The Judicial Council of the Associated Students, University of California, Davis
Majority Opinion of the Council
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GARDINER v. GANZ
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Hearing: January 24, 2019
Decided: January 28, 2019

Judicial Council Member NATHAN CHAN delivers the majority opinion.

I

On October 17, 2017, Respondent hired Petitioner as a member of the Internal Affairs Commission. However, Petitioner claims that Respondent hired him and many others unconstitutionally, because Section 502(4) of the ASUCD Bylaws, which outlines the hiring procedure of ASUCD Commission Chairs and Members, is unconstitutional. Bylaw 502(4) states:

“In the hiring of commissioners and alternates the chair of the Interviewing Committee shall select the applicants to be confirmed by the Senate. The rest of the Interviewing Committee shall advise them on which applicants to select. In the hiring of a Commission Chairperson, the Interviewing Committee shall select an applicant to be confirmed by majority vote.”

Additionally, Petitioner argues that the Council imposes a judicially mandated announcement of the vote count of the Interviewing Committee and how each Committee Member voted. These vote counts are from a vote within the Interviewing Committee to determine whether the Committee should nominate an applicant for the Senate confirmation.
II

Petitioner argues that Bylaw 502(4) is clearly in violation of Article II, Section 8§2(a) of the ASUCD Constitution, referring to the appointment of individuals to confirmation in the Senate. The Council agrees. Article II, Section 8§2(a), states:

“Members and Chairpersons of ASUCD Commissions shall be appointed by majority approval of an Interviewing Committee.”

It is objectively clear that Bylaw 502(4) is unconstitutional. While the bylaw states that the chair of the Interviewing Committee selects the applicants for commissioners and alternates, the Constitution states that the entire Interviewing Committee shall determine the applicant by majority approval. The contradiction is unquestionable.

The procedure in the Bylaws for selecting an applicant for Commission Chair is the same as the procedure in the Constitution, so there is no contradiction in the Bylaws on hiring Commission Chairs.

Petitioner’s request to mandate the announcement of how each Interviewing Committee Member voted when approving an applicant is for transparency and so the public knows which student body representatives advocated for which applicants. The Council does not completely agree with Petitioner.

We believe that it is not necessary to publicly announce how each Interviewing Committee Member voted because it would undermine the confidentiality of the Committee Members’ opinions, which are not necessarily public information. However, the Interviewing Committee shall make the vote counts public in the interest of transparency and so the Senate knows how confident the entire Committee was on selecting an applicant.

III

The Interviewing Committee for any Commission Chair or Member must follow Article II, Section 8§2(a). The Interviewing Committee will collectively deliberate on which applicant to select and select an applicant; then, they will vote, and determine with a majority, to approve or disapprove of that applicant moving on to a Senate confirmation hearing. The Council hereby issues a mandate that the Chair of the Interviewing Committee must announce these vote counts during the applicant’s Senate confirmation hearing. This mandate falls under Article IX, Section 2§1(a) of the Constitution, in which the Judicial Council is responsible for:

“Resolving all disputes that arise under this Constitution and the ASUCD Bylaws by issuing binding rulings.”
**Actionable Items**

Let it be resolved, that Section 502(4) of the ASUCD Bylaws is unconstitutional and that the Senate must revise it in accordance with this opinion. The mandate we issued herewith shall go into effect immediately. The Student Government Administrative Office shall enforce this ruling.

**OPINION RENDERED**

Nathan Chan, Ariel Mendlin, Maria Martinez, and Aria Aghalarpour concurring.

Jason “J.J.” Hsu abstaining.