

MEMO

TO: The UHD Faculty Assembly

FROM: The Faculty Senate Executive Committee

RE: Statement on Questions Regarding Ballot Process

DATE: November 17, 2008

One of the ballots that came to you last week (with the questions of confidence and approval) was the product of the Faculty Assembly meeting held on November 11, 2008. A few members of the assembly have raised questions regarding the process used to produce the ballot.

The Faculty Senate Executive Committee has met to consider these questions and their implications. After discussion, the majority vote of FSEC members determined that the ballot process was a viable action as determined by the Senate Constitution. Therefore, the ballots will be counted and the results made available to members of the university campus community.

We believe that it is in the best interests of the faculty to move forward in this way; we ask that as faculty we now concentrate on applying what we learn from the ballots in constructive paths that will produce a stronger academic environment for faculty and students.

As the decision was not unanimous, FSEC offers clarity of the alternative positions in the discussion below and rationale for the final decision.

The processes for the Faculty Senate and Faculty Assemblies are established in the Senate Constitution. The Senate Constitution is our governing document and was created and approved by the faculty. Therefore, FSEC determined that questions must be asked and answered within that context.

FSEC identified the relevant part of the Constitution to be Article 3, Section 5:

Section Five. A meeting of the Faculty Assembly shall be called at least once a semester by the Faculty Senate president and a formal report made to the Assembly on the activities of the Senate. A quorum at Assembly meetings shall be a majority of the Assembly membership. At Assembly meetings, resolutions may be passed in the name of the faculty by a majority vote of all members present or may be referred to the Committee on Credentials and Elections to be voted on through a referendum. The Senate president must call a special Assembly meeting when requested to do so by a petition signed by twenty-five percent [25%] of the Assembly members. The presiding officer of the Senate shall serve as presiding officer of Assembly meetings.

The question that FSEC grappled with is whether the vote to send forward a ballot needed to consist of a *majority of a quorum* or a simple *majority of the members in attendance at the time of the vote*. This relies on the specific interpretation of sentences 2 and 3 and the relationship of the two sentences to each other; it is in this interpretation that FSEC members were not unified.

FSEC recognized the oddity of defining a quorum and then not invoking it in a voting process; however, the specific sentence about voting says “a majority of the members present” and does not refer to a quorum. Thus, at best, there is a question of interpretation rather than a clear requirement for a quorum-based majority. Furthermore, the surface interpretation is one that allows “a majority of the members present” to send something forward to the faculty, which is what occurred on November 11. Anything that interprets the quorum to apply to the third sentence entails assumptions that, while perhaps consistent with notions of some meeting structures, are not actually spelled out. It was further noted by some FSEC members that the writers did not choose the term “quorum” in their third sentence, despite having just defined it, and therefore we could not assume an accidental omission – it could have been an intentional distinction. This would be plausible if the writers recognized the difficulty of gathering a quorum of faculty, given the complex schedules of most assembly members. Allowing a majority of attendees to send a question to all members by ballot is then the mechanism for getting full faculty input.

The dissenting opinion among FESC members maintained that the second sentence in Section 5 requires a quorum of the faculty be present at an Assembly meeting before a resolution can be passed or be sent to the full faculty for a vote.

In deliberations, FSEC also noted the following points:

1. The Senate Constitution is a publicly available document on the website and a link was sent to all faculty in the announcements for the first Faculty Assembly.
2. The “majority of the members present” interpretation was invoked at the first meeting of the Faculty Assembly on October 14. Specifically, a majority of the members present voted to hold another assembly to discuss the topic of academic leadership. The voting numbers were made public and at no point was a question raised regarding the legitimacy of the vote and subsequent action to hold another meeting. While this was not a resolution, it was an action based on the same principle.
3. The question was not raised at the time of the action during the meeting by any members of the Assembly, thereby preventing an opportunity to address the question immediately and avoid the implementation of the vote.
4. Any faculty members who believed the ballot to be unfair had the opportunity to signal such a reaction by how they handled their individual ballots.
5. There is no question that all parties acted in good faith and under the assumption that the actions were appropriate. There was no deliberate attempt to subvert the process.
6. If the alternative interpretation were accepted at this point, the remedy (of denying the ballot) may not address the original concerns, may generate further concerns, and is therefore not in the best interests of the faculty.

In closing, though the decision has been made in this case, the possible complications of portions of the constitution have been noted and will be taken into consideration in any future applications. Furthermore, FSEC reminds the faculty that one of our tasks for next year is a revision/update of the constitution; perhaps this point can be clarified to the satisfaction of all and the document will be strengthened.