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 R54-03:
By-Laws Amendment: Censure of a Senator

CHIEF JUSTICE DISNEY delivered the opinion of the Board, in which all other Members joined

Senate Resolution R54-03 attempts to amend the ASUCI Constitution by allowing for Senators to be censured via ejection from the Senate Chamber during meetings by a majority vote if their behavior is deemed unacceptable by the majority body. This is in spite of the fact that the resolution's title labels it as a By-laws amendment, as its operative clause specifies that "the [above] be added to the ASUCI Constitution under Article 6." There is in reality no clear reason to add these measures to the Constitution, as disciplinary punishment for misconduct during a Senate meeting would fall under the By-Laws. Despite the misleading title of the resolution, there is a bigger issue with permanently enshrining such a rule into the Constitution, and the Judicial Board cannot allow this resolution to pass as it is currently written.

I

A

No voting member of the Senate can be denied their right to vote. Currently, R54-03 does not specify the extent of a member's expulsion during a meeting. As such, an extension of this resolution allows for the possibility of the majority of senators to not only gag dissenting opinion, but also eject minority voices from meetings and prevent them from voting. The removal of voting rights from a Senator is inherently against the democratic ideals upon which ASUCI was founded and violates the purpose for which it was established: to "provide a forum for the expression of the student views and interests [...] [and to] represent and articulate our rights to a voice in campus governance" (ASUCI Constitution, Preamble).

Through the powers provided in R54-03, a majority of Senate members could silence a fellow representative and that representative's constituents, an action that is both unconstitutional and grossly undemocratic. Insofar as a Senator maintains his or her position, he or she maintains the right and responsibility to vote, and it is therefore decidedly against the powers of Senate to abridge said right and responsibility. Any Senator present during the initial roll-call must be present during the voting of all resolutions at said meeting.

B

R54-03 currently includes dilatory motions as grounds for disciplinary action, specifically censure and/or removal from deliberation and voting procedure. To include dilatory motions in such a resolution effectively strips Senators of their right to filibuster and similar actions, all of which are essential tools for Senate members and allows the Senate to maintain a balance of ideals.

Furthermore, there are currently no effective oversight measure specified in R54-03. According to the resolution, the censure and gagging of a Senator falls under disciplinary actions in response to disorderly conduct. The resolution goes on to specify that "the Senate has the right to determine the qualifications of its members and what constitutes unprofessional or unparliamentary conduct, subject to review by the Judicial Board" (R54-03, operative clause I, subsection a). While this operative clause does correctly cite the Judicial Board's final authority to determine whether conduct deemed unprofessional or unparliamentary is grounds for disciplinary action such as impeachment, as was upheld

in the Judicial Ruling on R53-47, Impeachment of a Social Ecology Senator, the resolution fails to ensure that such oversight is effectively taken.

Because of the nature of the rule, the Senate would ascribe the punishment before it could be proven to be acceptable by the Judicial Board, and adjudicating bodies would be unable to properly respond to an abridgement of rights should the use of the disciplinary action be found to have been used improperly. It is unreasonable to assume that any Justices will be present to oversee all Senate meetings, as such an assumption places additional burdens and duties upon the Judicial Board without proper procedure.

Such requirements could not be placed upon the Judicial Board by the Senate in any case, regardless of procedure, as this would effectively require a partial merger between two distinct branches of ASUCI, violating the constitutional stipulation for the separation of powers. Therefore, any review mentioned in the first operative clause of R54-03 would have to be done retroactively by the Judicial Board. It would thus be impossible to monitor instances of abuse of disciplinary actions and there would be no true remedy that could be granted to aggrieved Senators; even a complete "re-doing" of the meeting would fall short of the original meeting that occurred.

II

As R54-03 articulates, the Senate does not currently possess any formal measures of disciplinary action for its members aside from impeachment, and the Judicial Board recognizes that R54-03 is an attempt at amending this. To this extent, the Board is not fundamentally opposed the possibility of establishing

additional avenues of disciplinary action for Senators and would be in favor of a resolution that could effectively achieve this goal. However, as R54-03 currently stands, we fear that members of the Senate would potentially abuse this power to essentially blacklist other members, preventing said members from performing duties guaranteed in the ASUCI Constitution.

It is important to consider the size and makeup of the ASUCI Senate in comparison to the legislative bodies of other modern democratic states. The ASUCI Senate is incredibly small compared to bodies such as the United States House of Representatives, possessing less than 31 members at any given time while the latter contains 435 members. Such a large number ensures difficulty in acquiring enough votes to punish a single member. Even the document sourced in R54-03 notes this, citing how little actions have been used to push for suspension since their establishment. This is not an advantage that the ASUCI Senate shares.

Furthermore, without the presence of political parties, coalitions (as are common in multiparty democratic systems), or factions (as are sometimes present in single-party systems), the ASUCI Senate has no foundational assurance of diversity of opinion or ideology. These factors make it relatively easy for the Senate to create the supermajority required to strongarm an individual. If we compare this structure once again to that of the U.S. House of Representatives or the United States Senate, after which the ASUCI Senate is largely modeled, we see that the lack of a noticeable bipartisan system in the ASUCI Senate removes this check on creating such a supermajority; the general homozygosity of the ASUCI Senate lends itself to the silencing of rare minority voices. Whether or not this is intended by the

members of the Senate, it still makes the implications of this resolution undeniably dangerous.

Expulsion, short of impeachment, is the highest form of disciplinary action within the House, being only used five times in its its history. Each of these cases involved disloyalty to the United States Government or some form of criminal violation. It is unreasonable to translate treason on an international scale to the scale of ASUCI. Currently, the Judicial Board finds no adequate comparison to treason on a university scale. Therefore, expulsion from Senate seems unreasonable for our purposes.

The document sourced also questions the House's own authority to use such powers. This, along with the aforementioned limited uses of suspension and expulsion, should be enough to illustrate the restraint present when using disciplinary actions. There has been no historical usage of the principle of suspending a senator, which is what dismissing him or her from a meeting roughly translates to in US House Rules, rather it has happened that disruptive members have be pressured into recusing themselves- a decidedly voluntary action. ASUCI Senate should take the same amount of precautions when creating their own forms of disciplinary actions and should practice the same amount of restraint when exercising said actions.

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We emphasize that this ruling does not explicitly restrict the possibility of additional disciplinary measures for the Senate being added to the ASUCI By-laws. If it is the will of the Senate to reintroduce a new resolution

with intentions similar to those of R54-03, they may do so. It is only important that they recognize what revisions would have to be made to the current model put forth in this resolution in order to be constitutional and obtain the support of the Judicial Board. If, in future revisions, a hierarchy of punishments is established in a manner that maintains constitutionality and bureaucratic process is put in place to prevent abuse of power through disciplinary action, such a resolution could be passed. However, as it currently stands, R54-03 lacks effective oversight and violates the rights of Senators by providing the possibility to remove a minority voice from voting. Therefore, the Judicial Board rules against the passing of R54-03 on the grounds of its unconstitutionality.

It is so ordered.

Reece Disney, Chief Justice

John Akinwole, Vice Chief Justice

Michelle Abundis, Associate Justice

Benny Lin, Associate Justice

Quincy Gerald, Associate Justice