The Judicial Council of the Associated Students, University of California, Davis
Dissenting Opinion of the Council
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GARDINER v. HACK and SPASOV
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Hearing: March 1, 2019
Decided: March 11, 2019

Judicial Council Member NATHAN CHAN delivers the Dissenting Opinion.

I agree with the majority that Judicial Council can deny any appeal it receives and that Senate has no authority to instruct Judicial Council to hear or rehear a case. I disagree with the majority’s decision to strike down the entirety of Bill #51, as I believe certain parts of the bill are appropriate additions to the bylaws.

On March 1, 2019, I brought forward changes to the Judicial Codes that created an appeal process within Judicial Council as a sort of check on ourselves. This additional appeal process means there are currently two constitutional ways for a party to appeal a case: Senate can send an appeal to Judicial Council after a closed session on Judicial Council and two-thirds approval of Senate; and a party can file an appeal form to go through the Judicial Council’s internal appeal process. In both of these cases, the Constitution gives Judicial Council the clear ability to choose whether to hear a case or not.

Senate can add any process within itself, and Section 212(E) of the Bylaws simply adds a procedure for someone to initiate the Judicial Council appeal process within Senate. I believe this section is constitutional under the assumption that the “written appeal” described in Section 212(E)(i) is not an actual appeal to the Judicial Council. This “written appeal,” in my opinion, is really a “closed session request,” allowing someone to appeal a case through Senate. Under the same reasoning, this “written appeal” does not give Senate adjudicating powers, as the majority holds, because Senate is not making any kind of decision (or, adjudicating). Section 212(E) is merely a procedure for Senate to exercise their constitutional right to conduct a closed session on Judicial Council and request that Judicial Council reevaluate a decision, which it can always
deny. I don’t think that striking down the entire bill is necessary, as long as the “written appeal” the section describes is not interpreted as a legitimate judicial appeal to the Judicial Council.

I believe Sections 2105(C)(2) and 2106(C)(2) are constitutional. The “direct appeal,” if interpreted as a “closed session request” rather than an actual appeal to Judicial Council, is a fine addition to the Senate’s own closed session description. As stated previously, the two legitimate appeals to the Judicial Council must arise from a two-thirds vote from Senate after the closed session, or through the Judicial Council internally.

I respectfully dissent.

DISSENTING OPINION RENDERED