November 1, 2009

Central Student Judiciary
Michigan Student Assembly
Ann Arbor, MI

Via E Mail

Re: “Constitutional Convention”

Dear Members of the Central Student Judiciary:

Please be advised that this office represents Assembly Member Kate Stenvig.

We write this letter in support of Stenvig’s request that you issue a restraining order against the Michigan Student Assembly (MSA) resolution to form a so-called “Constitutional Convention.”

As Stenvig sets forth in her letter, the MSA leaders are attempting to empower a committee composed of nothing other than MSA President’s friends and supporters to propose amendments to the MSA Constitution for ratification by the students. While the MSA’s leaders have not stated what constitutional amendments they have in mind, they must be extremely undemocratic if those leaders believe that they can only propose them by these means.

As Stenvig states, this blatantly undemocratic Resolution clearly violates the MSA’s Constitution. We would add that it is also illegal under both Michigan and federal law. As set forth in numerous cases, the MSA Constitution is a contract between the MSA and the students—and a Michigan court can issue an injunction against any breach of that contract. Mayo v. Great Lakes Greyhound Lines, 333 Mich 205, 214 (1952). Similarly, because the Regents have collected and authorized the MSA to disburse funds and thus to function as part of the government of the University of Michigan, a federal or state court can issue an injunction against violations of the democratic rights protected by the United States Constitution. See, e.g., Welker v Cicereone, 174 F Supp 2d 1055 (CD Calif 2001).

The violation of the MSA Constitution is blatant. Under Article VIII of the MSA Constitution, a proposed amendment to the MSA Constitution can be submitted to a vote of the student body, only it has been proposed by (1) a two-thirds vote of the
Assembly, (2) a petition signed by at least 1000 current students, or (3) a two-thirds vote of a “duly called and elected Constitutional Convention.”

If the MSA’s leaders want to propose amendments to the Constitution, they could attempt to obtain a two-thirds vote by the MSA in favor of specific proposed amendments or they could obtain signatures from a 1000 students in support of a specific proposed amendment. In order to end run these procedures, however, they have created a committee, which they have called a “Constitutional Convention,” and have granted that committee the power to submit any amendment it wants to propose to a vote of the students without any vote by the MSA and without obtaining any signatures from anyone.

Whatever the MSA chooses to call this body, it is not a “Constitutional Convention.” A Constitutional Convention can only be elected by the constituents after a due call or notification of such a vote. The Congress of the United States did not appoint or elect the Constitutional Convention that wrote the Constitution of the United States. That Convention was composed of delegates elected in the various states. Similarly, the Michigan Constitutional Convention was not selected by the Governor and confirmed by the Legislature. It was elected by the voters of the State of Michigan.

The MSA Constitution empowers the MSA to establish the means by which the students can elect a Constitutional Convention. It does not authorize the MSA to decide that it should elect the Constitutional Convention.

Indeed, as unlawful and undemocratic as any election of a “Convention” by the MSA would be, the procedure specified in the Resolution is not even an “election.” Under the Resolution, the MSA’s President is the only person who can nominate the 12 Presidents of the Student Organizations and the 8 students at large. The MSA’s only role is to “confirm”—that is, rubber stamp—the nominations that the President has made.

Thus, the MSA’s President, who was not given this power by the Constitution or by the students, has a veto over at least 20 of the 34 “delegates” to this Convention. This is the procedure that the Resolution dares to call an “election” to a Constitutional Convention. As any student of history knows, this procedure derives from the traditions of monarchs and dictators, not from the traditions of democratic assemblies.

The MSA Central Student Judiciary should not allow the MSA to call its committee of friends and supporters a “Constitutional Convention” as a means of depriving students of their right to elect such a fundamental assembly.

Just as the United States Supreme Court, in its heroic days, struck down laws that violated the Constitution and fundamental principles of democracy, the MSA Central Student Judiciary should strike down this Resolution as a violation of the MSA’s Constitution and of the democratic rights of the students at the University.
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In this crucial time for the University and its students, the MSA Central Student Judiciary should not wait for a court of Michigan to enforce the principles of democracy. *It* should fulfill *its* responsibility to protect the fundamental democratic right of the students before this undemocratic, rump "Convention" proposes undemocratic amendments that it has no right to propose for a vote of the students.

Sincerely,
SCHEFF, WASHINGTON & DRIVER, P.C.

[Signature]

George B. Washington

GW/dt
cc: Kate Stenvig
Michigan Student Assembly