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 R54-38:
Amendment of the Bylaws to include Commissioner and Chief of Staff Duties, Hiring and Dismissal

Gerald, J., delivered the opinion of the Board, in which all other members joined

Justice Gerald delivered the opinion of the Board, in response to the passing of Senate legislation R54-38.

Senate Legislation R54-38 seeks to add an amendment to the ASUCI Bylaws to delineate the duties, hiring process, and dismissal procedures for Chief of Staffs, Commissioners, Directors, Officers, and other ASUCI staff. The subject matter itself is not deemed unconstitutional by the Board, but a singular clause in R54-38 which violates the separation of powers by giving the Judicial Board too much power over the Senate.

I

The final operative clause in R54-38 states "if any section of the above clauses are so found to be unconstitutional by the Judicial Board following review, the clauses which are not found unconstitutional shall remain in effect and the numbering adjusted to account for the removed clauses". In essence this clause sets out to have the legislation still go into effect even if the Judicial Board found some aspect of it to be unconstitutional. However, it is unfortunately this clause that makes the whole legislation unconstitutional. This clause violates the process of Judicial Review and the separation of powers because "it is emphatically the duty of the Judicial Department to say what the law is," and the final clause in R54-38 takes the maxim to the extreme (*Marbury v. Madison* 5 U.S. 137) . If this clause is allowed to be passed and establish precedent in all subsequent pieces of legislation, the Board

could alter all subsequent pieces of legislation such that the legislation that goes into effect has the potential to be radically different from what was intended by the Senate. The Judicial Board would therefore have de facto legislative powers with the explicit ability to edit legislation directly before allowing it to pass, granting the Judicial Board almost the same powers as a Senate committee, the only difference being that the Judicial Board cannot add anything to a piece of legislation. Therefore, what could at first be seen as a mere technicality can actually have grave consequences by giving the Judicial Board a dangerous amount of power not delegated to it by the constitution, a power that infringes on the domain of a democratic republican government with a present separation of powers. The constituents of ASUCI would thus not have their will be carried out through their elected legislators, but be carried out by unelected justices. It is for a reason such as this that this Board has never ruled only one part of a legislation to be unconstitutional, but rules on a legislation in its entirety. In order for the separation of powers to stand, the Judicial Board has and must continue to rule in absolutes.

II

The Board also had some miscellaneous concerns about R54-38 which while are not the reasons why R54-38 was deemed unconstitutional, they are worth noting for the Senate to take into account for future revisions. The fifth clause of R54-38 states that ASUCI is an “at-will institution”

meaning that "an employee can be dismissed for any reason, and without warning, as long as the reason is not illegal". The first operative clause then states that staff "may be removed from office by their respective Executive Officer at any time" and "documentation should be clear as to the need for removal." The concerns the Judicial Board has is to what counts as documentary evidence because ASUCI does not commonly use physical documents for such matters. The Board is therefore concerned about the practicality of carrying this out. It is also a concern of whether non-paid staff should be included in this piece of legislation, as U.S. labor law is only mentioned in reference to paid workers, while non-paid staff are in essence volunteers and therefore may not need to be included.

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It should be reiterated, the above concerns are not what caused R54-38 to be deemed unconstitutional. Rather it was the final clause which sought to have the legislation still go into effect somewhat even if the Board ruled it to be unconstitutional. The Board found it as an infraction on the separation of powers by giving the Board a power is should never have. The Senate has the full right to add this amendment to the Bylaws, but the legislation should have no reference to the Judicial Board. Thus this amendment to the ASUCI Bylaws shall not go into effect unless it is reintroduced without mentioning the process of Judicial Review.

It is so ordered.

Reece Disney,
Chief Justice

Benny Lin,
Associate Justice

Michelle Abundis,
Vice Chief
Justice

Quincy Gerald,
Associate Justice