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 OPINION ON AMICUS CURIAE: POWERS OF THE RULES COMMITTEE

ABUNDIS, C.J., delivered the majority opinion of the Judicial Board, joined by GERALD J., BUNDA J., and ANAYAT J.

CHIEF JUSTICE ABUNDIS delivered the supplemental opinion of the Judicial Board, in response to the question posed in the Amicus Curiae brief, entitled *Powers of the Rules Committee.*

Amicus Curiae: Powers of the Rules Committee asks the Judicial Board to assess whether "the Rules Committee can unilaterally appoint the Parliamentarian."[1] The point of contention raised is whether a majority vote casted by the Rules committee is binding to appoint a Parliamentarian, absent of a vote by the full Senate assembly. To determine what unilateral powers the Rules Committee possess to appoint such a position, the Judicial Board will outline the process necessary to appoint an ASUCI Senate parliamentarian.

I

There are two provisions important in the description of the process necessary to appoint a Parliamentarian. They include, Article 6 Section 5(a) of the ASUCI Constitution, as mentioned by the Brief-drafter, and also Article 4 Section B(1) of the ASUCI Bylaws. The Constitutional section provides the most tailored insight into the hiring of a Senate Parliamentarian. It states that the Rules Committee may "hire Staff for the Senate… including a Parliamentarian."[2] This in effect grants Rules Committee power to hire Parliamentarians, a power that cannot be stripped from the Rules Committee, however it does not give any further insight as to how the Rules

[1] In reference to Amicus Curiae Brief, at 1.
[2] ASUCI Constitution, Art. 6 §5(a).

committee reaches the point in which they decide to make a hire, or what must happen after, if anything.

Also unique to this Constitutional clause, is the phrase "Secretary and Parliamentarian."[3] By using the term 'and' as opposed to the term 'or', the Constitutional framers liken the two positions, and push forth a conjunctive reading of their appointment processes. This reading is the only possible interpretation that justifies what would otherwise be easier said differently. Further, the fact that both of these positions exist within the Senate body but are not acting members with full voting privileges of the Senate, validates this interpretation.

Entertaining that the two positions are similar and would be appointed through similar processes, enables the Board to look at the Secretarial appointment process to find more details as to the appointment process of a Parliamentarian, something dire since there is no other information available in the governing documents concerning the Parliamentarian. In the Bylaw provision cited above, the appointment process is further defined, the "Senate Secretary is to be nominated by the President of the Senate in accordance with University Personnel Regulations, and appointed by a simple majority of the voting Senators present."[4] If such a process was applied to the Parliamentarian position, then, we have now a three step process: the Parliamentarian must be nominated by

[3] ASUCI Constitution, Art. 6 §5(a).
[4] ASUCI Bylaws, Art. 4 §B(1).

the Senate President, appointed by the majority of the Senate, and hired by Rules Committee.

The Judicial Board found great difficulty in making the logical leap of comparing the two positions because it was not explicitly in text the text of our governing documents, however it was necessary given the current condition of said documents. Despite seeming differences between the documents, we must faithfully uphold all documents and make them coherent with each other when possible.

This interpretation, in that sense, maintains the veracity of the words put forth in both the Bylaws and the Constitution. Further, the fact that with this interpretation the two provisions at no point contradict each other, made the interpretation sounder. There is a quintessential difference between appointment, hiring, and nominating. All three terms allude to different actions. Black Law's Dictionary defines 'nominating' as "proposing for appointment" (with no allusion to hiring). Appointment is defined as "to designate a person or persons to take [office]." Hiring was construed as the "[making] of a contract by which one person grants to another either the enjoyment of a thing or the use of labor…for a stipulated compensation." None of these three bear exact likeness to each other and so for the purposes of our governing documents are different processes. The Judicial Board affirms that the Senate Rules Committee maintains unilateral authority to "hire" a Parliamentarian, among other possible Senate staff, but it holds no such power to nominate or appoint.

Altogether, this interpretation coincides with the general practice used for other appointed positions; the final act of appointment comes from a vote from the full assembly. It is predictable that the framers of the ASUCI Constitution added this as a necessary check and balance on the authority vested in the Rules Committee. Without such a measure, the Constitutional clause here brought forth would enable any and all staff they desired, given no such limitations were placed in the clause. As this decision applies to the questions posed today to the Board, the Brief-drafter is correct in his statement that the Rules Committee may hire a Parliamentarian. The Judicial Board, however, maintains that such a hiring has no purpose or pragmatic effect absent a nomination and appointment.

II

There are several general topics brought up in the brief submitted to the Board that will herein be addressed. To begin, the Judicial Board agrees with the Statement that ASUCI Constitutional enumerations of powers, be they granted to the Rules Committee or another body, "cannot be rescinded, amended, or taken"[5] short of a Constitutional amendment, however, it must be added that they may be have certain provisions that redefine what exists in the Constitution. Such clarification is not a matter of amending what exists, it is elucidating what always was. For example, in a hypothetical case where a branch was solely dedicated towards the selling of monogramed ASUCI products, and

[5] Amicus Curiae, at 3.

whose description in the Constitution included a broad product-selling enumerated power, a Bylaw provision may clarify how the selling must proceed. This would not rescind the power of the branch, it would simply stipulate how that power may be expressed. In so far, as there is no clarification that would otherwise nullify what exists or is too significant an incursion that would otherwise make a Constitutional provision moot, such provisions should be upheld.

Another marker the Board wishes to correct pertains to the use of the Judicial Board ruling on R54-88. The interpretation of the ruling was applied well in this instance, as it applied to the ASUCI Constitution, however the brief-drafter neglected to apply the principle to the Bylaws provision referencing the process for the appointment of a Secretary. Inherent to ruling on R554-88, interpreters do not get to choose what to interpret, and so cannot be applied without having looked at the Bylaws.

Lastly, the Judicial Board must make a statement pertaining to the role of customs in the procedure of ASUCI. The Brief-drafter is true to say that customs ought and in fact do hold more authority than the explicit text of governing documents. The Brief-drafter, however, also states that this superiority exists in points of conflict between text and custom. Customs can guide the operations of ASUCI whenever they lie in accordance to the day's interpretation of the governing documents. As interpretations change, and as the documents are amended or changed, customs must adapt. Only in absence of this

synchronicity is it an absolute obligation to overthrow custom.

III

Additional commentary the Judicial Board has in response to the submitted brief, regard the difference between the Parliamentarian position and the Acting Parliamentarian position. The Judicial Board tentatively agrees with the Brief-drafter's characterization that an acting position maintains the same criterion for appointment as the normal position would otherwise have for the issue presented in the Amicus brief. They mention, "An Acting Parliamentarian is the same as a Parliamentarian, except with the provision that his [or her] position become vacant upon the approval of a regular Parliamentarian, and that the acting Parliamentarian shall not be paid."[6] Absent of any argument as to why that description of an Acting Parliamentarian is incorrect, the Judicial Board will skip this discretion in titles, leaving room to return to this issue in future cases should they present new information upon which to clarify the distinction.

The Judicial Board in this decision is also not considering the actions that arose placing a legislation appointing an acting Parliamentarian on the Rules Committee agenda. This Supplemental Opinion is merely clarifying an appointment process, and theoretically applying it to a Rules Committee vote that took place.

[6] *Amicus*, at 3.

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The Judicial Board finds that in order to nominate, appoint, and hire a Parliamentarian or Acting Parliamentarian, a Rules Committee vote needs to pass by majority vote, along with two other criterions, the Parliamentarian must be nominated by the Senate President and voted by a majority of the Senate. If such process was abridged, there would be no such appointment.

It is so ordered.