

December 9, 2011

FROM: Donald Garrett [REDACTED]
TO: The Elections and Disputes Commission
RE: Bill 23 Grievance

Good Morning!

There is no standard form for submitting grievances pursuant to 4CSG § 2.203. Please accept the attached grievance and injunction for consideration in the Disputes Board. If you have any questions, please feel free to contact me. I respectfully request immediate consideration of the injunction and I do request a hearing on the grievance. However, since it is the end of the semester, I do completely understand if the hearing cannot be held until the Spring Semester.

DIG

Enclosures

Donald Garrett

v.

Thomas Lee, Brad Gross, Elizabeth Baires, Matthew Short, Chloe Kingsley-Burt, Taylor Cobb, Sarah Cioffi, Deepika Sharma, Rachel Grimesey, and Jordan Foster

Grievance Questioning the Constitutionality of Bill 23 (32nd Student Senate)

Pursuant to 4CSG § 2.203, I request a hearing on the constitutionality of Bill 23. Bill 23 is in violation of Article II, Section 2; Article II, Section 7; and Article VI of the Student Body Constitution of George Mason University. The grievance is against the authors of the bill and the Speaker, who is in charge of enforcing provisions of the bill.

Background

Bill 23 passed the 32nd Student Senate on Thursday, December 8, 2011. It is a bill that adds a Code of Professional Responsibility to the Code of Student Governance. Members of the Student Senate must sign a statement saying they will abide by the Code or else he or she will not be able to join the Senate.

I. Article II, Section 2 Violation

Article II, Section 2 of the Student Body Constitution states, in part, “Any person may be elected to the Senate, who, at the time of election meets the minimum requirements to be involved in Student Activities.” Bill 23, in part, states:

§ 203 Academic Achievement

- (1) Members of Student Senate will follow all academic rules outlined by the university, their respected colleges, and their professors.
- (2) Members of Student Senate must maintain a cumulative 2.5 GPA. If your GPA is anywhere between a 2.25-2.5 you will be put on a probationary period in which you will have one semester to raise you GPA above the 2.5 minimum. The rule does not apply if you are a first semester freshman or transfer student in which you do not have a GPA.

Furthermore, Bill 23 defines the probationary period as:

§ 306 Probation

Any member of Student Senate on probation will serve as an in-active member of the organization. They cannot fulfill their roles, vote, and must sit in the gallery if they wish to attend the Senate Meeting.

This bill goes beyond the constitutional requirement to serve as a Senator. According to the Office of Student Involvement website (<http://si.gmu.edu/student-organizations/faqs/>), the minimum requirement to be involved with Student Involvement (formerly Student Activities) is a 2.0 GPA. Bill 23 has a requirement that goes beyond the constitutional “minimum requirements to be involved in Student Activities.” By putting Senators in a probation period where they “cannot fulfill their role, vote, and must sit in the gallery,” this bill does not allow an elected, qualified member of the Student Senate serve the people that elected him.

II. Article II, Section 7 Violations

Article II, Section 7 of the Student Body Constitution states, in part, “No Bill of Attainder or ex post facto statute shall be passed.” Collins English Dictionary defines a Bill of Attainder as “a legislative act finding a person guilty without trial.” Provisions of Bill 23 have language that makes it a Bill of Attainder. More specifically, it states:

§ 301 Statement

Upon joining Student Senate members must sign a statement reading, “I, as a member of Student Government, will uphold the Code of Professional Responsibility.” All members must sign this pledge annually. The Student Government Advisor will keep this on file and ensure each member has signed the statement. These statements are public record.

§ 302 Personal Exclusion

Any member choosing not to sign a statement is excusing themselves from their role in this organization. Furthermore if at any time a member feels they cannot uphold this code they may excuse themselves from their role in this organization by submitting a letter of resignation to the head of their respective branch of Student Government.

This is a clear cut case of a bill of attainder. If a member of the Student Senate chooses not to sign the statement, it is assumed that he is not going to abide by the rules and forces him to resign without giving him the benefit of the doubt or a trial.

Bills of attainder must have a punishment attached. The punishment in this provision of Bill 23 is that a Member of the Student Senate is forced to resign if he does not agree to take this unconstitutional oath.

Furthermore, this bill gives authority to the presiding member of the Senate and its committees the ability to punish without a trial. In part, the bill states:

§ 303 Presiding Member

The presiding member of any meeting has the right to excuse any member for unproductive, inappropriate, or disruptive behavior. The presiding member has the right to interpret what constitutes such behavior.

