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 DISSENT ON R54-109: SBFB Guidelines Amendment to Not Fund Styrofoam Products

ABUNDIS, J., LIN J., and DISNEY C.J. ruled Resolution unconstitutional. GERALD, J., filed a dissenting opinion.

Justice Gerald, dissenting.

Senate Resolution R54-109 was an amendment to the SPFB Guidelines to include the rule that no funds allocated to an undergraduate organization can be used to buy products that contain the material polystyrene. If the club did buy polystyrene products, it would qualify as fund misuse and the the organization can face penalties such as the funds that were allocated to the organization being frozen. In addition to this R54-109 also put as its second and last operative clause that “no ASUCI funds may be used to purchase polystyrene products”. This second operative clause is the what the majority of the Board deems to make R54-109 unconstitutional. The reason it is unconstitutional is since it is stated that no ASUCI funds can be used for the purchase of polystyrene products, the Senate gave itself the power to control how the other branches of government can allocate its funds, making the Senate give itself a power not delegated to it by the ASUCI Constitution. It is also pointed out in the majority opinion that the resolution is also unenforceable given that it has no enforcement provisions and cannot be carried out in an effective manner given that polystyrene is found in many products and may be purchased accidentally. I have to disagree with both of these points. To me the Senate does have the authority to play a role in the spending of other branches of ASUCI and that the lack of enforcement provisions while may be worthy of note, plays no role in whether R54-109 is constitutional or not.

I

The Senate derives its authority to pass R54-109 from two delegated powers found in the ASUCI Constitution. The first is in ASUCI Constitution, Article 6, Section 2, Subsection A which states the Senate has the authority to "enact legislation for the welfare and interest of the undergraduate students". Clearly trying to not use materials that are harmful to the Earth falls under this category as styrofoam is quite bad for the environment and R54-109 has multiple lines detailing its harmful effects. The other delegated power that gives the Senate the authority to pass R54-109 is Article 6, Section 2, Subsection D which states that the Senate has the duty to "appropriate all ASUCI fee income and exercise oversight of all ASUCI spending". It is the latter half of Subsection D that to me gives the Senate that ability to play a role in the spending of other branches of ASUCI. What other branches spend their funds on is without a doubt a part of ASUCI spending so the Senate should be there in some capacity beyond allocating a budget. According to the Merriam-Webster dictionary, oversight can be described as "regulatory supervision" and given the context of the ASUCI Constitution, I believe this is the definition of the word used. Determining spending regulations that other branches must adhere to counts as regulatory supervision. In addition the Senate also has other financial powers such as the ability to freeze the accounts of other offices for failing to submit a financial report. With all of this financial authority-in this case it is essentially all of it- would it make much sense that the Senate has no right to set spending regulations for other offices? It is a ridiculous notion that the Senate can outright freeze the accounts of other offices yet it does not have the authority to set financial regulations. Therefore setting financial regulations is carrying out the Senate's duty to control anything financial within ASUCI and does not create a new power that the majority of the Board believes.

II

For a moment I wish to go back to the first operative clause of R54-109 which states that SPFB funds will not be allocated to polystyrene products being constitutional as everyone on the Board states. But by saying that this is constitutional and regulations for other branches of ASUCI is not, it is essentially stating that branches of ASUCI have more financial freedom than undergraduate campus organizations which is hypocrisy. It is stating that these organizations must abide by ASUCI guidelines but ASUCI itself does not need to, that the Senate can make rules for clubs to follow but cannot make rules for other branches. The notion that an office such as the Judicial Board can have more financial freedom by being a part of ASUCI than say a club applying for SPFB funds is outlandish.

III

The last few sections of the majority opinion describes how the resolution is unenforceable and that it is too vague and powerful. However true this may be, it is irrelevant in determining constitutionality. Yes it is true that there are no enforcement provisions, if anything a memo should have been sent to the Senate stating this and in all likelihood the Senate would have amended the resolution to add enforcement provisions and go into more detail of how it would be carried out. But regardless this does not inherently make it unconstitutional. Unclear laws can still be constitutional laws and the Judicial Board's duty is to state what is constitutional or not, not whether the

Board agrees with the practicality of a legislation. In conclusion, R54-109 is carrying out an enumerated Senate power, not creating a new one. It is also hypocritical to state that ASUCI is unable to set regulations for undergraduate organizations but cannot set regulations for itself, and that the practicality of carrying out a piece of legislation should not be considered by the Judicial Board. For these reasons I must respectfully dissent.

Quincy Gerald, Associate
Justice