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 member, and ASUCI Commissioners; and any matters delegated to the Judicial Board by the Legislative Council."

Ruling on Kunitskiy versus ASUCI Election Commission

Judicial Board Chair Siddiqui delivers the decision on behalf of the Judicial Board where Vice-Chair Nguyen, and Justices Hernandez, Bastos, Chopra, and Hosseini joined. Let it be understood that the following decision is final.
Mr. Dmitriy Kunitskiy has petitioned the ASUCI Judicial Board ("the Board" herein) to review and overturn the ASUCI Elections Commission ("the Comission" herein) decision to place Mr. Sam Shaw on the Spring 2012 ballot as a presidential candidate. Mr. Kunitskiy cites violation of Elections Code Article XIV.A.2 whereby Mr. Shaw did not meet the criteria set forth in the elections code prior to the March 16th deadline to declare candidacy. Mr. Kunitskiy has petition the Board to review and reverse the decision by the Commission to allow Mr. Shaw to be placed on the Spring 2012 ballot.

Kunitskiy versus the Commission presents a unique case where the Elections Commission reinstated Sam Shaw as a candidate for President after administrative staff notified the candidate that he did not meet the candidate criteria specified within the ASUCI Elections Code. The Commission cites that inadequate evidence was provided in order to disqualify Mr. Shaw. After reviewing the evidence and testimony filed by the Commission and Mr. Kunitskiy, the Board finds that there are significant shortcomings that impaired the process of due diligence in regards to both the Deputies' and the Commissioner's duties. The Commission cities that on March 15th 2012, administrative staff notified Mr. Shaw that he was ineligible to run without providing tangible evidence or indication of which criteria was not meet. The Board convened and unanimously denied a hearing for Mr. Shaw on that very day. The Commission overturned their own ineligibility ruling on April 2nd, 2012, allowing Mr. Shaw to be placed on the ballot. The timing of the incidents in question presents a clear method by which to circumvent proper protocol.

First and foremost, the issue of student privacy is a key component of this case preventing full disclosure of tangible evidence. The Board has found that full disclosure is limited by the Family Educational Rights and Privacy Act (FERPA) and is entrusted to FERPA trained staff members whom are given the duty of verifying

student records. Given the limitations by the Federal Government, the procedure for verifying candidate eligibility ultimately lies with administrative staff. However, recourse for this limitation has been built into the Elections Code (XII.C.1) whereby Deputies are charged with the responsibility of verifying candidate eligibility with the Registrar's Office, the Academic Counseling Office of the candidates' respective school, and the Judicial Affairs Office. In Kunitskiy versus ASUCI Elections Commission, this procedure was unfortunately overlooked, negating the Commission's argument of being unable to extract tangible evidence. Also, in regards to providing 'concrete' evidence, the Board unanimously admonishes the Commissions utter disregard of the duties and responsibilities of administrative staff and prior established procedures.

For clarification purposes, the intent of the Constitution and the Election Code, provides a means where "any registered undergraduate having paid the established ASUCI fee…shall be entitled to any privileges of that membership which include but are not limited to: voting in all ASUCI elections, seeking an ASUCI appointed office, participating in all ASUCI activities, and benefiting from all ASUCI services and programs… all members of ASUCI ***meeting the requirements*** herein after enumerated, are eligible and encouraged to seek, obtain, and hold office…" The Constitution provides safeguards for all positions including Legislative Council, Executive Cabinet, and Judicial Board in order to protect the entire student population as well as to protect those within the organization by holding student leaders to an exemplary standard.

Finally, acting as jury of peers, the Board may have upheld the Commission's decision if Mr. Shaw's own testimony, under oath, exonerated him by explicitly demonstrating he meet all of the eligibility requirements. However, Mr. Shaw's right to privacy and failure to elucidate the situation served as confirmation that at least one of the eligibility requirements was not met on his behalf. In no way is this decision a negative reflection on Mr. Shaw's attributes or character or capacity to be a student leader. This decision is handed down, as it is the primary duty of the Judicial Board to uphold the Constitution, and to protect the rights of the student population as set forth in the aforementioned requirements of the Constitution and the Election Codes.

Again, for the clarification purposes, any member of ASUCI who has filed a Declaration of Candidacy does not means this person qualifies as a candidate. Only after meeting eligibility requirements can an individual be consider a candidate. After eligibility requirements have been verified, a candidate can be disqualified for violations of the Elections Code Article XXI.B. Thus, before being accepted as a candidate, any member of ASUCI expressing intent by submitting a Declaration of Candidacy does not fall under the jurisdiction of the Commission. It is the Boards recommendation that either the Commission's powers be expanded by having

persons whom submitted their declaration waive their privacy rights or that the Elections Code be modified to document the role of ASUCI permanent staff in determining eligibility requirements. The latter is the Board preference.
It is, therefore, the Board's decision to overturn the lower ASUCI Elections Commission decision in Kunitskiy vs. ASUCI Elections Commission. Mr. Sam Shaw will be removed from the Spring 2012 ASUCI Elections ballot.

It is so ordered.

Abdullah Siddiqui

Judicial Board Chair

Dat-Vinh Nguyen

Judicial Board Vice – Chair

Felipe Hernandez

Associate Justice of the Judicial Board

Nicole Bastos

Associate Justice of the Judicial Board

Rahul Chopra

Associate Justice of the Judicial Board

Kayvon Hosseini

Associate Justice of the Judicial Board