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 R52-62: "Impeachment of Oliver Flores as Student Advocate General"

MENTER, J., delivered the opinion for a unanimous Board.

JUSTICE MENTER delivered the opinion of the Board.

On April 27th, the ASUCI Senate brought articles of impeachment against Student Advocate General Oliver Flores. Senate Resolution 52-62. The impeachment resolution also stripped Flores of all powers until his impeachment hearing, and recommended that the External Deputy Student Advocate General act as a replacement while the office of Student Advocate General is vacant. Before a hearing was scheduled, however, Flores resigned. Though we cannot issue a decision on the impeachment itself in the absence of a hearing, ASUCI Constitution, Art. IX § 5(b), other sections of R52-62 raise constitutional concerns that we choose to resolve here. Accordingly, we hold that the Senate may not strip the Student Advocate General of his powers until such time as this Board conducts a hearing and votes to remove him from office. We also clarify the extent of the Senate's powers to recommend replacements for vacancies in elected positions.

I

The ASUCI Constitution grants the Senate the power to impeach the Student Advocate General. ASUCI Constitution, Art. VI § 2(p)(1). Though the Constitution grants the Senate plenary authority to determine what offenses warrant impeachment, Art. VI § 2(r), it requires that specific procedures be followed before an official is actually removed from office. First, the Constitution only allows the Student Advocate General to be impeached by a three-fourths supermajority vote in the Senate, Art. VI § 2(p). After this, the Judicial Board must hold a hearing, and decide by a two-thirds vote whether to allow the impeachment to go through. Art. IX § 5(b). Finally, the Board must decide by another two-thirds vote whether the impeached official should be barred from holding office within ASUCI in the future. Art. VIII § 2(m). Unlike the United States Constitution, which isolates the judicial department from the impeachment process, the ASUCI Constitution grants the Judicial Board a central role. *Cf. Nixon v. United States*, 506 U.S. 224 (1993) (holding that the constitutionality of procedures used to impeach a Federal judge poses a nonjusticiable political question). Therefore, though we cannot review the Senate's substantive justifications for an

impeachment, we have the constitutional duty to ensure that they have followed the proper procedures.

Senate Resolution 52-62 impeached the Student Advocate General, Oliver Flores. But it also did more. In addition to bringing articles of impeachment, R52-62 "relieve[d] Oliver Flores of all power and responsibilities as the Student Advocate General until the final judgement of his impeachment hearing", ¶ 21, and recommended that the Executive Deputy Student Advocate General "assume the position of Interim Student Advocate General until a new Student Advocate General is appointed", ¶ 22. Each of these provisions raises constitutional concerns that this Board must address.

The ideal time to rule on some of these concerns has already passed. Flores has resigned, thus mooting the provision of the resolution stripping him of his power. Any damage the resolution could do to him has therefore already been done. *Burke v. Barnes*, 479 U.S. 361 (1987). The temporary nature of the suspect provisions in this resolution, however, compels us to consider their constitutionality regardless of their mootness. These same issues may arise again; but every time they do, they will expire just as quickly. Even if an impeached official does not resign, any provision of an impeachment resolution that takes effect only before a hearing will have expired by the time the hearing is held. Though these same constitutional questions may recur, they will disappear in such a short time that we may have no opportunity to review them before they do. Because these issues are "'capable of repetition, yet evading review'", *Roe v. Wade*, 410 U.S. at 125 (1973), we choose to rule on them now, before the opportunity to do so meaningfully has expired.

II

A

Senate Resolution 52-62 contains two provisions raising significant constitutional concerns. The first of these provisions stripped the Student Advocate General of all power until his impeachment hearing. *See* R52-62, ¶ 21. We hold that the Senate may not pass such a provision. The Constitution requires that, after the Senate vote to impeach the Student Advocate General, the Judicial Board hold a hearing on the impeachment. ASUCI

Constitution, Art. IX § 5(b). After this hearing, the Board must take a vote. If two-thirds of the members of this Board agree, then the impeachment may go through. Art. VIII § 2(m). Only at that point may the Student Advocate General be removed from office. The Senate has no other power to strip an elected official of his authority. Art. VI § 2. It may only do so by impeachment, which can only be finalized by the Judicial Board after a hearing has been held. Because ¶ 21 bypasses the impeachment process laid out in the Constitution, we hold that it is unconstitutional.

The second suspect provision of this resolution "recommend[s]" that Auzzsa Eaton, the current External Deputy Student Advocate General, "assume the position of Interim Student Advocate General until a new Student Advocate General is appointed", ¶ 22. This provision is not dispensed with as easily as the previous one. We must first figure out what it means. At first glance, the provision would seem to recommend that Eaton be appointed to a position with the title of "Interim Student Advocate General". However, the ASUCI Constitution does not recognize such a position, nor does it grant the Senate the authority to create it. If the resolution intends to have Eaton appointed to this nonexistent office, it must therefore be unconstitutional.

Alternatively, the provision may not be recommending Eaton to a newly created position, but may instead be intended to grant her the powers of the Student Advocate General. Paragraph 15 of the resolution seems to support this interpretation. See R52-62, ¶ 15 ("it is imperative that an interim Student Advocate General be appointed"). This paragraph spells "interim" with a lowercase "i", suggesting that the resolution does not intend that word to be part of the title of the position. Furthermore, the paragraph's (literally) imperative language could be read as going further than merely recommending that Eaton be appointed to the position, but rather, commanding it. It is therefore possible to interpret the resolution as appointing Eaton to the position of Student Advocate General.

