ASUCI Judicial Board

Janncarlo Flores

v.

Fund the Clubs

Ruling

Dated: April 23, 2020

Gandall, K. delivered the opinion of the Board, in which Abundis, M., Gerald, Q., Naqvi K., and Bunda J. joined. Anayat T., took no part in the consideration or decision of the case.

Justice Gandall delivered the opinion of the Board,

In today's case, the petitioner brings suit against the defendant alleging that ASUCI Engineering Senator Bryce Lindsey is not abiding by UCI's Administrative Policies and Procedures. More specifically, petitioner alleges that Section 800-20 of the UCI Administrative Policies, of which barrs political endorsements, was violated as the defendant sent out an email that "can be implied as political support for Fund the Clubs."

While we make no factual judgements in this case as to whether the defendant did indeed send such email, or such email actually is linked to Fund the Clubs, we do comment on the nature of Judicial Board jurisdiction in such cases, and where such administrative codes may apply.[1] In common parlance, we find we have no jurisdiction to hear this case. Thus, we find in favor of the defendant.

I.

Firstmost, this case involves the curious application of administrative procedures to the election code. This prescribes two primary question: first, if administrative procedures are related to the election code. Second, if not related to the election code, if such procedures can independently stand. As we explain, the answer to both questions is a resounding, and unequivocally 'no.' Thus, the Judicial Board's jurisdiction is always bounded by an act of the governing documents, or that of a prescribed rule elsewhere applicable to our ability to issue remedy.

A.

The first question we are to handle is if the administrative procedures are related to the elections code. Such an argument, however, is immediately made moot by our decision in *Knight*, as the entirety of the elections code was deemed unconstitutional: "we are further required to overturn the entirety of R55-38 under the Gerald standard held In Re R54-38. Thus, we strike down the entirety of the Elections Code." *Knight v. Elections Commissioner*, at 14. Because there is no elections code, we have no rule to link the administrative procedures to our jurisdiction. Therefore, we reject the argument that the administrative procedures are applicable to any elections code.

B.

Second, is if the administrative procedures apply independent of the elections code. We rule they do not for two reasons: first, the constitution only offers us jurisdiction to interpret ASUCI governing documents. Second, a review of our

[1] If we were to fact find, this court would be required to hold a formal trial. We find this matter, however, as primarily an issue of law, not fact. For this reason, we are required to hold neither a preliminary nor formal trial: "*Summary Opinion.* The Judicial Board, believing no facts are in dispute, may issue a summary opinion which shall have binding authority as a decision." Judicial Board Policies, §7.1.5.

procedural history indicates a broad deference to other campus courts, such as Student Conduct, to adjudicate these matters.

i.

Firstmost, the constitution specifically bounds our authority. More specifically, the constitution only allows the Judicial Board "To interpret all parts of the governing documents of ASUCI," not that of the university at large. ASUCI Constitution, Art. 8 §2(a). See also: "To investigate charges of **violations of the ASUCI governing documents**" Art. 8 §2(j); "To review weekly all bills and resolutions adopted by the Senate and to submit memos to the authors regarding **their adherence to the ASUCI governing document**" Art. 8 §2(i). While the general authority prescribed to this board could, in theory, be greater than mere judicial questions (as exists in the US constitution), no such authority is present in our existing codes. Finally, the constitution places a necessary condition of explicit enumeration on all judicial remedies: "To grant judicial relief as permitted by the governing documents of ASUC." Art. 8 §2(b).[2]

Thus, because the constitutional rules constrain our jurisdiction to matters solely before the ASUCI governing documents, we decline to extend jurisdiction to cases involving administrative codes not bound in governing documents.

ii.

Secondly, a review of the procedural history of administrative cases prefers deference. Indeed, in the case of *Damavandi v. ASUCI Elections Commission* (2019), the Judicial Board heard of a case, brought against him by the ASUCI Elections Commission, that he had written a 'plagiarized facebook post.' Appendix A. This, as the Elections Commission argued, violated the Elections Code which demanded candidates abide by university policy. Shortly thereafter, the Elections Commission was forced to rescind the case against Damavandi, as Student Conduct claimed jurisdiction over the case. In conjunction with corroboration given by the Executive Director to Student Conduct, the <u>The Manual of the Irvine Division of the Academic Senate</u> Art. VI explicitly grants jurisdiction of the matters before the court in *Damavandi* to two campus courts[3]: the Instructor of a course (not applicable in Damavandi's facebook post) and the AIAO:

> The responsibility for maintaining the standards of academic integrity rests with two University authorities: the Instructor and the AIAO. Under the Standing Orders of the Regents, discipline is the exclusive responsibility of the campus administration while authority over courses and curricula is under the exclusive authority of the Instructor through the Academic Senate.

Eventually, Student Conduct would find Mr. Damavandi innocent of all charges; however, such a precedent sets a necessary condition to adjudicating cases where

---

[2] There is an exception to this rule and that of the aforementioned boundaries: permission by the Chancellor. As the ASUCI Constitution enumerates, this board is bound to provisions and statutes passed by the Senate, unless the Chancellor delegates us such authority: "And responsibilities that the Chancellor may delegate to it." ASUCI Constitution Art. 8 §2(o).

