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."

DISSENT ON AMICUS CURIAE: POWERS OF THE RULES COMMITTEE

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

Justice Gerald, dissenting.

Amicus Curiae: Powers of the Rules Committee asks the Judicial Board to answer the question of whether the Rules Committee has the authority to unilaterally hire an acting Parliamentarian for the ASUCI Senate. The committee did so without a full vote of the ASUCI Senate and the brief contests that the committee has the right because it was performing an enumerated constitutional power. The majority of the Board believes that the Rules Committee erred in this regard. The majority of the Board believes that the appointment of an Acting Parliamentarian has to follow the same process as the Senate Secretary. I must disagree with this interpretation of the ASUCI Constitution. Such an interpretation ignores the explicit text of the document for the sake of expediency.

I

The Board in its majority opinion states the reason that the Parliamentarian must follow the same appointment process as the Senate Secretary is laid out in the ASUCI Constitution to a certain extent. The Constitution in Article 6 Section 5(a) states that the "Senate Standing Committee on Rules and Oversight may hire staff for the Senate, including a secretary and parliamentarian". The use of the word "and" according to the Board means that the two positions are conjunctive. In the current By-laws, there is no explicit appointment process for the Senate Parliamentarian. In fact, the Senate Parliamentarian is only mentioned once in the entire ASUCI By-laws. It is mentioned in Article 11 Section A(2) and it establishes that the Senate Parliamentarian is a non-voting member of the Rules Committee. The Board uses this fact to establish the connection between the Senate Parliamentarian and the Senate Secretary. The Board admits that it found "great difficulty in making the logical leap in comparing the two positions because it was not explicitly stated in the text of our governing documents, however it was necessary given the current condition of said

documents". The condition of the governing documents does not require that Constitution to be interpreted in such a way as to allow for the creation of an entirely new appointment process for a seperate position. Two separate processes for two seperate positions does no harm to the governing documents. The majority is imposing a new process for the appointment of a Parliamentarian that does not exist for the sake of making the process simpler by equating two positions. The bylaws is completely quiet on how the Parliamentarian is hired. In the scenario when the By-laws are silent, we must rely solely on the Constitution and that document makes it clear that the power to hire a Senate Parliamentarian resides solely with the Rules Committee.

The reason that the Senate Secretary is allowed to be appointed through a separate process is not simply because a different process is stated in the By-laws. It is allowed because the Rules Committee chooses not to hire a Senate Secretary. Article 6 Section 5(a) states that the Committee "may hire staff" which means that the committee does not have to carry out this duty if it does not deem it necessary to do so. Thus when the Senate Secretary is nominated by the Senate President and confirmed by a majority of the sitting senators, the Rules Committee does not have a role to play in the Secretary taking their position for they forfeited their duty. But the Board believes that the appointment of the Senate Secretary (and by extension the Senate Parliamentarian) is a three step process. The Board believes the Secretary must be first nominated by the Senate, confirmed by the Senate and hired by the Rules Committee. Nothing in the By-laws states that this has to be the sequence of events. The By-laws states that the appointment of the Senate Secretary is only a two step process, not three. If it were intended to be a three step process, the By-laws would have been more explicit. It would have stated that the Senate Secretary must first be nominated, then hired by the

Rules Committee, and finally confirmed by the Senate as a whole. A different sequence of events, such as the Rules Committee hiring the secretary after they have been confirmed by the Senate as a whole, would make no sense. Only when it is acknowledged that the Rules Committee refuses to carry out the power of hiring a Senate Secretary does the process of the By-laws make sense.

II

There are other concerns brought up by the Amicus Brief but I will not address them because they are not pertinent for why I decided to dissent. The main focus is that the Board has ignored the explicit text of the ASUCI Constitution because of a desire to combine the hiring/appointment processes of two separate offices for the sake of clarifying a process that was already clear in the first place. This scenario reminds me of a talk between former Supreme Court Justice Oliver Wendell Holmes Jr. and former Court of Appeals Judge Learned Hand. As Holmes was about to leave in his carriage Hand ran up to it and told him to remember to "do justice, sir, do justice". In response, Holmes said "that is not my job. It is my job to apply the law". I believe that not allowing the Rules Committee to do its enumerated power, we have not applied the law. This is why I must respectfully dissent.