

## TAX REFERENDUM DECISION

State University of New York at Albany, Student Association, Supreme Court, Decision On The Mandatory Student Fee "Referendum" of October 23-25, 1968.

Under consideration is the constitutionality of the "referendum" on the mandatory student fee held October 23-25, 1968, which was subsequently challenged in referrals presented to the Supreme Court of the Student Association of the State University of New York at Albany by Paul Schlecht and Steve Kichen and by Keith Nealy. The Court now renders its decision.

RE: The Nealy referral, Part II A and B, and Schlecht and Kichen referral Parts 1 and 4.

Point 1 of the Schlecht and Kichen referral under "Statement of the Defects" states: "The wording of the referendum was editorialized in favor of the affirmative position." Point 4 states: "The ballot of the referendum did not mention that if passed the tax would go into effect next semester." Part II A of the Nealy referral states: "The referendum itself did not mention that if passed the tax would go into effect next semester." Part II A of the Nealy referral states: "The referendum itself did not clearly state the purpose of the referendum." Part II B states: "The referendum 'electioneered' on the ballot itself."

The Supreme Court defines 'referendum' as the submission of a legislative act to the students for a binding vote. In establishing this definition we have drawn from two sources: BLACK'S LAW DICTIONARY, which defines 'referendum' as "a method of submitting an important legislative measure to a direct vote of the whole people," and WEBSTER'S SEVENTH NEW COLLEGIATE DICTIONARY, which defines referendum as "the principle or practice of submitting to popular vote a measure passed upon or proposed by a legislative body or by popular initiative."

The Court will now use its definition, established above, to clear up the meaning of the word 'referendum' as used in the Constitution and laws of the Student Association. Article VII (Amendments) of the Student Association Constitution states:

SECTION 1: An amendment to the Constitution may be proposed by petition of two-thirds of Central Council.

SECTION 2: Any amendment so proposed shall be ratified through referendum by three-fourths affirmative vote, at least twenty percent of the Student Association voting.

The referendum required by the Constitution for the ratification of an amendment is of a specific nature: a measure passed by Central Council goes into effect upon a three-fourths vote of at least twenty percent of the members of Student Association.

ELECTION PROCEDURES (CC 6768-61) treats a referendum as an election, which the Court agrees it is. But a referendum is not governed by CC 6768-61 because the accompanying ELECTION BILL (CC 6768-64) makes no mention of referenda. Referenda are, however, discussed in STUDENT TAX POLICY (CC 6768-47), Section II, Part 3a, which states that "voting in a poll or referendum affecting the student body as a whole shall not be contingent upon the payment of student tax."

The Court's definition of 'referendum' ("The submission of a legislative act to the students for a binding vote") is in accordance with the use of the word 'referendum' in Article VIII, Section 2 of the Student Association Constitution. The Court calls incorrect the use of the word 'referendum' when applied to opinion polls dealing with political and social problems.

The legislative act submitted to the students in a referendum goes into effect as provided for in the act itself. This is in keeping with the definition of 'referendum': "a legislative act . . ." The act shall be in bill form, as prescribed by precedent and current usage in Student Association. Bills presented in Central Council and elsewhere are of this form:

Bill number

Organization  
State University  
of New York at Albany

Title

Date of Introduction  
Introduced by: Name

It is hereby proposed that the following be enacted:

I. Provisions of the bill

II.

III. The last number should state by what date the bill goes into effect.

The proposal in the "referendum of October 23-25 should have been in the form of a bill containing a legislative act for a vote by the student body. Nowhere on the ballot or accompanying the ballot was a proposed statute presented to the students. As is the case with a referendum on a constitutional amendment, the text of the proposal must be placed on the ballot or be available to every voter in the polling area.

The Court will now consider the ballot as presented to the voter.

"With the increased outcry by the student body for bigger, better, and more activities, of recreational, social, and educational nature there is increased financial need. In order that the Student Association may come closer to meeting its finances, it hereby refers the question of a mandatory student fee to you, the Student Body. Are you in favor of a mandatory student fee? ( ) Yes ( ) No.

The Court rules that since no legislative proposal was presented to the student body in the "referendum," there was no referendum. That is, there was no "submission of a legislative act to the students for a binding vote." The Court so rules by a vote of 5-0-0, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring).

