The Judicial Council of the Associated Students, University of California, Davis
Majority Opinion of the Council

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Nelson v. ASUCD
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Decided: April 27th, 2018

Judicial Council Chair RYAN GARDINER delivers the majority opinion.

I

On April 17th, 2018, Rebecca Nelson attempted to exercise her constitutionally guaranteed right to initiate a recall election against several ASUCD elected officials. The process that ensued was riddled with inconsistency, confusion, miscommunication, and amounted to a denial of the petitioners right to recall. In this particular case, denial of rights did not occur as a result of an individual's unconstitutional decision making. Even more concerning, this denial of rights occurred as a result of a bureaucratic and administrative process so difficult to navigate that it makes the exercise of one's rights impossible. This case also shed light on the failure of several institutions within the Association, including the Bylaws, our system of elections administration, and the legislative process.

II

As with anything in the Association, the administrative procedures governing recalls are laid out in the ASUCD Bylaws. However, what would appear to be years of legislative tinkering has led to a mangled recall process that runs perpendicular to the ASUCD Constitution.

Two blatantly unconstitutional aspects of the Bylaws include the timeline for initiating a recall, and the threshold for its success. The Constitution is very clear about the timeline for recall elections. Article V Section 4.1 specifies:
“After the Recall Initiative Ballot Measure has been properly verified by the Elections Committee, a Special Election shall be scheduled by the Elections Committee. The Special Election shall be held no less than one (1) academic week and no more than three (3) academic weeks from the date of certification.”

In contradiction to that section of the Constitution is Bylaw 400(B)(a)(ii), which states:

“Initiative Ballot Measure: a measure in which an individual collects eight (8) percent of ASUCD members signatures and student identification numbers to place the measure on the ballot prior to the third week of the fall, winter, or spring quarter of that academic year.”

The Judicial Council has deemed the language “prior to the third week of the fall, winter, or spring quarter of that academic year” in Bylaw 400(B)(a)(ii) unconstitutional. Additionally, Bylaw 402(B)(b) states:

“ASUCD Special Elections shall be conducted on a Tuesday and Wednesday no sooner than two (2) weeks and no later than four (4) weeks after the requisite number of signatures has been verified. After consulting with the party who collected the requisite number of signatures to hold a Special Election, the dates of the Special Election shall be determined by the Elections Committee and publicly released no later than three (3) academic days after the signatures have been verified.”

The Judicial Council has ruled the language “no sooner than two (2) weeks and no later than four (4) weeks” in Bylaw 402(B)(b) to be unconstitutional, as it also contradicts Article V Section 4.1. In addition to the timeframe specified in the Bylaws, the threshold for passage specified for recalls in the Bylaws is contradictory to the threshold specified for passage in the Constitution. Article V Section 4.3 states:

“An affirmative vote by a simple majority of those voting on the issue shall be required to immediately recall the ASUCD official.”

At two points in the Bylaws, contrary information is provided regarding this threshold. Bylaw 407(B)(a)(vi) states:

“Ballot Measures must be approved by the 60% affirmative vote specified in the ASUCD Constitution. Ballot Measures and Recalls take effect immediately upon certification by the Elections Committee and settlement of all appeals, unless a later date is specified by the measure.”
The Judicial Council has ruled the language “60% affirmative” in Bylaw 407(B)(a)(vi) to be unconstitutional. Separately, Section 407(B)(b)(viii) states:

“Ballot Measures must be approved by the 60% affirmative vote specified in the ASUCD Constitution. Ballot Measures and Recalls take effect immediately upon certification by the Elections Committee and settlement of all appeals, unless a later date is specified by the measure.”

The Judicial Council has ruled the language “60% affirmative” in Bylaw 407(B)(b)(viii) to be unconstitutional.

III

The Bylaws themselves were just one aspect of the larger problem the petitioner brought to our attention. The way the process has been interpreted, largely by the Elections Committee and Internal Affairs Commission, was incorrectly executed. However, it is important to recognize that there is not a single member of this Association who has seen these provisions enacted. There has not been a successful recall in the recent history of ASUCD. Therefore, it is understandable and forgivable that mistakes have been made by everyone involved in this process.

