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

Majority 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 Member DEVO LEICHTER delivers the majority opinion.

I

On June 8th, 2018 the Judicial Council heard *Htoo v. Kaleem*, and considered the constitutionality of Senate Bill #72, which would effectively consolidate the oversight and hiring authority of the Elections Committee chairperson under the Judicial Council. This case also raised questions as to the intended constitutional purpose of the Judicial Council, and sought to identify the scope of its jurisdiction. The binding powers of Judicial Council, as outlined under Article IX, Sections 2§1(a-c), include the following:

a) *Resolving all disputes that arise under this Constitution and the ASUCD Bylaws by issuing binding rulings, unless otherwise overturned by the ASUCD Judicial Council Oversight Committee;*

b) *Resolving all disputes arising under official actions of ASUCD Elected Officials, Appointed Officers, and all subordinate bodies of the ASUCD Senate;*

c) *Exercising appellate jurisdiction over any decision of the Elections Committee or action of an Elections Committee Member.*

In assessing these constitutional passages, the Judicial Council sought to answer the following questions: (1) Does the Judicial Council function as a purely adjudicative body, or can it exercise administrative authority? (2) Does Senate Bill #72 grant the Judicial Council administrative authority over the Elections Committee? (3) Does administrative authority over the Elections Committee effectively negate any *appellate* authority granted to the Judicial Council?
II

The intended purpose (versus the current practicable purpose) of the Judicial Council remains the nucleus of a long-standing, heated series of internal debates between several councilmembers. However, never before has this dilemma manifested itself in the form of a tangible ruling; therefore, the established precedent within this rather unremarkable case contains serious implications as to how the Judicial Council ought to operate in the context of ASUCD for future generations. After serious discussion, the councilmembers agreed in unanimity, that (a) and (b) of the aforementioned constitutional passages directly imply that **Judicial Council exists, primarily, as an adjudicative body within ASUCD**. Specifically, the constitution emphasizes the primary function of the council as (a) defenders and interpreters of the ASUCD governing documents, and (b) the ultimate decision-making body regarding internal conflicts of the association. Moreover, Judicial Council must resolve these circumstances utilizing the governing documents as its main source, regardless of their definitiveness or clarity - for these reasons, judicial procedure ought to distance itself from the origin of conflict, lest its intervention alters the ultimate decision. Recently, a request from the ASUCD Senate came before the Judicial Council to clarify the bylaws in order to subvert a potential political dispute. Although split in its decision, the council opted for non-action, on grounds that there existed a lack of definitive assurance that such involvement would affect the brewing conflict, let alone resolve it. In other words, one cannot guess the consequences resulting from intervention, nor should the Judicial Council offer original advisory legal advice when its role clearly (primarily) defines itself as the final say in said matters. We understand the Judicial Council as the ultimate adjudicative body of ASUCD due to the inherent deliberative nature of conflict resolution, in addition to the aforementioned prudential claims.

III

Subsection (c), however, offered the council a much trickier route of interpretive thought. This clause depicts a rather unique relationship between the Judicial Council and the Elections Committee; specifically, the council maintains appellate jurisdiction over any action of the committee, rather than simply the “unbylawful,” or “unjust” ones (which would cross over to its jurisdiction under (a) and (b)). On the surface, one might question whether, despite the adjudicative function of the Judicial Council, one can make an exception for allowing administrative control over the Elections Committee - after all, given its indirect discretionary control over elections activities granted under (c), could one not simply argue that (supposed) administrative control over the Elections Committee granted by Senate Bill #72 already exists? This argument might hold weight, if not for the operating term “appellate,” which by definition requires a third party to initiate the decision-making process for the Judicial Council in accordance with this clause. This once again categorically becomes deliberative in spirit, as the council must exercise judgement within the constructed arguments of the submitted appeal.
IV

Senate Bill #72 expanded the powers of Judicial Council in two separate ways, specifically allowing it to collectively “hire and fire” the Elections Committee chairperson, through final confirmation of nominees and the ability to consider their removal via closed sessions respectively. To the first of these powers, the Judicial Council finds that hiring authority, by definition, constitutes administrative decision-making. As with Senators before the passage of Senate Bill #72, this creates a managerial relationship between the Judicial Council and the Elections Committee, within which the council assumes all responsibility for all successes and failures of the committee. We know this degree of responsibility exists, as the intended purpose of Senate Bill #72 originates from a concern over the implications of politicization that occur when Senators assume that very same relationship. Such responsibility, therefore, not only creates a conflict of interest when Judicial Council inevitably presides over mistakes it indirectly made, but also negates any sort of appellate authority it once maintained. In other words, if the Judicial Council assumes administrative responsibility for the actions taken by Elections Committee, this in effect nullifies their appellate relationship present in Article IX Section 2§1(c), and therefore defies constitutionality.

However, one cannot say the same with regard to “firing” power. The majority of Judicial Council agrees, the act of considering the removal of an ASUCD official presents fundamentally different implications with regard to its influence over Elections Committee than with hiring. Specifically, such considerations remain inherently adjudicative, as one cannot simply recommend removal upon arbitrary grounds. With regard to aforementioned guidelines under sections (a) and (b), the Judicial Council operates within the confines of the ASUCD governing documents as a means to resolve disputes, and the same rules apply when exercising firing powers. Moreover, one may interpret recommendation for removal as a pre-existing power of the Judicial Council, specifically as the most radical form of appeal available. The ability to recommend dismissal of the Elections Committee chair, therefore, remains consistent with the council’s adjudicative role within the association, granted the exercise of such power coincides with the standard appeal processes of the Judicial Council.

Actionable Items

Let it be resolved, that Sections 1-6, and Section 8 of Senate Bill #72 are unconstitutional, and the ASUCD bylaws must be reverted to its original language prior to their passage. Section 7, and Sections 9-11 of Senate Bill #72 shall remain enacted. The Student Government Administrative Office shall be responsible for the enforcement of this ruling.

OPINION RENDERED

Aria Aghalarpour and Jason “J.J.” Hsu concurring.
Ryan Gardiner dissenting.
Sydney Hack abstaining.