The Court now feels it must define 'poll.' The Court agrees with the definition of WEBSTER'S NEW WORLD DICTIONARY that a 'poll' is "a voting or expression of opinion by individuals." Applying this definition to the ballot in question, the court rules that this ballot, as structured, can only be a poll of students on the question of whether or not the students were "in favor of a mandatory student fee." Therefore, the results of the election may be used only as an expression of opinion by the student body, and any legal action taken by Central Council as a result of this election in regard to imposing mandatory student fee is unconstitutional. The Court so rules by a vote of 5-0-0, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring).

On October 31, 1968, Central Council passed two bills dealing with a mandatory student fee: CC 6869-61, WAIVER OF PAYMENT OF MANDATORY FEE FOR ECONOMIC REASONS; and CC 6869-62, PENALTY FOR NON-PAYMENT OF MANDATORY FEE.

Both these bills assumed the existence of a mandatory student fee; but, as the Court has established at length above, no mandatory student fee was ever approved by the student body in a legal referendum. The Court therefore declares the two bills cited above (CC 6869-61, CC 6869-62) illegal and unconstitutional by a 5-0-0 vote, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring).

The Court will now quote from the resolution of the Board of Trustees of the State University of New York of May 8, 1968.

## 1. STUDENT ACTIVITY FEES

The student body at each State-operated campus may determine, either directly or through duly elected representatives on the Student Council or other organization chosen by the student body, if so empowered, to fix and assess upon themselves an annual fee for the support of programs of an educational, cultural, recreational and social nature approved by the student organization duly elected by and representative of the student body. The fee may be fixed in different amounts for designated classes of students other than full-time.

## 2. PAYMENT UPON REGISTRATION

... If it is determined in an individual case that payment of the fee approved by the Chancellor would cause undue hardship such student may nevertheless be allowed to register and his obligation to pay such fee shall thereafter be subject to such provisions as the representative student organization shall make for deferment or waiver thereof in such cases.

## 3. COLLECTION AND DISBURSEMENT

... Control over disbursement of the proceeds of the student activity fee shall be exercised by the appropriate organization representing the student body . . .

## 4. NON-PAYMENT

The representative student organization may determine to deny participation in student activities in the case of any student who has not fulfilled his obligation with respect to payment of the student activity fee . . .

The Court takes this opportunity to point out to the Central Council that as presently constituted it does not contain any "duly elected representatives of the student body" as a whole, but only of the Student Association, i.e., the students who have paid the present voluntary student activities fee. Therefore, if it is to act in accordance with the decision of the Board of Trustees, the Central Council as it now exists cannot institute a mandatory student fee, take any action to implement the fee once it is adopted, spend any monies received from such a mandatory student fee, or control any "programs of an educational, cultural, recreational, and social nature" to be financed by such a fee.

If the mandatory student fee were to go into effect in the spring semester, 1969, the present Central Council would have to be dissolved and new elections held in which all students could vote, in order to have a Central Council composed of "duly elected representatives of the student body."

The Court suggests that the mandatory student fee not go into effect until the fall semester, 1969, since the incumbent members of Central Council were elected by members of Student Association last spring and early this fall for the normal term of one year. If the mandatory student fee does go into effect in the fall semester, 1969, the Central Council for the year 1969-70 will have to be elected by the entire student body, since the entire student body will be included in the Student Association under a mandatory student fee. However, the Court points out that a constitutional amendment may be necessary to extend the franchise to students who are not members of Student Association.

RE: Nealy referral, Part I A

The Nealy referral states that CC 6869-41 "does not establish whether or not a student had to have paid the student tax in order to vote."

The Court finds the "referendum" of October 23-25 constitutional on this point by a 5-0-0 vote, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring). The "referendum" was an election, as implied by CC 6768-61; however, it was not an election governed by this particular bill (CC 6768-61), but rather by the STUDENT TAX POLICY (CC 6768-47), Section II, Part 3a, which states that "voting in a poll or referendum affecting the student body as a whole shall not be contingent upon the payment of Student Tax." Article I, Section 3, paragraph 'g' of the Student Association Constitution states that "the Central Council shall provide for proper and just Student Association elections and tabulation of the results thereof;" and since Central Council had already established eligibility for voting in a "referendum affecting the student body as a whole" (CC 6768-47), there was no need for CC 6869-41 to do this.

RE: Nealy referral, Part I B, and Schlecht and Kichen referral Part 5.

The Nealy referral states that CC 6768-41 "did not establish a minimum vote in the referendum. Hence, according to the tacit interpretation of the referendum given by CC 6869-62, any small number of students could have voted with the same effect." The Schlecht and Kichen referral states: "It was never mentioned what percentage of the vote was needed to pass the referendum."