The process for requesting a recall is specified in Article V Section 4 of the Constitution and Section 407(B) of the Bylaws. After this ruling has been implemented, if the Elections Committee and the Internal Affairs Commission follows the Bylaws precisely, they will also be following the Constitution. To simplify the process, Judicial Council has studied Bylaw 407(B) intimately and can provide the following steps that involved parties must take.

1. The Petitioner may request an “Initiative Ballot Measure or Recall Petition Request Form” from the Elections Committee. This form must be made available and solicit information such as whether the request is for a recall or initiative, who the individual elected official the recall request is being made against, and the precise reasons for the recall (407 B ii).

2. Upon submission of the “Petition Request Form” the Internal Affairs Commission shall hear and approve the Petition Request Form. They may suggest modifications but not unilaterally make amendments to the request form. The Internal Affairs Commission may postpone consideration of the request form for no more than one week. After consideration, the Internal Affairs Commission Chair shall sign the request and return it to Elections Committee (407 B iii).

3. Upon receiving the Internal Affairs Commission signed Petition Request form, the Elections Committee has two academic days to prepare and present the official recall
petition. The Petitioner must identify a Recall Coordinator to the Elections Committee at this time (400 B iv). The Recall Coordinator has four academic weeks from the date and time the petition is presented to them to collect a number of signatures equal to 8% of the membership of ASUCD (400 B vi).

4. Elections Committee has three academic days to disqualify or qualify the petition (400 B vii).

5. Should the petition be qualified, the Elections Committee must call a special election. The election must be held within one to three weeks after certification (Article V Section 4.1).

6. The ballot will include Elections Committee’s description of the reasons for the recall and options to vote “Yes”, “No”, or “Skip”. Should a simple majority vote “Yes”, the elected official in question shall be immediately recalled.

Judicial Council found the largest issue in implementing this process seemed to be the Elections Committee and Internal Affairs Commission, and those assisting them, mistakenly not differentiating a Petition Request Form from the Petition itself. To remedy this, all Elections Committee has to do is create the form and make it available to the petitioner.

This issue is, however, about much more than just a form or petition. This is about what voters or signatories will see on the ballot and petition, respectively. There is much debate surrounding the merits of this recall, and that debate is certainly warranted. However, that discussion should occur between the recall opponents or supporters and the voters. The petitioner has the opportunity to write their reasons for the recall on the petition request form. Elections Committee has the power to prepare and present the petition. According to Article V Section 4.2, specific statements of the reasons for the recall must appear on the petition. Therefore Elections Committee shall prepare the petition with the information given to them by the petitioner as well as their understanding of the facts of the situation. Elections Committee has the power to prepare the petition in whatever form they see fit. The governing documents do not prescribe that the process be carried out either electronically or on paper, and as such that decision is left at the discretion of the Elections Committee.

III

The final point to be made on this matter is less about the tangible specificities of the recall process and more about the larger failure of institutions we have witnessed in the past few weeks. ASUCD for all its flaws and intricacies, is a democratic body of governance. The leadership of the Association serves at the will of the voters and that will may be revoked at any time. Any member of the Association has a right to initiate the recall of an elected official for any reason. This is not a quirk of the governing documents, but rather a critical institutional design. It is imperative that elected officials are able to be held accountable for their actions. And it is equally imperative that the institutions we have created to work on behalf of the ASUCD
membership serve to make the exercise of these rights possible. While the Elections Committee and Internal Affairs Commission struggled to interpret these Bylaws, the real fault lies with the body that writes the Bylaws to begin with. The ASUCD Senate has been delinquent in its responsibility to maintain and enforce the Bylaws in accordance with the Constitution. One particularly egregious demonstration of this point was the passage of SB #18 in December 2017. This bill passed with little consideration for the effect it would have on the ability of members to exercise their electoral rights. In fact, many of the Bylaws we had to rule unconstitutional in this opinion were implemented through SB #18. Had the previous Elections Codes not also been riddled with constitutional inconsistencies, it is likely that the Judicial Council would have deemed the entire legislation unconstitutional. In the matter of SB #18, it must also be stated that blame cannot fall entirely on the Senate. Judicial Council did not take issue with SB #18 in our weekly review of legislation. While this is clearly a mistake of the Judicial Council, it is perhaps indicative of a larger change in policy that needs to occur to raise the stakes of judicial review so as to encourage a more significant contribution from the Judicial Council in the legislative process.

