ASUCI JUDICIAL BOARD

"All Judicial authority of ASUCI shall be vested in the Judicial Board. The Judicial Board's authority shall extend to all judicial cases arising under the [ASUCI] Constitution; the various by-laws of ASUCI; all official actions of the Executive Officers, Legislative Council Members, and ASUCI Commissioners; and any matters delegated to the Judicial Board by the Legislative Council"[1]

Ruling on *Khorsandi v. ASUCI Elections Commission*

Justice Bastos delivers the majority decision of the ASUCI Judicial Board, in which Vice-Chair Nguyen and Justices Hernandez and Chopra joined; Chief Justice Siddiqui filed a dissenting opinion in which Justice Hosseini joined. Let it be understood that the following decision is final.

In the case of *Khorsandi v. ASUCI Elections Commission,* petitioner Benny Khorsandi has requested the ASUCI Judicial Board to review and overturn the decision reached by the ASUCI Elections Commission[2] which rejected Khorsandi's complaint requesting for candidate Traci Ishigo, running for President, and Andrea Gaspar, running for Executive Vice President (EVP) to be disqualified. Khorsandi argues that Ishigo and Gaspar's "Rooted In" video for the 2012 ASUCI Elections used "the legitimacy and authority of individuals who are board members of UCSA (University of California Student Association) to "gain an unofficial endorsement by key members of UCSA…in order to garner great legitimacy for said candidates." Khorsandi brings

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[1] Immediate clarification is needed in regards to which governing documents the Judicial Board is allowed to enforce to serve as future precedent in all cases pertaining to the Associated Students, University of California, Irvine (ASUCI). First and foremost the power invested in ASUCI is granted from the Regents of the University of California (the Regents), the President, and the Chancellor of the University of California, Irvine (UCI).

The applicable laws, regulations, and policies adhere to the following hierarchy. The United States and State of California laws, regulations, and statutes provide the first level of authority. The Regents promulgate policy for the University overall, leaving certain policy making duties to the Office of the President. University wide policy manuals and guidelines are issued and maintained by the Office of the President and can be referenced here: www.ucop.edu/ucophome/coordrev/ucpolicies. While University policies primarily govern system wide policies, UCI's office of the Chancellor is charged with developing campus specific policies. Under Appendix A and pursuant to Section 61.00, the UC authorizes that the Associated Students (AS) of their respective campuses, has the ability to advocate on behalf of the students. To reiterate the hierarchy for clarification: Federal Law ➔ State Law ➔ the Regents Policies ➔ Presidential Orders ➔ UCI's Chancellor's Policies ➔ ASUCI governing documents. Thus, let it be resolved that any complaint, related to elections or otherwise, arising under authority of ASUCI, shall be subject to scrutiny of the UC system wide policies. In this regard, while ASUCI cannot and does not hold authority over any other University entity, ASUCI does have the ability to hold each and every member of the community and each department or entity of the UC to policies implement by the UC. – Autored By Judicial Chair Abdullah Siddiqui

[2] *Saeedy v. Gaspar*

up the following violations against Ishigo and Gaspar: I Article XX Campaigning and Publicity, Section H, II Article XX Campaigning and Publicity, Section G, and Article XV Candidate Responsibilities, Section G.

Khorsandi v. ASUCI Elections Commission has raised contentious issues about the lack of clarity and specificity in the ASUCI Elections Codes and Constitution. The ASUCI Judicial Board has carefully considered the arguments, evidence, and witnesses of both the petitioner and defendant. The Judicial Board has also considered its role as a judicial branch that must exercise caution and restraint when interpreting laws to ensure that the law-making process is preserved and reserved to the appropriate branches as dictated by the ASUCI Constitution. According to the three violations, we have found that the three violations, when applied to the "Rooted In" video do not prove beyond reasonable doubt that candidates in question merit grounds for disqualification.

Khorsandi presented very logical and compelling arguments regarding all three stated violations and how their ambiguous nature creates a gray zone. Although these arguments were very strong, the Judicial Board majority placed its emphasis on the presence or lack thereof, of codes that clearly state comprehensive guidelines to the limits of candidate campaigning methods.

