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

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HTOO v. KALEEM
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Hearing: June 8, 2018
Decided: September 27, 2018

Judicial Council Chair RYAN GARDINER delivers the dissenting opinion.

In the case of *Htoo v. Kaleem*, the majority rules on the constitutionality of SB #72 by dividing the authorities granted to the Judicial Council in two parts. Elections Committee hiring authority and Elections Committee firing authority. They wisely rule that the Council cannot constitutionally hire the officials tasked with administering ASUCD elections. It is clear that elections administration is a responsibility delegated to the Senate and the Senate alone. The judiciary only has a role in elections insofar as an independent appellate authority over elections decisions. The wisdom of the majority ends there as they also rule that the Judicial Council can constitutionally be the authority that fires the Elections Committee Chair. This is a misguided interpretation of Judicial Council’s authority, however before making that reasoning two matters must be discussed: a) the limits of firing authority in ASUCD and b) the constitutional foundation for elections administration.

The authority to dismiss an official in ASUCD is governed externally and bound by university protocol. For the sake of this case, when discussing the authority to fire an official, we are truly describing the power to recommend dismissal to the ASUCD Business Manager. For the sake of the governing documents this is largely semantic, but certainly worth noting.

While the Elections Committee is commonly associated with being the sole administrative authority in ASUCD Elections, it must be remembered that this is not a constitutional mandate. The Constitution only references the Elections Committee in Articles V and IX—the provisions of the constitution governing ballot measures and the Judicial Council, respectively—without ever establishing the Elections Committee as an institution. It is simply
referenced. Similarly, the Constitution provides a framework for the “Elections Codes” in the sixth provision of the “Bill of Rights” but then in Article II Section 5 and Article III Section 3 gives the Senate the ability to craft “Elections Regulations” to govern the electoral process. This is all to say that there is no definitive protocol for elections administration in place in the Constitution. Thus, we are left to interpret these references and the electoral protocols themselves in identifying what proper elections administration should look like.

The majority accepts that the Judicial Council can hold powers of termination over the Chair of the Elections Committee, as an extension of elections appellate authority. This is misguided. The constitution gives the Judicial Council the authority to exercise jurisdiction over decisions made by the Elections Committee. The use of the word Elections Committee is largely erroneous, as that body is never outlined in the constitution at all, but it can be reasonably accepted that this means decisions regarding the administration of elections can be appealed to the Council. This creates a framework for elections administration where the Judicial Council is a separate, overseeing body. Should the Council attain the power to hire and fire the Elections Committee Chair, in effect, absorbing the Elections Committee into the Judicial Branch, any independent oversight authority is absolved. Judicial Council would be answerable for decisions made by the Elections Committee, and therefore cannot serve as an independent appellate body.

The Constitution is very specific about the role of the judiciary in electoral administration. The Judicial Council is an independent appellate authority. SB #72 dismantles that framework and gives the judiciary a power in direct contrast with its constitutional mandate. The powers of independent appellate authority and administrative oversight are simply mutually exclusive, and thus SB #72 is unconstitutional.

OPINION RENDERED