

Section 9: Letter Accepting Spring 1996 Amendments

May 10, 1996

Council of Presidents
Associated Students of Stanford University
Stanford, CA 94305

Re: Acceptance of Amendments to the ASSU Constitution

Dear Council of Presidents,

The purpose of this letter is to communicate to you the conclusions I have reached after reviewing the ASSU constitutional amendments passed in this Spring's election.

It appears to me that a significant portion of Constitution 96 remains unchanged from the current Constitution. I thus consider the amendments as additions and deletions to the current Constitution rather than as a completely new document, and I have therefore limited my review to those changes to the current Constitution.

As a matter of educational philosophy, the University subscribes to the view that the student body should be given wide latitude in creating the forms and functions of student government, and in addressing the issues and activities within the purview of that student government. I believe that the history of the relationship between the ASSU and the University has borne out the successful nature of this approach. For this reason, the amendments to the Constitution relating to issues such as the structure and composition of the Legislative and Executive Branches, the committee system, the new Constitutional Council, the activities of the Elections Commission, etc., create no significant issues. The overwhelming majority of the amendments -- and indeed all of the changes that appeared to be the focus of the election -- fall into this category.

A few of the amendments, however, cause me to have significant legal concerns. These amendments could create serious and (I believe) unintended consequences unless placed in the proper context.

The University thus hereby transmits its acceptance of the Spring 1996 amendments to the ASSU Constitution, subject to the conditions and interpretations stated below:

1. The University approves the amendments on the condition that each and every provision in the Constitution, including Article I, Section 6, be interpreted in light of and subject to the terms of the following introductory clause which is to precede the Constitution (which clause is drawn from language required by the Board of Trustees as a condition of its approval of the 1963 Constitution):

“In order to encourage responsible citizenship and the exercise of individual and corporate responsibility on the part of students in the government of student affairs and activities, Stanford University, by approval of this Constitution, authorizes the Associated Students of Stanford University to exercise and discharge major privileges and responsibilities within the framework of policies and regulations established by the University through the President of the University and the Board of Trustees.”

This approval is conditioned on the understanding that the Board of Trustees retains ultimate and final authority over the University under law and under the Founding Grant, anything to the contrary stated or suggested in this Constitution notwithstanding.

It should be noted that the relationship between the University and the ASSU is a multifaceted and long-standing one. All students who enroll at the University are required, as a matter of University policy, to become members of the ASSU, and the University collects student fees on behalf of the ASSU. The University looks to the ASSU to provide forms of government and services, such as a banking mechanism for student organizations. The ASSU nominates students for appointment to serve on University committees. The University provides space for the functions of the ASSU, assists in the audit of its books and provides the insurance services of the University's self-insurance reserve. The University's name is allowed to be in the name of the Association. The broad language of "independence" found in Article I, Section 6 does not, in the absence of the context provided above by the introductory clause, accurately reflect the interrelationships between the ASSU and the University -- many of which are reflected in the provisions of the Constitution itself.

Moreover, under the terms of the Founding Grant, it is specifically provided that the Trustees "shall have power, and it shall be their duty...(t)o manage and control the institution hereby founded" (emphasis added). Although (for example) the Board of Trustees has delegated broad powers to the faculty via the Academic Council to address matters of academic policy, even in that arena the Board of Trustees has reserved to itself the power to approve and disapprove faculty action. Similarly, the Board cannot abdicate its responsibilities under the Founding Grant by ceding management and control in the area of student affairs.

In approving a new constitution in 1969, President Pitzer used similar language to that required by the Board of Trustees in 1963. In my view, the introductory clause required above states the proper relationship between the ASSU and the University, and the terms of this Constitution are therefore to be interpreted in light of and are subject to it.

I invite the ASSU to work with representatives of the University starting in the Fall to clarify any aspects of the relationship that need attention. I am looking forward to discussing these matters further with you in my first meeting with the ASSU Senate in the Fall.

2. The reference in Article I, Section 7 (2) to "all meetings of bodies" is interpreted to mean "all meetings of student bodies."
3. Article I, Section 8 is interpreted to mean that "[t]he power to amend this Constitution [which] shall in perpetuity be vested in the members of the Association" shall be exercised pursuant to the terms and procedures of Article VII of this Constitution.
4. The reference to "constitutionality" in Article IV, Section 2 A and throughout is interpreted to mean "constitutionality under the ASSU Constitution."
5. Because the Constitution is silent on this point, it is my understanding that the initial membership in the Constitutional Council described in Article IV, Section 2 B will be selected in the manner set forth in Section 2 B (2) of that Article.
6. The statement in Article IV, Section 2 D that "[t]he Council shall not have the power to indict" is interpreted to mean that the Constitutional Council shall play no role in the process of student discipline in any fashion.
7. The amendment that proposes to delete Article V, Section 2 F (which Section 2 F reads "Approval of the University: Upon certification of the appropriate election result, the Senate shall submit all those Special Fee requests which were approved by the Association, and the General Fee amounts authorized by the Association, to the President of the University for his or her approval") is interpreted as follows: that the University, of

course, retains the ability not to collect any fee that it finds to be contrary to the policies and regulations established by the University or outside of the educational mission of the University.

For the reasons already discussed concerning the relationship between the ASSU and the University, and for the further reason that (under Article V, Section 3 B) it is the University that collects on behalf of the ASSU the fees that the ASSU imposes on the University's students, this understanding is necessary and is a condition to the University's acceptance of the amendments to the Constitution.

8. The amendment adding the second and third sentences to Article VII, Section 3 ("Failure of the Board (or the University President, if so designated) to take action within 90-days of receipt of the proposed amendment, or some later date as approved by a two-thirds vote of the Senate, shall constitute unconditional acceptance of the amendment. It shall take effect immediately, unless the amendment specifies a later date.") is not approved. Although I am confident that I or a future president of the University would act expeditiously in reviewing submitted amendments, one can readily imagine a situation in which either the issues involved or the surrounding circumstances, or both, would make the 90 day deadline unreasonable. In addition, and for reasons stated later in this letter, it is inappropriate for this amendment to seek to impose such a requirement on the University.
9. Pursuant to the terms of the last sentence of Article VII, Section 4, the approved Letters of Acceptance specifying conditions or interpretations of the Board of Trustees or of the President of the University -- including those letters from the period of 1969 to the present currently appended to the Constitution, as well as this letter -- shall continue to be included in and be a part of the Constitution, and should be placed in an appendix thereto.

Finally, let me note two additional matters that do not rise to the level of conditions or interpretations for the purposes of acceptance. First, although the University is not withholding its approval of the amendment to Article V, Section 8 B (6) stating that the Financial Manager of the ASSU need not be a member of the Association, let me state my strong view that student organizations should be student run. Second, although Constitution 96 did not include an amendment to those portions of Article V, Section 6 that relate to an Operating Budget Allowance, it should be noted that the University no longer provides such a subvention to the ASSU.

In giving its acceptance and approval as stated above, the University authorizes the ASSU to assume and discharge major obligations in the governance of student affairs and activities within the University's educational purposes. I wish the ASSU well in effectuating these amendments and making a successful transition to its new structure of government.

Sincerely,
Gerhard Casper