Violation 1: Article XX Campaigning and Publicity, Section H, *"Candidates may not advertise endorsements until they submit a candidate endorsement form."* and **Violation 3: Article XV Candidate Responsibilities, Section G** : *"Any candidate can be endorsed by an organization registered with the Dean of Students and must submit the Candidate Endorsement Form signed by the leading student officer(s) of the organization, stating that the organization (not the individual) has officially endorsed him/her.*

The "Rooted In" video has a disclaimer that states UCSA does not endorse Ishigo and Gaspar as an organization, showing due diligence and good faith[3] on behalf of both candidates. If UCSA did in fact endorse Ishigo and Gaspar, there is no rule that clearly states a non-organization is required to fill out an endorsement form since it is not an organization that can be registered with the Dean of Students. Thus, the lack of a law explicitly detailing what an outside organization can do falls under a gray zone of which the legislative branch is responsible for correcting. In accordance with ASUCI Law and Policy, neither of these is explicitly stated and neither was violated. The individuals in the video may have been part of the board but present themselves in a way where their individual support of said candidates is apparent. No individual states a current connection to UCSA, except for Andres Gonzales, an ex-board member of UCSA. In accordance to the elections code, individuals are not required to fill out an endorsement form.

These individual and non-organization endorsements issues need immediate attention by the lawmakers of ASUCI. Since this responsibility is not afforded to the judicial branch, it is not in our place as a branch of ASUCI to rule on a code that does not exist. Therefore, the Judicial

[3] Vice Chair Nguyen and Justice Bastos support the good faith argument.

Board highly recommends for an additional elections code that specifies the protocol outside organizations must follow if they would like to endorse a candidate. The revisions should have precise definitions of the words chosen to be part of the code to avoid future gray zones.

Violation 2: Article XX Campaigning and Publicity, Section G, *"The use of ASUCI and/or University equipment, and/or telephones (except in a manner available to the entire student population) for campaigning is prohibited."*

The Judicial Board viewed the second violation as the most critical to determine grounds for disqualification. The video was filmed at a UCSA board meeting hosted by UC Irvine in the student center. Khorsandi's counsel argued that the use of the event to fly out the board members from their respective locations to Irvine, and their meeting arrangements in the student center fall under this category by viewing these aspects as resources, a more encompassing and expansive perspective of "University equipment." Although this may have been a strategic and blatantly opportunistic move made by Ishigo and Gaspar, the Judicial Board has found that "equipment" constitutes physical objects that can be used to promote one's ASUCI campaign. In the UCSA scenario, the gathering of willing board members who wanted to publically state their support for both candidates is not a use of physical equipment of the university and also supports the majority's decision for Violation 1. Extending the meaning of "equipment" to "resources" creates a slippery slope as to what the broad term, "resources" may constitute in the future and how those resources are directly or indirectly connected to ASUCI. Adding "resources" to this particular code corrupts the definition of equipment and the intent of the code. Khorsandi's counsel argued that "equipment" was indeed used because the meeting and physical use of student center space facilitated the recording of the video, creating an indirect use of "equipment." Additionally this indirect use of equipment was premeditated, organized, and executed. Though these are valid points and arguments worthy of attention, these arguments do not fit under the language of Violation 2. Khorsandi's argument for Violation 2 should merit consideration on behalf of the legislative council to clarify this election code. The lack of elaboration on what "equipment" means and the inclusion of the word "phone," a physical object compels a narrow interpretation of "equipment." Therefore, pre-meditation in this instance cannot be weighed under this particular code. It is important to note that the Judicial Board believes the filming of this video required planning, prior communication, and gathering of materials, which is evident in individual members who participated in the video who wore Ishigo and Gaspar campaign t-shirts, used almost identical phrasing, held up campaign boards, requested a camera man to film the video and edit it, approved a final version of the video (non UCI equipment was used for the video) and added a disclaimer and description of the video on Youtube. These aspects simply do not fall under "ASUCI equipment."