The Court rules that the "referendum" was constitutional on this point by a vote of 5-0-0, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring). Nowhere in the Constitution and laws of Student Association is a minimum vote required for a referendum, other than a referendum on a constitutional amendment. Also, the Board of Trustees of the State University of New York mentioned no minimum percentage requirement in its resolution authorizing the levying of a mandatory student fee.

RE: Nealy referral, Part I C.

The Nealy referral states that CC 6869-41 "did not state any purpose for the referendum."

The Court finds that CC 6869-41 only directed "Election Commission to include in its elections of October 23-25, a referendum on mandatory student tax." Bill CC 6869-41 is similar to CC 6768-78, which also set up the machinery for a referendum; such a bill does not have to state the purpose of the referendum.

The Nealy referral further states that "it must be assumed that it had no purpose, except perhaps informational. This is not consistent with the action taken on CC 6869-62."

The Court has already ruled that the results of the "referendum" can be used only for informational purposes, as to the opinion of the student body concerning a mandatory student fee.

The Nealy referral goes on to state: "Also it was not made clear to the voter that the results of the referendum would determine whether or not we would have a mandatory student fee," and "furthermore it was not clear what the penalties would or could be for not paying the student fee, and so the voter could not intelligently cast his ballot."

As the Court found above, CC 6869-42 only established that a referendum would be held. The act submitted for student approval in a referendum would itself contain information concerning the effective date of the act. No such act was ever passed, but in any case, CC 6869-41 is definitely not a substitute for that act.

RE: Nealy referral, Part I D

The Nealy referral states that CC 6869-41 "did not provide for the wording of the referendum." Again, the Court points out that the "wording of the referendum "would be the actual text of the act being submitted to the students for a binding vote. Any directions for voting printed on the ballot are to be drawn up by Election Commission, in accordance with CC 6768-61, ELECTION PROCEDURES, Section III, "Use of Ballots."

RE: Nealy referral, Part III A, and Schlecht and Kichen referral, Parts 2 and 3.

The Nealy referral states: "The results of the voting were not adequate for the mandation of student tax," and "this mandate would curtail the rights of a minority (namely those who do not wish to pay student tax)." The Schlecht and Kichen referral states: "There was a significant number of students who were unable to vote due to the delay in distribution of required validation cards. It is to our understanding that on the third day of polling this situation was realized and these students were allowed to vote, but due to the fact that this was not uniform for the entire referendum, it is an obvious inconsistency," and "information concerning the actual number of students who were unable to vote was unavailable to us due to the fact that the Bursar's office would not or could not give us the required information."

The Court rules that the results of the vote in the "referendum" are constitutional and valid on these points by a 5-0-0 vote, (Justices Folts, Handelman, Heater, Lieberman, and MacMonagle concurring). The only percentage requirement for an election specifically stated in the Constitution or laws of Student Association is the three-fourths vote required for the ratification of an amendment to the Student Association Constitution.

RE: Nealy referral Part III B.

Part III B. of the Nealy referral states "Even if one were to accept the premise that a minority of the student body in a referendum can determine the policy for the entire student body allowing no freedom of choice, it could hardly be called just that a simple majority should be all that is needed. In any body operating under ROBERT'S RULES OF ORDER REVISED any bill which would curtail the rights of a minority requires a 2/3 affirmative vote for passage. It is only reasonable that the same be required in a referendum of the same sort. It was not."

The Court has established above that the "referendum" was in fact an opinion poll. If it had been a valid referendum it would have been constitutional. The "referendum" was not conducted under ROBERT'S RULES OF ORDER REVISED. This manual applies to the conduct of meetings and not to the conduct of elections; elections are governed by the Constitution and laws of Student Association.

RE: Schlecht and Kichen referral, Point 6.

Point 6 of the Schlecht and Kichen states "The ballot and advertising in the ASP was not clear on the status of the graduate student and did not mention that he would receive student tax at half the undergraduate fee."

The Court has decided that this deals with the constitutionality of a student fee and not with the validity of the "referendum". Therefore the Court will not rule on this point.

So Rendered by the Supreme Court of the Student Association of the State University of New York at Albany this Fourth Day of December, Nineteen Hundred and Sixty Eight.

Cheryl Heater, Chief Justice

Peter MacMonagle, Associate Chief Justice

James Folts, Justice

Paul Lieberman, Justice

Jay Handelman, Justice