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."

Judicial Ruling on R50-07

Vice-Chair Lozano, writing for the majority, in which Judicial Board Member Lee joins. Judicial Board Member Tanaka abstains.

Upon reviewing ASUCI legislation during its meeting on Wednesday, November 5, 2014, the ASUCI Judicial Board has found fault with Resolution 50-07, "Appointment of ASUCI Bio Sci Representative" (R50-07). The Board therefore issues this ruling regarding the resolution.

The Judicial Board possesses the authority to "interpret all parts of [the ASUCI] Constitution." A.S. Const. art. VI, § B cl. 1. All legislation passed by the Legislative Council must be "necessary and proper … according to [the ASUCI] constitution." A.S. Const. art. IV, § B, cl. 1.

ASUCI is responsible for "foster[ing] recognition of the rights of students." A.S. Const. preamble, ¶ 2. The Constitution enumerates certain "basic rights of students", and "it is binding on ASUCI to recognize … and … protect" those rights. A.S. Const. art. XII, § A. The fifth enumerated right is "the right to influence decisions which affect them." A.S. Const. art. XII, § A cl. 5.

The Constitution states that "Legislative Council membership *shall be* apportioned in the following manner: Elected Membership," "Ex officio, non-voting membership," and "Appointed, non-voting membership." Appointed members consist of representatives from "officially recognized governing bodies". Ex officio members consist of the Executive Cabinet. Elected members consist of at-large members as well as members representing Academic Units. These provisions create exclusive and exhaustive Legislative Council membership categories: no other type of Council membership may be created. A.S. Const. art. IV, § C (emphasis added).

R50-07 purports to appoint a Legislative Council member to represent an Academic Unit: in this case, the School of Biological Sciences. However, the Constitution states that Council members representing Academic Units "shall be *elected by and from* the Academic Units (degree granting units)." A.S. Const. art. IV, § C, cl. 1 (emphasis added). In other words, this provision requires that a) Council members representing an Academic Unit are students within that Academic Unit

at the time of their election, and b) the exclusive method of selecting Academic Unit representatives is an election in which the electorate is the student body of that Academic Unit.[1]

The Resolution at hand states that "it is the duty and responsibility of the ASUCI Legislative Council [as] outlined in the Constitution and the Legislative Council By-Laws to fill any vacancies by appointment." Res. 50-07, cl. 2. This is correct in that the Legislative Council By-laws lay out a process for filling vacancies on the Legislative Council by appointment. *See* A.S. By-laws (III)(E). However, the Constitution does not lay out such a process for Council vacancies. As we explain above, the Constitution requires an election as the exclusive method of selecting Academic Unit and at-large representatives. As by-laws are established under the authority of the Constitution, by-law provisions cannot override Constitutional requirements. *See* A.S. Const. art. IV § A; *see also* A.S. By-Laws (II)(A). Therefore, we find that R50-07 violates Article IV, Section C, clause 1 of the ASUCI Constitution.

In addition, the selection of a representative on the Legislative Council is clearly a decision which affects the students represented by that Council member. ASUCI is "the official undergraduate student government body." A.S. Const. art. I. The Council is "the supreme policy-making body" thereof. A.S. Const. art. IV, § A. The Council also "appropriates all ASUCI fee income." A.S. Const. art. IV, § 2. Voting ASUCI members (i.e., undergraduate students) are required to pay the ASUCI fee. A.S. Const. art. II, § A. Therefore, the constitutional clauses specifying elections "by and from" the appropriate student bodies to select Academic Unit and at-large representatives are in furtherance of the students' "right to influence decisions that affect them." We therefore find that R50-07 violates Article XII, Section A, clause 5 (the "Fifth Right") of the ASUCI Constitution.

While not strictly germane to the ruling at hand, the Board notes with concern that the Council member purportedly appointed by R50-07 is, as of the date of this ruling, listed as voting on ASUCI legislation both prior to the Council's vote on R50-07,[2] as well as during the six-day period between the Council voting on the Resolution and the Resolution going into effect.[3] [4] Additionally, the text of R50-07 states that it was passed at the October 21, 2014 Council meeting; as of the date of this ruling, the minutes of that meeting do not include any mention of the Resolution.[5]

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[1] Similar requirements are placed on at-large representatives to the Council.
[2] http://www.asuci.uci.edu/legislative/legislations/print.php?cnum=B50-01
[3] http://www.asuci.uci.edu/legislative/legislations/print.php?cnum=R50-11
[4] http://www.asuci.uci.edu/legislative/legislations/print.php?cnum=R50-12
[5] http://www.asuci.uci.edu/legislative/minutes/print.php?id=419

We are aware that the Council is in need of a Constitutionally-appropriate method to fill vacancies in its Elected Membership in order to conduct its business. The Council retains exclusive authority to legislate under the Constitution. *See* A.S. Const. art. IV, § A, *see also* A.S. Const. art. III, § B. In order to facilitate the filling of vacancies on the Council, however, the Board notes that a special elections process, similar to the one already prescribed in the ASUCI Elections Code, may resolve the deficiencies we have found in the current system of filling vacancies. *See* A.S. Elections Code art. IX.

The Judicial Board has found that R50-07 violates the ASUCI Constitution. Using the authorities vested in the Board by the Constitution, we hereby declare that Resolution 50-07, "Appointment of ASUCI Bio Sci Representative," is not in effect and its implementation is barred.[6]

IT IS SO ORDERED

_____
Oluwatobi Agbelemose, Chair

_____/s/_____
Annette Lee, Associate Justice

_____/s/_____
myron lozano, Vice-Chair

_____
Kevin Tanaka, Associate Justice

[6] As discussed in this ruling, the Fifth Right gives students "the right to influence decisions which affect them." Additionally, the Sixth Right gives students "the right to seek redress from grievances." The May 2010 Ruling of the Judicial Oversight Committee specifically "recognize[d] that it is [unfair] for the Judicial Board to both initiate cases and then adjudicate them," and states that "the Judicial Board shall not have the authority to nullify legislation unless a case is initiated by a student filing a 'Petition for Hearing.'" It is therefore the Vice-Chair's position that rulings unilaterally initiated by the Judicial Board, such as this ruling, cannot be considered final nullifications. In order to fulfill the Fifth and Sixth Right's guarantees and follow the ruling of the Committee, it is the Vice-Chair's position that such unilateral rulings take immediate effect, but can be challenged by a student filing a Petition for Hearing with the Judicial Board.