Lastly, UCSA cannot be considered physical equipment owned by ASUCI and/or UCI. Although, ASUCI belongs to UCSA, UCSA does not belong to ASUCI or is to be held

accountable by our policies our procedures. By paying membership fees ASUCI acts solely as a member and must abide by the rules of UCSA, not the other way around.[4]

Like in Violation 1and 3, the Judicial Board aims to maintain its integrity and purpose as a governmental branch of ASUCI. It is highly recommended that the lawmakers of ASUCI revise this section of the elections code to define "equipment" and choose whether to broaden the meaning of the term or add another code that dictates the guidelines on resources and how candidates may use resources available to them during their campaign. If ASUCI does not amend all three elections codes disclosed in the three violations presented by Khorsandi, there are detrimental consequences to the integrity of ASUCI and its political process. It is critical to have an understandable, detailed definition of "equipment" or other words chosen to define its scope.

This case touches upon a very fine line that compelled the ASUCI Judicial Board as a whole to make a very stern recommendation about witnesses Andrea Gaspar and Ryan Reyes. The Judicial Board questions the validity of their testimonies under oath during the trial and will take action to investigate the veracity of their statements[5]

With better thought-out and deliberative edits or additions to the elections codes, the next ASUCI Elections will be grounded on a new ASUCI founded on clarity and standards to effectively manage elections by providing detailed guidelines.

Therefore, the ASUCI Judicial Board majority upholds the Election Commission's decision in *Saeedy vs. Gaspar* for the ASUCI Spring 2012 Elections.

The Judicial Board of the Associated Students of the University of California, Irvine, with a majority, on this day, May 4, 2012, has taken action on this issue.

It is so ordered.

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Nicole Bastos, Associate Justice Dat-Vinh Nguyen, Vice Chair

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Rahul Chopra, Associate Justice Felipe Hernandez, Associate Justice

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[4] Written by Justice Hernandez

[5] Full recommendation of Judicial Board in dissenting opinion

Dissenting Opinion on *Khorsandi v. ASUCI Elections Commission*

Chief Justice Siddiqui delivers the dissenting opinion of the ASUCI Judicial Board, in which Justice Hosseini joined.

This case presents a gray area in regards to the University of California, Student's Association (UCSA). After a difficult, demanding, and tedious investigation the Judicial Chair has determined that UCSA is a special 'creature' within the University that can only be classified as a support group registered the Office of the President. The term support group has been assigned to UCSA on two tenets. The first tenet is that the use of the name, "University of California," is highly regulated, as it is property of the UC (California Education Code 92000). The second tenant is that UC policy requires that each organization bearing the UC name apply annually for recognition from the University. UCSA annual application contains a statement signed by the officers of the organization that the board of directors has read and formally voted to comply with the UC Policies (Regent Policy 5203). Although the governing policies are difficult to trace and document, such organizations shall be held responsible for compliance with the above mentioned governing documents. Regardless of what type of 'creature' UCSA is within the UC system, current UCSA Board members and candidates Andrea Gaspar and Traci Ishigo where in violation of the following UC Policy.

UC Policy, Section 41.00 states, "All individuals or organizations…must avoid any unauthorized implication that they are sponsored, endorsed, or favored by the University."

Section 41.10 states, "As a State instrumentality, the University must remain neutral on religious and political matters. The University cannot sponsor or fund…political activities except when authorized for University purposes by The Regents or the President or their designees…"

Section 41.12 states, "In personal and other non-official correspondence, statements, or other material represented in a variety of media, …the Internet, and film…relating to…political activities or issues, the **University title** … **or the title of a student government official** shall be used *only* for identification. If such identification might reasonably be construed as implying the support, endorsement, or opposition **of** the University with regard to any …political activity or issue, the identification shall be accompanied by a disclaimer: an explicit statement that the individual is speaking for himself or herself and not as a representative of the University or **any** of its offices or **units**. Similarly, a disclaimer shall accompany such correspondence, statements, or other material issued by a Registered Campus Organization to the same effect if it might reasonably be construed as implying the support, endorsement, or opposition of the University.

