

November 9, 2002

Members of the Constitutional Council,

Recap of initial arguments

The petitioner has “asked that the Constitutional Council find the failure of Stanford Student Enterprises (SSE) to release public documents unconstitutional, to nullify its rejection of our request, and to instruct it to release its balance sheet, statement of cash flows, and income statement for each year since it was founded, as well as the salaries paid for each of its positions staffed by students or recent students.”

As I argued in our initial filing, I am not allowed to release information that the Board of Directors has deemed proprietary until the By-Law forbidding me to do so has been overturned as unconstitutional.

The Association Constitution provides for freedom of information ‘with the exception of proprietary business information of Association businesses... and personnel records of employees’ (ASSU Constitution, Article I Section 7.1). The Constitution leaves unspecified the definition of proprietary business information.

The Association Legislative Bodies delegated to the Board of Directors of SSE the authority to define information proprietary (By-Laws of the Association, Appendix II.1.H):

- i. “II.1 The following policies shall be determined by the Board of Directors of Stanford Student Enterprises, or its designee(s):
 - i. A specification of what information held by Stanford Student Enterprises may be considered proprietary. Proprietary information shall be available to the President or any member of the Association legislative bodies upon request, but may not be more widely released without the consent of the Board of Directors or its designee.”

The petitioners must challenge the constitutionality of this By-Law, not the act of refusing to release the financial documents. If the constitutionality of this By-Law is overturned, then a new clause must be added to the governing documents indicating who has the authority to deem information proprietary. Only then can the petitioners continue with their request that SSE be forced to turn over proprietary business information.

Update and argument for dismissal of the Petition

In the interest of bringing the case to closure, I have pursued meetings with both the Board of Directors and the petitioners. In these discussions, two material things have happened.

First, on November 5, 2002 the Board of Directors of SSE updated its financial policies to more specifically define “Proprietary Business Information.”

Based on this new Board policy, I am releasing to the petitioners the balance sheet, statement of cash flows, and income statement for each year since SSE was founded, as well as the salary ranges for positions staffed by students or recent students.

It’s important to point out *that this release is in accordance with the By-Law, not in violation of it*. The Board updated its policy, and I am now able to release the requested information.

At this point, the essential request of the petition has been met, and the Council should dismiss the case under Section 4 of the Rules of Order of the Constitutional Council:

4. At any time after the first meeting on a given case has been announced, the Council may dismiss a case, if any one of the following conditions is met:
 - a. All of the petitioners withdraw their complaints, or
 - b. The Council deems that no act has occurred, or
 - c. At the Council’s discretion, any other set of circumstances that warrant dismissal.

Argument for dismissal opinion upholding the By-Law

Second, based on my discussions with the petitioners, I expect that there may be future requests for disclosure of information that the Board of Directors of SSE has deemed proprietary (for example, detailed income statements by Enterprise).

In the Council’s dismissal of the Petitioners’ case, it would be in the best interests of the Association, the Council, SSE, and the Petitioners to definitively uphold the By-Law referenced above, heading off the issue now, rather than submit everyone to another Petition process to deal with the same issue.

The question to consider in this opinion is whether or not the By-Law is constitutional. The basic arguments for upholding the By-Law are as follows:

The freedom of information clauses, first of all, are incredibly important because Association members make better electoral decisions when they have complete information about their student government.

Why, then, did the authors of the Constitution add an exclusion for proprietary business information? Because the framers recognized that the long-term interests of the ASSU demanded that SSE be allowed to operate as a true business, independent of political involvement. The specific allowance for proprietary business information within the freedom of information clause is a clear statement that the long-term interests of the Association depend fundamentally on SSE’s ability to compete fairly and succeed in the marketplace, and to be insulated from the short-lived winds of year-to-year politics.

Why does the By-Law appoint the Board as the entity best suited to make this determination? Because the Board is comprised partly of business professionals, with a mix of specific business expertise that is necessary to understand and advise SSE and partly by students, whose perspective ensures that SSE serves the best interest of the members of the Association. The active student majority on the Board, led by the Association President and members of the Graduate Student Council and Undergraduate Senate, ensure that appropriate student oversight is maintained.

To provide additional background to help close the case, I'm attaching a letter from the previous six CEOs of Stanford Student Enterprises.

Thank you for your time and consideration of this matter.

David Endelman
Financial Manager, ASSU
CEO, Stanford Student Enterprises