# 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 R53-97: Dismissal of a Social Ecology Senator*

Gerald, Q., delivered the opinion of the Board, in which all other Members joined, with the exception of Justice Lin.

JUSTICE Gerald delivered the opinion of the Board.

On 4/17/2018 Senate R53-97 was passed which calls for the removal of social ecology senator Adrian Moreno for neglecting to attend the required number of sessions as declared in the ASUCI bylaws Article VI, Section F, subsection 3 which states "any senator with three (3) total absences per Quarter at Regular Senate meeting shall be eligible for dismissal from the Senate by Legislation from the Rules Committee". Following this statement, it is declared that the seat would be declared vacant thus opening up to a special election to fill the seat. This resolution sets before the Judicial Board a constitutional crisis over the powers of the senate to perform such an action that would bypass the impeachment process outlined in the ASUCI Constitution Article IX, § 6. We therefore have a contradiction between the bylaws and the Constitution itself. We choose to resolve this conflict here and it is the court's decision the Senate does not have the authority to outright dismiss a fellow senator without following the impeachment process.

A

R53-97 is very similar to a previous case in which the Senate tried to dismiss another elected official without engaging in the impeachment process. The most recent example was the decision reached in *In Re R52-62*. In that case, the Senate attempted to remove the then Student Advocate General Oliver Flores by dismissal instead of impeachment. Noting that the processes for removal from office are identical for both senators and executive officers, it is reasonable to apply the reasons

made in that case to this one. In that case, the board had decided "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", *In Re R52-62,* (Spring 2017). The board cannot defy this precedent to establish a new one without substantial cause to do so. But the board cannot find a substantial cause to reverse this decision in the Constitution for it is explicit in the process of the removal of senators. It is clearly stated in Article IX § 6(a) that "the Senate may impeach a senator by a two thirds vote". The ASUCI constitution has no reference to the dismissal process noted in R53-97 for it is only in the bylaws in Article VI, Section F, subsection 3. It is therefore necessary to elaborate upon the purpose of this dismissal process and its nature in relation to the impeachment process.

B

Upon first glance, the dismissal process and the impeachment process appear to have the same effect. Both remove an official from their position to open up a vacancy. In addition both are only used when the official participates in neglect of duty, malfeasance, or misconduct. But upon closer inspection, there are drastic differences. First in the impeachment process as detailed in the ASUCI Constitution Article IX § 6(b), after the impeachment of a senator by two-thirds vote the "Judicial Board must then hold hearings to and determine whether the senator should be removed from office, and if so, whether they should be barred from holding office in ASUCI for a period of time". The Judicial Board has a major role in the impeachment process do determine the fate of the Senator impeached such as the major power of rejecting the Senate's desire to see the Senator in

question removed from office by ordering them to stay. In contrast, the dismissal process bypasses the Judicial Board's role only requiring a majority vote from the Senate from legislation created by members of the Rules Committee. Also stated in Article VI, Section F, subsection of the ASUCI bylaws, the "Rules Committee shall seek a replacement for vacancies, providing there are at least four (4) Regular Senate meetings remaining in the term. Dismissed persons are eligible to apply for such vacancies". There is a major difference in the severity of punishment between the two process of removal from office. The impeachment process has the possibility of being more severe in terms of the Judicial Board having the power to barr the Senator from serving in ASUCI in any capacity whereas dismissal is more lax giving the Senator dismissed a chance at regaining their position. It could be interpreted as the dismissal process being an alternative to impeachment if the Senate does not want to be be as strict with the Senator in question. But this process is itself unconstitutional for avoiding a constitutional procedure.

C

If this dismissal procedure were an accepted practice, it would have happened often to multiple officials throughout the years. But upon the inspection there is not a single case in which this dismissal process has been carried out without question. With the dismissal of the Student Advocate General being declared unconstitutional in *In Re R52-62* there aren't many other instances of senators being outright dismissed by the Senate to open a vacancy. Two previous resolutions were also written to dismiss senators for the same reasons as in R53-97, that being failure to attend a required number of sessions. R52-07 tried to remove ICS Senator Tej Vuligonda for only attending "eleven (11) Legislative

Council meetings out of a total of thirty-eight (38) held during his term last year….this translates into an attendance record of being present at 28.94% of all meetings". R52-79 attempted to do same thing for the then Physical Sciences Senator Donald Trinh. The problem is that both of these resolutions were withdrawn before being put to a vote, therefore preventing the Judicial Board from deciding their constitutionality at the time. Thus without any major example of the dismissal process being carried out in its entirety, it is nearly impossible to argue its constitutionality.

D

The title of Article IX § 6 is "Impeachment and Removal from Office". There is no ambiguity in this title nor the process of impeachment itself. While the ASUCI Constitution has no supremacy clause such as detailed in Article VI, Clause 2 of the U.S. Constitution, given the nature of Constitutions, it is clear that the ASUCI Constitution is supreme if there is a conflict between it and the bylaws. Given this, Article VI, Section F must be carried out differently to be in accordance to the Constitution instead of the Board being forced declare it unconstitutional. Article IX § 2(r) states the Senate determines "what constitutes an impeachable offense listed in (o) through (q)" so the Senate clearly has the ability to remove a Senator from their position. But it only says an "impeachable offense" alluring to the impeachment process and nothing else. Therefore the bylaws in question must be interpreted as grounds for impeachment instead of it being its own process.

□ □ □

By refusing to carry out the impeachment process, the Senate gave itself an arbitrary power to dismiss officials which is not a power given to it in the ASUCI

Constitution. R53-97 sought to engage in a process which conflict with the Constitution which cannot be tolerated by the Judicial Board. Given that the Constitution is explicit in the process for the removal of officials being the impeachment process and that there is no history to the contrary, we must declare R53-97 to be unconstitutional. The reasons for dismissal though can be used for grounds for impeachment if the Senate wishes to carry out the impeachment process

*It is so ordered.*

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| **Suchith Shantharaj,**<br>**Chief Justice** | **Reece Disney,**<br>**Vice-Chief Justice** |
| **Yesenia Lopez,**<br>**Associate Justice** | **John Akinwole,**<br>**Associate Justice** |
| **Quincy Gerald,**<br>**Associate Justice** | **Michelle Abundis,**<br>**Associate Justice** |