The `Rooted in Slate' video posted to Youtube on April 17th (the video) attempts to adhere to the UC regulations by exhibiting a disclaimer, however, at 0:08 seconds and also at 1:43 minutes into the video, the names of individual UC campuses as well as current student body representatives contend that individual units or campuses endorse or support candidates Traci

Ishigo and Andrea Gaspar. While both the title and the name of the individuals followed by a disclaimer is legal, there is substantial legitimacy by the plaintiff, Benny Khorsandi that such actions can be construed as endorsement of an individual campus of the University and that such action is strictly prohibited. The candidates and the UCSA Board members violated UC Policy by not censoring statements implying support of individual campuses. The Majority opinion ignored that UCSA is the system wide 'voice' of the UC students. By ignoring the prohibited use of campus identification, UCSA Board members violated the UC's Code of Ethics and have shown blatant conflict of interest. Thus, let it further be resolved that officials from the Associated Students of other campuses shall not be able to associate their personal political stances with those of their respective campus while serving in their official capacity, especially when they visit as a guest.

The Majority opinion disregarded last year's precedent in Klaushcie versus the Commission where it was determined that Article XX.G set precedent in regards to ASUCI equipment. In this case, equipment was determined to be 'indirect use of student funds to support the candidate.' The Majority's narrow interpretation of the EC referring to ASUCI equipment and/or telephones completely eviscerates judicial methodology. It is the Board's duty to interpret the law and due diligence reveals that when referring to UC Policy 80.00, the ability to assess and expend compulsory campus-based student fees is granted solely to the Associated Students. Thus, any expenditure directly by ASUCI, and ASUCI alone, should be extended to ASUCI equipment and/or resources. The Majority's frame of reference in judging Article XX.G does not even attempt to faithfully abide by the original and traditional meaning of the Constitutional clause. The reference to 'physical' objects such as a telephone is blind to the fundamental framework of Constitutional law. The previous precedent was not an unlawful expansion since ASUCI telephones are rarely, if ever, used. Furthermore the act of making a telephone call implies expenditure of ASUCI monies to exact a campaign advantage. To consider that reason, logic, textual definition, historical perspective, context, and plain common sense compel the conclusion that the previous ruling was wrong or misguided shackles the feet of future Judicial Boards.

ASUCI stands to lose control of campus politics if outside organizations or even campus departments are allowed to throw support behind campaigns. The Minority Justices' find that the intent of Article XV.G was to grant the Commission oversight of all political process undertaken by qualified candidates and potential representatives of our campus. The Majority's ruling shows perverse disregard for our own political process, the rights of students, and the autonomy granted to ASUCI by The Regents, the President, the Chancellor, and our own Constitution. By overturning the Commission's recommendations, the floodgates have been opened for interference into our own political process and interference into the system wide politics by UCSA unless individual Associated Students now arm themselves by augmenting their governing documents. If UCSA is allowed to interfere with individual campus politics, numerous powerful committees charged with representing the student body including, UC Council on Student Fees (CSF) and the selection of the Student Regent, may be tampered with.

Such actions are dishonorable and the Majority exhibited lackluster insight into such actions. It is the Minority Justices' opinion that ASUCI Legislative Council seeks immediate reconciliation of our own governing documents to strictly forbid outside intervention into UCI's campus political activities.

The premeditated intent to make the video shows a clear violation of ASUCI's Code of Ethics whereby deliberate obstruction of ASUCI policies, conduct unbecoming of a representative of the student body, and extortion of influence and prestige for political gain as well as use of ASUCI equipment and facilities where all exercised by the said candidates without remorse.

The Minority's contention that the premeditated intent to make the video is verifiably by the erroneous testimony delivered by both Ryan Reyes and Andrea Gaspar. Both individuals attested that the video was shot on an unscripted, ad hoc basis. While the comments regarding Gaspar's and Ishigo's personal appeal expressed by current and former Board members starting 0.58 seconds into the video do not seem scripted due to stuttering, loss of words, and pauses for thoughts, the rest of the video shows a clear theme starting with identification of individual campuses, the exhibition of 'Rooted in Slate' apparel and signs, and the similar statements concurring the theme of video. Given that this evidence is in direct contradiction to the testimonies delivered, considerable doubt has been shed on both Mr. Reyes's and Ms. Gaspar's testimonies. This is the reason for the Minorities opinion that ASUCI's Code of Ethics was violated without remorse. A full investigation will be conducted into these testimonies and an official complaint will be brought forth.

Abdullah Siddiqui, Judicial Board Chair

Kayvon Hosseini, Associate Justice of the Judicial Board