ASUCI JUDICIAL BOARD

"The Judicial Board has final judicial authority for ASUCI, which extends to all cases arising under the governing documents of ASUCI, all official actions of ASUCI officials and staff, and any matters delegated to the Judicial Board by the Senate or Student Advocate General."

JUDICIAL RULING ON Gandall v. Elections Commission

MENTER, J., delivered the opinion of the Board, in which SHANTHARAJ, C.J., and ANDERSON and BOKAEI, JJ., joined. SHIN, J., took no part in the consideration or decision of the case.

JUSTICE MENTER delivered the opinion of the Board.

In this case, the Judicial Board considers whether extension students have the right to file a complaint before the ASUCI Elections Commission. We hold that they do. The right to "observe all aspects of the election process" and "seek remedies for violations" is reserved to all students, regardless of status. ASUCI Const. Art. III, § 1(e). We further hold that, when the Elections Commission violates this right by refusing to hear a complaint until the deadline for filing has passed, the rights of the student must take precedence over adherence to the deadline.

I

This case arises out of the Spring 2017 ASUCI Elections, but it arrives before us with an unusual procedural posture. Appellant Kimo Gandall filed multiple complaints before the Elections Commission, alleging violations of the Elections Code on the part of multiple candidates, including a candidate running for Public Health Senator[1]. The Commission dismissed the complaint, refusing to issue a ruling. The Commission cited Gandall's status as an extension student to justify its dismissal. As an extension student, Gandall has not paid the ASUCI fees, and therefore is not a member of ASUCI. His rights under the ASUCI Constitution are consequently more limited than the rights of an undergraduate student. The Elections Commission believed, albeit in error, that the right to file a complaint was among the rights that Gandall lacked.

After the Commission refused to hear his complaint, Gandall appealed to this Board. Meanwhile, the Commission published the results of the Public Health Senate Race. Gandall's complaint was the only one naming any candidate for Public Health Senator as a defendant. Having determined that Gandall was not allowed to file a complaint, the Commission believed that that race was no longer being contested, and posted the results of the election pursuant to Elections Code, Art. VII § A(10).

As we will explain, the Commission erred in holding that Gandall had no right to allege a violation of the Elections Code. But the merits of that holding aside, the Commission was incorrect to determine that, having dismissed the complaint, they were then allowed to finalize the election results. Gandall submitted his appeal

[1] The Board does not currently have access to the complaints submitted to the Elections Commission. We are therefore unable to issue an opinion on the merits of the complaints, and must infer their contents from other parts of the record.

to the Judicial Board in a timely manner, before the deadline at 5:00pm on the Thursday of the fourth week of the quarter. Elections Code, Art. 7 § A(11). The Elections Code authorizes the Commission to post the results of elections "except for those races where an official complaint has been filed with the Judicial Board or the Elections Commission". Art. 7 § A(10). Because a complaint had been filed before the Board, the Commission's publication of the election results violated the Elections Code.

The Commission nevertheless urges us not to consider Gandall's appeal, citing Elections Code, Art. XXI, § E, which states that "[n]o appeals will be accepted after the posting of results". Because the Elections Commission has already posted the final results for the Public Health Senate race, they argue that Gandall's appeal violates the Elections Code. However, the Commission's decision to publish results in the first instance was itself a violation of the Elections Code. We therefore cannot give the publication of results a preclusive effect on appellant's claims. Were we to do so, the Elections Commission would always be able to immunize its decisions from judicial review by posting election results before the Board has a chance to hear an appeal. We therefore cannot respond to the publication of election results by denying an appeal. Instead, the results of any election still in dispute must be withdrawn from publication until a final decision is issued.

Despite the absence of a ruling from the Commission, we treat this case as an appeal of the decision to dismiss appellant Gandall's complaint. Neither the ASUCI Constitution nor the Elections Code provide a procedure by which the Commission can refuse to hear, consider, or rule on a complaint. In fact, the Elections Code *requires* the Commission to review "all official complaints". Elections Code, Art. XX, § G. The ASUCI Constitution grants the Judicial Board "appellate jurisdiction over any decisions of the Elections Commission". ASUCI Constitution, Art. VIII § 2(d). The Commission may not frustrate this jurisdiction by failing to issue a decision on a valid complaint. This case is therefore appropriately before the Board.