However, this interpretation would render the resolution unconstitutional as well. The Senate may not fill a vacancy in an elected position by appointment. The only power the Constitution gives the Senate to fill such a vacancy is the power to approve a special election. ASUCI Constitution, Art. VI § 2(y). Were the

Senate able to appoint a replacement for the Student Advocate General, it would effectively have the veto power over the results of a democratic election. Whenever three-fourths of the Senate disliked the results of an election, it could simply impeach the winner of the election and replace him with somebody else. The Constitution does not grant the Senate this authority.

B

Both of the interpretations we have put forward so far are incompatible with the Constitution. If we adopt either of them, we must therefore strike the provision down. However, if there is another interpretation of ¶ 22 that is not in conflict with the Constitution, we must construe the provision according to that interpretation. This interpretation need not be the most obvious or intuitive one; it must only be a "fairly possible" one. *Crowell v. Benson*, 285 U.S. at 62 (1932). So long as any constitutional construction exists, it "must be resorted to, in order to save a statute from unconstitutionality." *Hooper v. California*, 155 U.S. at 657 (1895).

We find that the text of this provision of the resolution supports a saving construction. Specifically, we can interpret the provision as expressing only a non-binding preference that Aussza Eaton hold the office of Student Advocate General. This construction need not be "most natural interpretation", *National Federation of Independent Business v. Sebelius*, 132 S. Ct., at 2603 (2012), so long as it is consistent with the text of the resolution. Paragraph 22 of the resolution "recommend[s]", but does not command, that Eaton "assume the position of Interim Student Advocate General". And though ¶ 15 emphasizes that "it is imperative that an interim Student Advocate General be appointed", the use of the passive voice leaves open the possibility that someone other than the Senate will do the appointing. The resolution may therefore be read as favoring, but not requiring, that Eaton be made Student Advocate General.

When interpreted in this manner, the resolution easily passes constitutional muster. The Senate is empowered to "set the official stances of ASUCI". ASUCI Constitution, Art. VI § 2(b). This includes the power to set a stance on who should be the Student Advocate General. Such a stance does not

unconstitutionally abrogate or alter the power of any elected official. It neither reduces the power of the current Student Advocate General, nor increases the power of the External Deputy Student Advocate General. It is merely an endorsement; nothing more. Placing this construction on ¶ 15 and ¶ 22, we find that these provisions of the resolution comport with the Constitution.

III

Because ¶ 21 of the resolution is not compatible with the Constitution, but all other provisions are, we strike down only ¶ 21. Our decision to invalidate only part of the resolution is guided by normal severability principles. First, if we are to sever portions of a statute, the statute must have "textual provisions that can be severed." *Reno v. American Civil Liberties Union*, 521 U.S. at 883 (1997). This requirement is easily met here. Paragraph 21 is not referenced anywhere else in the resolution, and the resolution is entirely coherent without it. Our construction of ¶ 22 in particular makes ¶ 21 especially easy to separate from the rest of the resolution. If we were to interpret ¶ 22 as granting the External Deputy Student Advocate General any of the powers of the Student Advocate General, then we could not easily separate the provisions. It would not make sense for the resolution to appoint a new Student Advocate General without removing the previous one. When we interpret ¶ 22 as expressing only a non-binding preference, however, it becomes easy to separate ¶ 21 from the rest of the resolution. The Senate may choose to recommend a replacement Student Advocate General, even while the current one remains in power.

After determining that the resolution contains severable provisions, we then decide which provisions to sever. In general, we seek to limit the impact of our holding only to those specific provisions or applications of a statute that violate the Constitution. In other words, a statute "may … be declared invalid to the extent that it reaches too far, but otherwise left intact." *Brockett v. Spokane Arcades, Inc.*, 472 U.S. at 504 (1985). Because ¶ 21 is the only provision of R52-62 that is not compatible with the Constitution, it is the only provision we strike. We need not go further with resolution.

However, it is possible that the Senate may not want us to sever the provisions of a statute in this manner. In such a case, the Senate may include a severability clause, advising us which provisions of a statute we should consider separately and which we should treat as a cohesive unit. In general, when a statute contains a severability clause, we will make an effort to adhere to it. However, such clauses are not binding. They are "an aid merely; not an inexorable command", *Reno* at 844-845, n. 49. We may choose not to adhere to a severability clause when it would require us to distinguish between the various provisions and applications of a statute with unmanageable precision. Nor will we allow a severability clause to save a facially invalid statute from being struck down. *Whole Woman's Health v. Hellerstedt,* 136 S. Ct. at 2319 (2016). Under normal circumstances, however, we will do our best to honor the terms of a severability clause when one is present.

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By stripping the Student Advocate General of his power, ¶ 21 exceeds the constitutional authority of the Senate, and we therefore strike it down. All other provisions of the resolution are susceptible to a construction compatible with the Constitution, and we therefore uphold them. Accordingly, we hold that Resolution 52-62 may not alter the powers of any of the officials in the Student Advocate General's office. Neither the External Deputy Student Advocate General, nor any other person, may take on new duties pursuant to this resolution, until such time as a special election for Student Advocate General is held.

It is so ordered.

Suchith Shantharaj, Chief Justice

Laura Anderson, Associate Justice

Roxana Bokaei, Associate Justice

Aviel Menter, Associate Justice

Grace Shin, Associate Justice