In addition to unconstitutional policy being set, there are areas where well-conceived policy changes are sorely needed. As stated earlier, the Elections Committee has jurisdiction over the medium used for signature collection. In the Winter 2018 Elections, signatures were collected for candidate qualification via a digital platform on the ASUCD Elections Website. The petitioner is right to demand consistency in the mediums used for signature collection. Oscillating between digital and physical signature collection raises serious concern about preferential treatment being given to certain signature collection initiatives. The Judicial Council urges Senate to implement policy on this matter for the sake of institutional consistency and, more importantly, to uphold the fundamental rights of those petitioning.

This process should serve as a wake up call for the Senate and exemplify the importance of conscientious governance. Many, if not all, of the issues resolved in this case could have been avoided with better legislating. The ASUCD Senate is the sole legislative authority in this Association, and perhaps it is time the Senate considers that authority to be more than just a simple statutory obligation, but rather a critical responsibility for the functioning of ASUCD.

**Actionable Items**

Let it be resolved, that the language of the Bylaws specified in Section II of this opinion are unconstitutional and must be struck from the Bylaws. A copy of the Bylaws reflective of our ruling has been appended. The Elections Committee shall make available an “Initiative Ballot Measure or Recall Petition Request Form”, which, should the petitioner complete, initiate the recall petition process as specified in the Constitution, Bylaws, and this ruling. The Student Government Administrative Office and Elections Committee shall be responsible for the enforcement of this ruling.
400. PURPOSE & TERMINOLOGY

A. PURPOSE: The rules and procedures specified in this chapter shall apply to all ASUCD Elections and the ASUCD Elections Committee. These codes are intended to supplement provisions of the ASUCD Constitution pertaining to the conduct of ASUCD Elections.

B. TERMINOLOGY: The following terms are defined in order to make Chapter Four of the ASUCD Bylaws free of ambiguity.

   a. Ballot Measure: any initiative placed on the ballot of an ASUCD Election. There are two (2) types of Ballot Measures:

      i. Legislative Ballot Measure: a measure that has proceeded through the legislative process and is placed on the ballot by a majority vote of the ASUCD Senate prior to the third week of the fall, winter, or spring quarter of that academic year.

      ii. Initiative Ballot Measure: a measure in which an individual collects eight (8) percent of ASUCD members signatures and student identification numbers to place the measure on the ballot prior to the third week of the fall, winter, or spring quarter of that academic year.

402. CALENDAR & TIMELINE

A. Elections Calendar: The Elections Committee shall maintain a master calendar containing deadlines, dates of events, and other important dates to ensure adequate notice to all campaigns and other interested parties of relevant election information.

B. Elections Timelines:
a. **General Election:** shall last at least seventy-two (72) hours during the seventh week of fall and winter quarter.

b. **Special Elections.** ASUCD Special Elections shall be conducted on a Tuesday and Wednesday **no sooner than two (2) weeks and no later than four (4) weeks** after the requisite number of signatures has been verified. After consulting with the party who collected the requisite number of signatures to hold a Special Election, the dates of the Special Election shall be determined by the Elections Committee and publicly released no later than three (3) academic days after the signatures have been verified.

c. **Election Extension.** If for any reason a problem occurs with the elections website, which causes a large portion of the electorate to be completely unable to vote (the sufficient threshold for this shall be determined by the Elections Committee), the Elections Committee shall extend the election by the same length of time this large portion of the electorate was unable to vote. The exact length of the outage shall be determined by the Elections Committee to the best of its ability.

d. **Notification of Election Time Change.** The time of each election shall be posted on the Elections Committee website. In the event that the Elections Committee changes the time of the election, the committee must publicly release notice of this change within one (1) hour of such a decision being made.

407. **SPECIAL ELECTIONS, BALLOT MEASURES, AND FEE REFERENDA**

A. **Special Elections** A Special Election for all Ballot Measures, Recalls, and Fee Referenda shall be held in accordance to ASUCD Bylaws Section 402(B).