II

Having decided that we may hear Gandall's appeal, we must determine whether the appeal has merit. We hold that it does. The Commission's understanding that only undergraduate students have

a right to challenge the results of an election is in direct conflict with the ASUCI Constitution. Article III of the Constitution enumerates the rights of UCI students. While certain rights are reserved only to undergraduate students, such as the right to vote in ASUCI elections or hold office, Art. II § 3(b), the right to file a complaint before the Elections Commission has no such limitation. Indeed, the ASUCI Constitution reserves to *all* students: the right to "observe all aspects of the elections process" and "seek remedies for violations", Art. III § 1(e); the right to "seek redress from[*sic*] grievances", Art. III § 1(n); and the right to "choose their student leaders and to hold them accountable", Art. III § 1(o). Under our Constitutional system, the Elections Commission is tasked with redressing grievances arising from the "elections process", and with providing remedies for violations of the Elections Code. Art. X § 2. For these rights to be given effect, they must guarantee to all students, regardless of ASUCI membership, the standing to allege violations of election laws before the Commission.

Even if the plain text of the ASUCI Constitution did not compel our holding today, our earlier decision in *Gandall v. Elections Commission* (2017) (hereafter *Gandall I*) still would. In *Gandall I*, we affirmed a decision by the Elections Commission to bar appellant Gandall from running for elected office. Gandall was then, as he is now, an extension student. And then, as now, there is no mechanism by which extension students can pay the ASUCI fee, and thereby become ASUCI members. Because the ASUCI Constitution reserves the right to hold elected office *only* to undergraduate students able to pay the ASUCI fee, we held that it was appropriate for the Elections Commission to deny Gandall that right. However, we limited our holding by noting that most rights enumerated in Article III of the Constitution were not contingent on undergraduate status. We expressly ruled that "the intent of the Constitution to include extension students is to ensure they receive the same basic rights as students listed in Article 3, section 1, subsection (e) to (t)." *Gandall I*, at 1. Because the right to file a complaint with the Elections Commission can be found within subsections (e) to (t), *Gandall I* requires us to grant that right to extension students.

The Commission argues, however, that because Gandall is not an undergraduate student, he is unable to "participate in the elections process". This is an overbroad reading of the rights

exclusively reserved to undergraduate students. Article III, § 1(a)-(d) reserves the right to vote, the right to run for elected office, the right to seek appointed office, and the right to engage in direct democracy only to undergraduate students. Though these rights cover a significant portion of a student's ability to participate in the elections process, they do not cover the full extent of all possible participation. In particular, these rights say nothing about the ability of a student to file a complaint before the Elections Commission or Judicial Board. And if there were still any doubt about the scope of these rights with respect to the case before us today, the Constitution expressly reserves the right to "observe all aspects of the elections process" and "seek remedies for violations" to all students, not just undergraduates. Art. III § 1(e). The Commission's interpretation of the scope of extension students' rights to participate in the elections process cannot be reconciled with the ASUCI Constitution.

Finally, even if there were any remaining ambiguity in the text of Article III, or in the extent of our decision in *Gandall I*, we would be required to construe that ambiguity in favor of electoral participation. The preamble to the Constitution explains the goals of ASUCI. To the extent possible, our interpretation should be consistent with these goals. The drafters of the Constitution sought "to provide a forum for the expression of the student views and interests; … to represent and articulate our rights to a voice in campus governance; … to foster recognition of the rights of students in this university community". ASUCI Constitution, Preamble. All of these aspirations are served by our ruling today; none is inhibited. Were we to prohibit extension students from filing complaints, we would be depriving them of a forum for the expression of their interests, denying them a voice in campus government, and discounting their rights within the community. We cannot agree with the Elections Commission that we should confine the right of extension students to participate in our elections beyond those limitations that the Constitution necessarily imposes. Accordingly, we hold that the Commission must consider Gandall's complaints.

