

Opinion of the Court

**SUPREME COURT OF THE ASSOCIATED STUDENTS OF
COLORADO STATE UNIVERSITY**

CONTESTATION OF BILL #4406: CONSTITUTIONAL AMENDMENT: THE \$10M CAP

DEPUTY CHIEF JUSTICE JORDAN delivered the opinion of the Court.

When examining this bill, we were given two areas of concern by the requester, Andrew Bondi Senate Recruitment & Retention Officer. He defined these areas as the following: “If referendums, specifically used by Bill #4406, are constitutional as per the ASCSU Constitution specifically pertaining to viewpoint neutral criteria required by the CSU BOG Institutional Plan for Student Fees and Charges...” and “The ASCSU Senate’s ability to control the SFRB’s bylaws.”

After reviewing the legislation, the court developed two questions we decided needed to be answered: if the survey called for by Bill #4406 constitutes a referendum, and if the ASCSU Senate has the ability to dictate the bylaws of an organization such as the Student Fee Review Board (SFRB).

We first want to address why it is important if the survey outlined in Bill #4406 is a referendum. I reference the Associated Students of Colorado State University (ASCSU) Constitution, Article VII, Section 7: “Referenda shall not deal with any aspect of student fees.” Thus if the survey in question is a referenda then it is in violation of the ASCSU Constitution.

This survey being a referendum is problematic for multiple reasons. First, a select (and often unfortunately small) number of people vote in the ASCSU elections. Second, this group is not necessarily representative of the student body. Third, this group may not be fully informed of all the factors behind the student fee increase. Fourth, in the US Supreme Court Case *Board of Regents of the University of Wisconsin System v. Southworth*, the US Supreme Court decided that a referenda of students was not a viewpoint neutral manner for determining student fees, and CSU Board of Governor’s Institutional Plan for Student Fees and Charges requires the SFRB to make its recommendations in a viewpoint neutral manner.

In a 6-0 decision, the ASCSU Supreme Court decides that the survey does constitute a referendum. We hold that by placing the survey within the context of the elections, it puts the members of the SFRB in an awkward position. If any of these members vote against what the survey puts forward, they may be persecuted, or have this decision held against them in the future, even if their own constituents felt the measure was necessary, or the member themselves felt the increase’s positives out-weighed its negatives. Essentially, while the survey is technically nonbinding, in effect it would be binding on the members of the SFRB. By being a referendum, the survey this bill calls for is unconstitutional.

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Secondly, we need to address the ASCSU Senate's ability to control the SFRB's bylaws. Bill #4406 calls for a constitutional amendment to the ASCSU Constitution that would modify the SFRB to have its bylaws be "within the boundaries set forth by the Constitution of ASCSU." This would give the ASCSU Senate the ability to decide operations of SFRB with constitutional amendments.

In a 6-0 decision, the ASCSU Supreme Court decides that the ASCSU Senate does not have the ability to dictate the bylaws of the SFRB. The SFRB exists as an entity outside of ASCSU. It is not a part of ASCSU. If the ASCSU Senate were to set boundaries for an organization that exists outside of it, this sets a precedent allowing the Senate to set boundaries on other organizations that exist outside of ASCSU and the ASCSU Senate does not have this ability. If this were to happen in the context of SFRB it is especially problematic considering that the SFRB also approves the student fee for ASCSU. While Bill #4406 may not make any mention of the ASCSU Fee, it does allow for constitutional amendments to be made that could make changes in ASCSU's favor. We considered this situation to be a conflict of interest that should not occur. Article VIII, section 12 states: "The Student Fee Review Board shall have the power to establish its own Bylaws, rules of order, plan of procedure and fiscal rules as its members deem necessary." There is a reason that this clause exists in the constitution. It could be assumed that the SFRB would have this power, but it is stated in order to tell the rest of ASCSU that it does not hold power over the SFRB. Thus, the premise of this bill—to require the SFRB to change its bylaws—is unconstitutional.

Finally, we wanted to express our worry that a bill such as this survived in the ASCSU Senate for as long as it did. The ASCSU Senate holds "the power to initiate and enact legislation" per Article II, section 1, this power includes the power to vote down bills that may not be favorable; this includes the ability to end debate and vote down a bill that is contentious, but disliked by most. We trust in the ability of the ASCSU Senate to use this power in the future.