B. **Ballot Measures**

   a. Legislative Ballot Measures

      i. A Ballot Measure may be placed before a vote of the student body by a two-thirds (2/3) vote of the ASUCD Senate. If two-thirds (2/3) is reached, then the Legislative Ballot Measure will be included in a Special Election in accordance with ASUCD Bylaws Section 402(B).
ii. In the event that a Special Election is called, any Ballot Measure or Recall already submitted may be included in the Special Election, and any previously approved Legislative Ballot Measure may be rescheduled for this Special Election by a two-thirds (2/3) vote of the Senate.

iii. Any additional Ballot Measure approved by the ASUCD Senate through legislation within one (1) academic week of a call for a Special Election may also be included in the Special Election. Additional Recall petitions submitted within this week shall be included in the Special Election.

iv. Signed Expenditure Forms for Ballot Measures and Recalls must be filed with the ASUCD Elections Committee by the Ballot Measure or Recall Coordinator by the last day of the election.

v. If the Legislative Ballot Measure increases student fees, the candidate shall be responsible for compliance with additional requirements for student fee initiatives, as stipulated in ASUCD Bylaws Section 407(C).

vi. Ballot Measures must be approved by the 60% affirmative vote specified in the ASUCD Constitution. Ballot Measures and Recalls take effect immediately upon certification by the Elections Committee and settlement of all appeals, unless a later date is specified by the measure.

b. Initiative Ballot Measures

i. At any time, any member of ASUCD may request a petition for an Initiative Ballot Measure or a Recall of an elected official. The Elections Committee shall provide a petition request form. A completed request for a petition for an Initiative Ballot Measure or a Recall is to be submitted to the Elections Committee. The Elections Committee Chair shall forward the petition to the Internal Affairs Commission.

ii. If the Legislative Ballot Measure increases student fees, the candidate shall be responsible for compliance with additional requirements for student fee initiatives, as stipulated in Section 407(C).

iii. The Internal Affairs Commission shall review the request for a petition at the next regularly scheduled Internal Affairs Commission meeting. The
Internal Affairs Commission may suggest modifications to an Initiative Ballot Measure, but may not make any amendments to the Ballot Measure without the approval of the authors. Upon the Internal Affairs Commission’s approval of the Initiative Ballot Measure’s language, the Internal Affairs Commission Chair shall sign the request for an Initiative Ballot Measure or Recall, and shall submit the request for a petition to the SGAO and the Senate President Pro Tempore. Internal Affairs Commission shall not postpone an Initiative Ballot Measure by more than one (1) week except by consent of the petitioner(s).

iv. Upon the receipt of the Internal Affairs Commission’s Initiative Ballot Measure language, the Elections Committee shall prepare and present official petition forms to the petitioner(s) within two (2) academic days. This petition must clearly state its purpose. The petitioner(s), at this time, must select a Ballot Measure Coordinator to represent the campaign and take on all duties and responsibilities granted by the ASUCD Elections Code. The Ballot Measure Coordinator may request more copies of the petition if needed. If the Elections Committee presents the petition to the petitioner(s) within four (4) academic weeks of the end of spring quarter instruction, the petitioner(s) may elect to take out the official petition during the first academic week of the subsequent fall quarter.

v. The Ballot Measure Coordinator and any other ASUCD members who wish to circulate the petition may do so. Only signatures of ASUCD members shall be valid for the petition. The petition requires eight percent (8%) of the currently registered undergraduate population, as specified in Article V of the ASUCD Constitution.

vi. All petitions must be submitted to the Elections Committee within four (4) academic weeks after the petition was taken, or by the end of spring quarter instruction. Petitions must be submitted by the due date and time, and must have the valid signatures of eight percent (8%) of ASUCD members, or the petition shall be disqualified. Once a petition has been submitted, it cannot be withdrawn.

vii. The Elections Committee shall be responsible for verifying the validity of the petition. The Elections Committee shall notify the Ballot Measure Coordinator, the official named in the Recall Petition, and the Senate President Pro Tempore of the status of the petition within three (3)
academic days. If valid, it will be placed on a Special Election ballot in accordance with ASUCD Bylaws Section 402(B).

viii. Ballot Measures must be approved by the 60% affirmative vote specified in the ASUCD Constitution. Ballot Measures and Recalls take effect immediately upon certification by the Elections Committee and settlement of all appeals, unless a later date is specified by the measure.

ix. Signed Expenditure Forms for Ballot Measures and Recalls must be filed with the ASUCD Elections Committee by the Ballot Measure or Recall Coordinator by the last day of the election.