

To all concerned parties:

Regarding the request for Judicial Council member recusal:

Following a discussion of conflicting interests due to affiliation with MPIRG, member of Judicial Council, Jeff Garcia, chose to abstain from all discussions of and decisions regarding the submitted student appeal.

Regarding the appeal of the April 5-6 MPIRG Referendum:

Based on Article XI, Sections 3-4 of the Macalester College Student Government Constitution, we have determined that election procedures were not followed appropriately for the MPIRG Referendum. Hence, the published results of the MPIRG Referendum (not the Executive Office Elections) are invalid.

Article XI states the following:

Section 3. The LB may call for a referendum on any issue which it feels should be decided by the student body.

Section 4. The Election Procedures Commission (EPC) shall schedule a forum to discuss any proposal prior to the election.

Section 3 refers to the validity of the referendum, and its distribution to the student body. As a matter of student interest, the referendum was correctly distributed by the LB in accordance with its contract with MPIRG. However, the failure to schedule and promote a community forum to discuss the referendum prior to the election is a clear violation of Section 4. Without an informed voting constituency, the outcome of this election may not accurately depict the will of the Macalester community. Therefore, the vote on the referendum is null.

The Election Code in the MCSG bylaws only regulates elections for offices-- as stated in Article VIII, Section 1.1.

Section 1: Purpose

1. This election code shall govern all elections for all elected offices within the Macalester College Student Government (MCSG).

The standards outlined in the Election Code are not mutually applicable to elections for elected offices and referendums. An argument cannot be made to compare publicity and campaigning procedures between the two, as they are explicitly discussed in distinct articles of the Constitution.

However, in examining the complaint in reference to the Election Code, we discovered a lack of formal guidelines for conducting votes on referendums. The only mention of referendums in MCSG governing documents is Article XI of the Constitution. We believe that the omission of regulations for referendums in the Bylaws could fuel future debates on the constitutionality of their fair election-- as seen in the present circumstance.

Furthermore, the Constitution denotes three separate kinds of referendums:

- Student-initiated on any LB action [Article XI, Section 1]
- LB initiated on any matter it believes to be pertinent to the student body [Article XI, Section 3]
- Dissolution of MCSG [Article XIV, Sections 1, 2, & 4]

In the interest of clarity, **we recommend disambiguation of the various forms of referendums**. Additionally, **we strongly suggest that the MCSG review the Bylaws and discuss relevant regulatory procedures of referendums up for vote, and implement them to uphold a fair democratic electoral process.**

With the end of the semester approaching, **we propose that the upcoming Legislative Body Representative Election ballot include the MPIRG referendum**. We assert the importance of fair and consistent election procedures, even with the current lack of explicit and formal regulations in the Bylaws and Constitution. As the only procedure currently mandated, **we consider it imperative that a community forum be called in advance of the ballot**. Pertinent information should be distributed to the student body prior to both the forum and the elections, as this is crucial to ensure an informed constituency.

We note that it may be convenient to hold the referendum forum as a distinct event, but in conjunction with the LB Candidates forum (required by Article VIII, Section 6.2 of the Bylaws). We know that time is limited, especially with the end of the semester approaching, but we maintain that the entire student body must be aware of the referendum well enough in advance to develop an informed decision. According to Article 3 of the MCSG/MPIRG agreement, this referendum is to be carried out "in consultation with MPIRG". We encourage both parties to participate equally in raising voter awareness prior to the ballot, along with other interested groups on campus. This may lessen the responsibility that would otherwise rest solely upon MCSG.

Regarding MCSG's contractual obligations to MPIRG:

We do not find the re-administration of the referendum on the upcoming spring ballot to be a breach of contract (namely Article 10 of the 2010 MCSG/MPIRG Agreement). MCSG will still adhere to the criteria outlined in Article 3 of the Agreement by including the referendum on the second, upcoming, spring ballot. The

Agreement does not specify which spring ballot the referendum is to be included on, nor does it provide procedures in the event of an invalid election.

We want to emphasize that this new vote is not an attempt to change the outcome (nor an attempt to terminate the contract prematurely [see Article 10]), rather it is in response to the failure to follow constitutional procedures in the first election. Incorrect election procedures constitute an invalid election. According to Article XI, Section 5 of the MCSG Constitution:

These procedures shall not be construed as a means of unilaterally releasing the LB from contractual obligations. Actions which have already been executed by the LB prior to petition verification shall be exempt from these proceedings.

First, Section 5 refers to attempts to renege on previously established contractual obligations. A new and fair election does not automatically abrogate the Agreement. The Agreement between MCSG and MPIRG specifies that the referendum be placed on the spring ballot. Our decision will keep the referendum on the spring ballot; therefore, it should not constitute a breach of contract.

The second part of Section 5 references Sections 1-2 of the same Article. Namely, that the petitions for student body initiated referendums be verified by the Judicial Council before the LB finalizes a contract. The complaint about election procedures is not a petition to overturn the Agreement, therefore it does not need to be verified by the Judicial Council. In any event, as the new Agreement is still in the negotiation stages, it is answerable to student appeals.

We expect that the proposed changes be implemented in an expedient manner, considering the approaching final semester meetings of relevant bodies.

Sincerely,
The Judicial Council (2013-14)