during the November 25 th meeting. However, it is important to note that the bylaws make it perfectly clear that the SC must act to ratify at the next regular meeting under Part One, Article II, Section 2(d) of the ASM Bylaws.

The next regular meeting of the SC took place on December 5 th, 2002. A motion to ratify would have had to have been brought to the floor and voted upon by the SC at this meeting. It was not. The Student Council took no action on the motion during this meeting to ratify bill 09-1031-K. By taking no action, the Student Council by default surrendered its right to ratify this bill under the ASM Bylaws. By adjourning, the Council effectively ratified its previous decision. By allowing the Student Council to vote on January 27 th, 2003 Chair Gadow violated the ASM Bylaws regarding the motion to reconsider.

“Representative Evans moved to adjourn. The question was to adjourn, which passed by a 15-14-0 hand vote. Those present at adjournment were Representatives
Abdelrahman, Blair, Camacho, Christenson, Clark, Dogs, Evans, Gadow, Helmrick, Hoffmann, Horn, Jenks, Lankford, McWilliams, Mehta, Nemcek, Nichols, Otten, Presberry, Rahman, SanMiguel, Santi, Schlicht, Shereda, Sieb, Thelen, Thompson, Tromblee, Weiss and Xavier. Chairs Epps, Patzner and Welygan were also present.” –December 5th, 2002

The Student Judiciary feels compelled to address the structure of the nominations process for Justices of the Court, as some serious problems have occurred and created conflicts between the ASM Constitution and ASM Bylaws. The ASM Constitution is explicitly clear that once Justices are seated on the ASM-SJ they may only be removed under the following circumstances:

ASM Constitution-Article VI: Student Council
Section 6: Powers and Duties.
(g) The SC shall have the sole power to convict on bill of impeachment any elected or appointed officer of the ASM. Cause for impeachment shall be limited to neglect of duties, official misconduct, or malfeasance in office. Impeachment shall be initiated upon the petition of one-third of the SC, excluding vacancies. A three-fourths vote of the entire SC, excluding vacancies, shall be required to convict or remove.

It is necessary to clarify the very limited reasons for which the ASM-SC can impeach justices. Under Section 6(g), Justices can only be removed if they fail to appear at trials to which they are assigned by the Chief Justice, are found by a unanimous verdict of the ASM-SJ to have violated the ASM-SJ Code of Conduct, or having engaged in extreme activities such as accepting bribes in exchange for favorable decisions. Justices cannot be removed for political reasons.

An obvious conflict is created when the Court seats appointed ASM members. The Council possesses the right to ratify nominations under extreme circumstances. However, should any ASM member wish to challenge the appointment process of a Justice, it is not possible for that Justice to be removed once they are seated. Obvious problems arise when students are granted the opportunity to challenge nominations and SC representatives are given the opportunity to ratify bills that place Justices onto the Court – however, once seated these opportunities are stripped away. This cannot be tolerated.

Order(s):
1- The Court finds the Student Council Chair Bryan Gadow violated Part One, Article II, Section 2(d) by allowing the Student Council to ratify bill 09-1031-K after the appropriate deadline. The Court declares that this action be considered void.

2- The Court grants a contingent order upholding Court order S-03-04, barring the Nominations Board from conducting any search-and-screen committee for any 2-year Justice positions until all options for appeal have been exhausted – the Court will notify the Chair of Nominations once this has occurred.

3- The Court orders that Ms. Julia Kraschnewski and Ms. Marissa Courey resume their official duties as Associate Justices of the ASM-SJ once all options for appeal have been exhausted.
4- The Court orders the Chair of the Student Judiciary shall be enjoined from seating any future nominees to the Student Judiciary until all options to challenge their seating has occurred – 4 weeks after the appointment in approved by the SC. Once Justices are seated, they may not be removed except through the extraordinary and extreme action of impeachment.

By the Court, it is so ORDERED.

____________________  ____________________  ____________________
Justice Emily Becklin  Justice Asia Mitchell   VCJ Jordan John Green