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

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Saling v. Dalavai
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Decided: March 12, 2018

Judicial Council Vice Chair DEVO LEICHTER delivers the majority opinion.

I

On February 27th, 2018, Josh Dalavai exercised his constitutional authority as ASUCD President to veto Senate Bill #34, which had already passed ASUCD Senate on February 15th, 2018. Regarding the use of a presidential veto, Article IV, Section 9 of the ASUCD Constitution outlines the following parameters:

“Every piece of legislation that has passed the Senate shall be presented to the ASUCD President. Upon presentation of such legislation the President shall have until the next ‘regularly scheduled’ Senate meeting (as defined in Article II, Section 7 of this Constitution) to either approve the legislation by signing it into law or disapprove by returning it to the Senate with his/her objections (hereafter such action shall be referred to as a veto). In the event that legislation is presented to the President within three days of the next ‘regularly scheduled’ Senate meeting, the President shall have until the following ‘regularly scheduled’ Senate meeting to either sign or veto such legislation. If the President fails to return legislation to the Senate by the aforementioned deadline, the legislation shall become law in the same manner as if it had been signed unless the Senate by their adjournment prevents its return, in which case it shall not become law.”

Put simply, once legislation passes the senate, the president shall be presented such legislation, and from that point must either sign or veto said legislation before the next “regularly scheduled” Senate meeting. The Judicial Council operated under the impression that the Student
Government Administrative Office (SGAO) presented Senate Bill #34 to him February 19th, 2017, and that as per Article IV, Section 9 of the ASUCD Constitution, since the next “regularly scheduled” Senate meeting would occur on February 22nd (roughly three days from the time SGAO presented him with the legislation), he would have until February 29th (i.e. the following “regularly scheduled” meeting of Senate) to consider the bill.

In its deliberation, the Judicial Council addressed several aspects of the constitutional excerpt in question, specifically on whether the allotted three-day period prior to the next “regularly scheduled” Senate meeting should be interpreted strictly, and whether the act of “presentation” originates from a specific source or occurs naturally after the passage of legislation. With regard to the former, the Judicial Council finds that three days must be strictly interpreted as exactly seventy-two hours: Unlike legislation which may allow flexibility with regard to the enforcement of certain standards, the Judicial Council agrees that one must adopt a more critical mindset when interpreting the Constitution for the sake of preserving its integrity. Applied to the case, we know that presentation of the legislation occurred prior to 6:10 pm PST on February 19th (i.e. seventy-two hours from that week’s next “regularly scheduled” Senate meeting); therefore, the majority of the Judicial Council finds that the three-day condition by which President Dalavai would have until the following “regularly scheduled” Senate meeting to consider the legislation did not apply, and that Senate Bill #34 automatically became law on February 22nd, 2018 at 6:10 pm PST as per Article IV, Section 9 of the ASUCD Constitution.

II

The Judicial Council seemed most divided on the definition of “presentation” in the context of Article IV, Section 9 of the ASUCD Constitution. The Judicial Council found, after much deliberation and argumentation, that Article IV, Section 9 makes a distinction between the act of passing a bill and the act of presenting said bill to the President - we must recognize these as separate steps in the legislative process based on the explicit language used in the Constitution. The common definition of “presentation” itself implies action on behalf of individuals, a sort of deliverance of information or articles from one body to another. Alternatively, one might argue that “presentation” in this context exists as a phase, which exists to designate the time period by which the President considers legislation, and that this process occurs automatically without the need for initiation on behalf of an individual; However, to our understanding this separation between passage and presentation exists by design, due to several compelling factors possibly considered by the original drafters.

The first of these considerations relates to consistency of allotted time: Instances may occur where, for reasons outside of their control, the President cannot physically review legislation until days after its passage. This poses an issue where the time available for the President to consider legislation can differ from week to week, which undermines the stability of the President’s legislative authority. On the other hand, one might argue for that this point seems obsolete, as the level of efficient exchange of information during the mid-1990’s when Article
IV, Section 9 was drafted dwarfs in comparison to modern day, and the President can simply view legislation digitally almost immediately after its passage; however, this argument fails to consider the reality that institutional and communicative failures within ASUCD, or rare instances where the President may be incapacitated for medical reasons may still occur, creating an identical dilemma as before.

This transitions well into the next point that this interpretation undeniably allows for more procedural flexibility. We must remember that this Constitution was drafted of college students, for college students, by college students. In addition to the various naturally-occurring barriers outlined previously, there exist many other less extreme factors within the life of a college student that may pose difficulties for a President and their ability to properly contemplate legislation within the limited timeframe that presentation-upon-passage would impose. Obviously, we must hold our paid officials to certain standards, especially the demonstration of dedication and diligence. Yet, we believe the separation of passage and presentation offers itself as a tool, not only as a remedy to unfortunate circumstances present in reality, but to grant the President a certain degree of flexibility for how and when one presents legislation, which can differ from administration to administration. This ability can help tremendously, especially in a college environment where time exists as a valuable commodity.

Unfortunately, with greater flexibility comes with greater risk of abuse: Never does the association wish to find itself with a President, whether by negligence or obstructionism, who does not allow themself the opportunity for presentation to occur, thereby indefinitely halting the legislative process at their whim. However, whether the need for greater flexibility and consideration outweighs this potentially fatal loophole in the constitution remains irrelevant. The fact remains that the intent and the wording of Article IV, Section 9 clearly indicates one must interpret “passage” and “presentation” as separate entities. Moreover, Senate and the general populace holds several means of overcoming this potential abuse of power. These may include enacting regulations preemptively and codifying the presentation process, or coercing the President with the various checks and balances available to them, among other means of achieving diplomacy. As such, we do not fear the potential ramifications of allowing the act of presentation to occur separately from passage, given the various institutional means of addressing its potential abuse.

**Actionable Items**

Let it be resolved, that the Presidential Veto of Senate Bill # 34 is hereby invalid. Upon the publication of this opinion, Senate Bill #34 shall go into immediate effect. The Student Government Administrative Office shall be responsible for the enforcement of this ruling.
OPINION RENDERED
Devo Leichter, Ryan Gardiner, Aria Aghalarpour and Sydney Hack concurring.
Jason “J.J.” Hsu dissenting.