III

Under normal circumstances, our consideration of an appeal would end at the decision to remand back to the Elections Commission. We would have no need to speculate as to the future of the case beyond remand. The unusual procedural posture of this

case, however, presents unique issues that we will likely be called upon to resolve in the very near future. We choose to resolve these issues now rather than later.

When ruling on an appeal from the Elections Commission, this Board normally issues a final decision on the merits, remanding to the Commission only for determination of a penalty. In this case, however, the Commission has not issued a ruling of its own, and the Board does not have access to appellant's original complaints. We must therefore remand for a full ruling on the merits. Gandall may wish to appeal this ruling, but such an appeal would necessarily fall outside the statutory time limit, because the time limit has already expired. Elections Code, Art. 7 § A(11). However, should Gandall wish to appeal the ruling issued by the Elections Commission on remand, the Board will nevertheless choose to hear the appeal if it is filed within 48 hours of the Commission's ruling, statute of limitations notwithstanding.

Our authority to extend the statutory time limit for filing an appeal is derived from two sources. The first is the "traditional equitable authority" reserved by courts. *Holland v. Florida*, 560 U.S. 631, at 643 (quotations omitted) (2010). In *Holland*, the United States Supreme Court considered whether Federal courts were required to adhere strictly to the statutory time limit for filing a petition for habeas corpus, or whether the courts could extend that time limit in appropriate circumstances. Even though the relevant statute contained no provisions authorizing equitable tolling, the Supreme Court held that a "statute of limitations is normally subject to a rebuttable presumption in *favor* of equitable tolling." *Id.* at 643 (quotations omitted, emphasis in original). This well-known principle applies to the ASUCI Judicial Board as well. Absent the clearest command from the Senate, we will not read a statutory time limit in such a way as to abrogate this Board's authority to equitably toll.

This is not to say that the Board will toll a statute of limitations whenever it is sympathetic to an appellant's case. In most cases, the deadline must be respected. The specific circumstances of this case, however, incline us to to toll the statutory time limit. Should Gandall choose to appeal the upcoming decision of the Elections Commission, the time limit will have expired, but not due to any fault of his own. Instead, fault must be attributed to the Election Commission's procedural violations of the Elections Code.

Just as the Commission may not frustrate our appellate jurisdiction by failing to issue a ruling on a case, neither may they time-bar an appeal by committing an irreparable procedural violation. When a litigant's appeal is late due to a failure attributable to error or misconduct on the part of ASUCI, rather than to his own negligence, we are highly likely to accept the appeal regardless of its lateness.

Our decision to extend the time limit for an appeal is not only reasonable given traditional equitable principles, but also compelled by the ASUCI Constitution. As we have now held, appellant has a right to have his complaint heard. Were we not to extend the time limit for an appeal, appellant would have no opportunity to petition the Judicial Board for a ruling on the merits of his complaint. The Elections Code can impose reasonable procedural requirements for an appeal, but it cannot, consistent with the Constitution, wholly eliminate a student's right to appeal. It would therefore be unconstitutional for us to insist on the statutory time limit in a case in which appellant was given no opportunity to meet it.

* * *

Given the rapidly oncoming deadlines imposed not only by statute, but by the elections process itself, we specify here an expedited schedule. The Elections Commission must issue a decision on the merits of Gandall's complaints before the statutory deadline at 5:00pm on Tuesday of the fifth week of the quarter. Elections Code, Art. VII § A(13). Gandall may then appeal that decision no later than 48 hours after the opinion is issued, or 5:00pm on Thursday of the fifth week of the quarter, whichever is earlier. While the case is pending, the Elections Commission must withdraw from publication any election results that are still in dispute.

The decision of the Elections Commission is vacated, and the case remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Suchith Shantharaj, Chief Justice	**Roxana Bokaei, Associate Justice**

Laura Anderson, Associate Justice

Aviel Menter, Associate Justice