In parliamentary law, the presiding officer does not alone have the ability to remove the member from a meeting. According to Robert’s Rules of Order, a member may only be removed from a meeting if 2/3 vote orders it. By having a 2/3 vote, that at least is somewhat of a trial. This bill gives authority to a presiding officer to suspend a member from his service to the Senate or a Committee without a trial of some sort.

III. Article VI Violation

Article VI of the Student Body Constitution lays out the procedure for the removal of a Member of Student Government. Bill 23 usurps the EDC’s role in the removal process and goes against the goals and aims of Article VI, Section 2.

Article VI has a two step impeachment process- the Senate alleges malfeasance, corruption, negligence, dereliction of duty, or misconduct then the EDC decides if the alleged party is responsible of the allegations. Bill 23 usurps the EDC's authority in the impeachment process.

Allegation is defined as "A claim or assertion that someone has done something illegal or wrong." The Student Senate has the power to allege; however, Chapter 2 of Bill 23 goes beyond that and defines what it believes malfeasance, corruption, negligence, dereliction of duty, and misconduct are. The EDC's role in the impeachment process is to find if the alleged party is responsible of the allegations. Taking that into consideration, their role is to define what malfeasance, corruption, negligence, dereliction of duty, and misconduct are. In short, when the Senate passes a resolution of impeachment, it asks the EDC to define what the aforementioned terms mean. The Elections and Disputes Commission in the decision on Grievance 2001-008 highlighted that a single branch of Student Government could not usurp the roles and responsibilities of another. Bill 23 does just that.

Bill 23 also goes against the goals and aims of Article VI, Section 2. In part, it states, "This article, regardless of the previous articles, lays out a final, simple and efficient form in which impeachments will be conducted from now on."

Section 305 of Bill 23 adds a 4 step process for impeachments to be carried. A provision of the bill states:

The accumulation of a forth strike, by unanimous decision of the Leadership team, will result in a resolution being submitted by Leadership with articles of impeachment. If not removed by the senate then all consecutive strikes will be treated the same.

Article VI, Section 2 lays out a simple process where a Senator presents an article of impeachment, the Senate decides on it, and then if it passes it is transmitted to the EDC. Bill 23 implies that impeachment resolutions may only be brought up by the "leadership" of the Student Senate if and only if an individual has received 4 strikes. Impeachment proceedings conceivably could be brought up after the first strike but this bill seeks to thwart that.

Severability

If the Elections and Disputes Commission finds that Chapter 2 of this bill is unconstitutional, the entire bill must be stricken as unconstitutional pursuant to 1 CSG § 206 Subsection (2):

§ 206 Severability

Any provision of this Code, or the application thereof, which is held invalid by a court of Student Government, or the governing or administrative authority of the University, shall not affect the validity of other statutes, provisions or applications of this Code that can be executed without the invalid provisions or applications. The provisions of all statutes are severable unless:

- (1) The statute specifically provides that its provisions are not severable;

- (2) It is apparent that two or more statutes or provisions must operate in accordance with one another.

Chapter 2 of Bill 23 is the driving process behind the entire piece of legislation. It is what allows for violations to be filed. If this portion of the bill is invalid, then the rest of the legislation cannot stand.

Miscellaneous

Please receive a copy of Bill 23, as signed, from the Student Government Advisor. It was amended in Senate and I do not possess an engrossed copy.

Donald Garrett

v.

Thomas Lee, Brad Gross, Elizabeth Baires, Matthew Short, Chloe Kingsley-Burt, Taylor Cobb, Sarah Cioffi, Deepika Sharma, Rachel Grimesey, and Jordan Foster

Request for an Injunction Against the Enforcement of Bill 23 (32nd Student Senate)

The petitioner, Donald Garrett, respectfully requests that the Elections and Disputes Commission prohibit the enforcement of Bill 23 until its constitutionality is decided. Section 301 of Bill 23 states:

§ 301 Statement

Upon joining Student Senate members must sign a statement reading, “I, as a member of Student Government, will uphold the Code of Professional Responsibility.” All members must sign this pledge annually. The Student Government Advisor will keep this on file and ensure each member has signed the statement. These statements are public record.

Members of Student Government would be bound to this provision starting in the Spring Semester. If violations and strikes are filed against someone and this bill is found unconstitutional, there is a possibility that a member of the Student Senate could be suspended, placed on probation, or removed. This injunction would prohibit any issues arising from this enforcement of this bill if it is proven unconstitutional.