The Judicial Council of the Associated Students, University of California, Davis
Majority 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 Chair ARIA AGHALARPOUR delivers the Majority Opinion.

I

On January 31, 2019, the ASUCD Senate passed Senate Bill #51, clarifying in the Bylaws an appeals process for the ASUCD Judicial Council. However, Petitioner claims that these changes are unconstitutional. The Judicial Council analyzed each claim by the Petitioner regarding Senate Bill #51, in determining the constitutionality of Senate Bill #51.

II

Petitioner first questioned the constitutionality of the Senate instructing the Judicial Council to rehear a case. Additionally, the Senate instructing the Judicial Council to issue a revised appeal to the Senate. We first analyzed Section 212(F)(a) of the bill, which makes the following amendment with regard to the appealed cases of the Judicial Council:

“When the Senate instructs the Judicial Council to rehear a case they must adhere to the following provisions:

i. Hear additional argument on the issues of the case specified within the written record provided by the Senate President Pro Tempore.

ii. Deliberate on the new hearing in light of the findings of the Senate’s report.

iii. Release a new opinion, either amending their previous opinion or explaining why the rationale of the past opinion stands in light of the Senate’s finding that a case must be retried.”
The Judicial Council finds this amendment inconsistent with the ASUCD Constitution, and a breach of the Senate’s legislative power. As we look at Article IV, Section 2(2) of the ASUCD Constitution:

“The Judicial Council may deny any appeal it receives, in part or in whole, by majority approval of the Judicial Council.”

As stated by this section, the Judicial Council has the constitutional authority to deny any appeal it receives as long as there is a majority vote by the Judicial Council. The Senate does not have the authority of jurisdiction to mandate the Judicial Council to hear or rehear a case or demand a revised appeal. The Senate does have the constitutional authority to ask the Judicial Council to reevaluate their decision, as cited in Article IV, Section 4 of the ASUCD Constitution. However, the Senate does not have the authority to force the Judicial Council to rehear a case and draft a new appeal.

III

The next disputed section in Senate Bill #51 were codified in Section 2105(C)(2) and 2016(C)(2). These sections make the following amendment with regard to appeals of the Judicial Council decisions:

“or if a direct appeal of this litigation was brought before the Senate.”

The Judicial Council finds this amendment conflicting with the ASUCD Constitution, and overextending legislative power. Article IV, Section 1(1) states:

“The adjudicating powers of the ASUCD shall be vested in the ASUCD Judicial Council (hereafter referred to as the Judicial Council).”

As illustrated from this section, the Judicial Council is the only body with adjudicating powers in the Association. Accordingly, all appeals must be sent directly to the Judicial Council. Senate Bill #51 is awarding the Senate adjudicating powers by allowing direct appeals of litigation to be brought before the Senate. Providing the Senate with adjudicating powers violates the ASUCD Constitution and breaches the duty of the Senate.
On March 1, 2019, the Judicial Council created an appeals process within the Judicial Council codes as a check on itself. This additional appeal process means there are currently two types of “appeals” that exist the Association: a request that the Senate sends to the Judicial Council after a closed session and two-thirds approval of the Senate or an appeal that comes directly before the Judicial Council.

The “written request” to the Senate is not an official appeal to the Judicial Council; it is an “appeal” to the Senate to request they conduct a closed session on the Judicial Council. The “written request” shall be renamed to “close session request,” as it is not a legitimate appeal to the Judicial Council, because no one person can submit an actual judicial appeal through the Senate, as Article IV, Section 4 of the Constitution states, any desire of the Senate for the Judicial Council to reevaluate their decision (in other words, submitting a legitimate appeal to the Judicial Council) must come with two-thirds approval of the entire Senate.

IV

As mentioned before, in addition to the appeals process available through a closed session and two-thirds approval of the Senate, we have created an appeals process within the Judicial Council Codes, in order to make the process more available for students.

**Actionable Items**

Let it be resolved, that Senate Bill #51 is unconstitutional. Any added language to the ASUCD Bylaws from Senate Bill #51 is deemed unconstitutional. The Student Government Administrative Office shall enforce this ruling by removing all language resulting from Senate Bill #51.

**OPINION RENDERED**

Ariel Mendlin, Maria Martinez, Jason “J.J.” Hsu, and Aria Aghalarpour concurring.
Nathan Chan dissenting.