[3] As Justice Abundis often fumed, these are not technically 'courts', but merely operate similarly in their adjudicative capacities.

our jurisdiction is muddled by deference to 'a higher authority': that a higher administrative office cannot, either in the written code or by explication to the Elections Commission, claim jurisdiction.[4] In the case before the court today, the Elections Commissioner equally warns us that such a case has been taken over by the administration, and thus asks us to defer to the university: "This case has been taken over by the University Administration. They will be investigating and deciding if any discipline needs to take place. Though this is a violation of University Policy and students campaigning are beholden to University Policy this matter is now in the hands of a higher authority, and so I recommend no further action be taken by the bodies of ASUCI." *Elections Commissioner Response* (2020), 10. For this reason, we defer the case to whatever decision, and applicable remedy, is dictated by university administration.

* * *

The case before the Board offers an interesting and complicated dilemma present in administrative law regarding the realm of deference. It was, perhaps, best phrased by Justice Stevens in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984):

> Judges are not experts in the field, and are not part of either political branch of the Government. Courts must, in some cases, reconcile competing political interests, but not on the basis of the judges' personal policy preferences. In contrast, an agency to which Congress has delegated policymaking responsibilities may, within the limits of that delegation, properly rely upon the incumbent administration's views of wise policy to inform its judgments. While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices -- resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities.

We concur with the sentiment given by Justice Stevens. Indeed, Judicial Board members are not experts in electronic mailing administrative protocol, nor do our governing documents ask us to do so. In the line of judicial interpretation, one must adhere to the law, only the law, and not to our vague understanding of the law as a 'living document,' at the will of our pens as magic is to the wand of a wizard. To do otherwise would be to pervert our duty as gatekeepers of the constitution, and doom

---

[4] In *Damavandi*, complaints and evidence to Student Conduct were still subject to Judicial Board review, and were passed through the Judicial Board. We do not surrender this authority to screen complaints, but rather, broader defer to another agency that specializes in these matters. This is consistent with our decision in *Knight*, which held to a similar standard as the US precedence of Chevron: "There is a good reason for this; indeed, as held similarly under the Chevron deference, it is a general principle of statutory interpretation that the factual understanding by agencies is to be favored because such institutions understand the nuances of the topic." *Knight v. Elections Commission* (2020), at 11. In short, we do not defer because these administrative agencies are superior, but rather, that they are uniquely specialized to handle such situations. We retain, therefore, our authority to act independently, but do so with responsible caution.

our society to a virtual kritocracy, bent on imposing our will on the legislator and the people.[5]

For this reason, we concur with the Elections Commission, and find in favor of the defense.

It is so ordered.

Michelle Abundis Chief Justice	Quincy Gerald Vice Chief Justice
Kulsoom Naqvi Associate Justice	Kimo Gandall Associate Justice
Jeremy Bunda Associate Justice	

[5]*See also:* Aquinas, *Summa Theologica*, II, Q. 60, A. 5: "Now a thing becomes just in two ways: first by the very nature of the case, and this is called 'natural right,' secondly by some agreement between men, and this is called 'positive right,' as stated above (II-II:57:2). Now laws are written for the purpose of manifesting both these rights, but in different ways. For the written law does indeed contain natural right, but it does not establish it, for the latter derives its force, not from the law but from nature: whereas the written law both contains positive right, and establishes it by giving it force of authority… Hence it is necessary to judge according to the written law, else judgment would fall short either of the natural or of the positive right."

Appendix A

ISSUES PRESENTED

1. Does the Election Commission have merited evidence to prove Damavandi (herein the petitioner) committed plagiarism?

2. Does the Election Commission's ruling that the plaintiff violated UCI plagiarism laws violate his right to due process?

3. Even if the Election Commission gave the plaintiff his due process rights, does the Election Commission have the jurisdiction to rule on academic violations?

4. Does the vague ASUCI provision cited that petitioner must, "comply with University Policy, which includes Housing Complex Rules and State and Federal Law," given that such policies were not enforced as stipulated within their codified manuals, create a chilling effect on the petitioner's first amendment rights?

TABLE OF AUTHORITIES

GOVERNING DOCUMENTS

UCI's Academic Integrity Policies, Art. XI §C(1).
ASUCI Elections Code, Art. XXI §C(4).
UCI Academic Integrity Policies, Art. XI §III
UCI Academic Integrity Policies, §II ¶ 1
UCI Academic Integrity Policies, §VII ¶ 4.
Appendix VIII UCI Academic Senate Policy on Academic Honesty.
ASUCI Elections Code Art. XXI §H.
ASUCI Bylaws Art. V §A.
The Manual of the Irvine Division of the Academic Senate Art. VI.
UCI Academic Integrity Policies, §III ¶ 2.
ASUCI Constitution, Art. 8 §2(f).

PARLIAMENTARY MANUAL

RONR (11th ed.), p. 656, ll. 3 - 6.
RONR (11th ed.), p. 655, ll. 17 - 19.
RONR (11th ed.), p. 656, ll. 3 - 6.
RONR (11th ed.), p. 8, ll. 27 – 29.
RONR (11th ed.), p. 8 - 9, ll. 35; 1.

RONR (11th ed.), p. 643, ll. 12-14.

LEGISLATION

R54-77, "In Support of the Goals and Requests of the Basic Needs Coalition."
California Brown Act §54950.
California Leonard Law, Section 94367 (b).

CASES

ASUCI Senate v. Safady (2018).
Reno v. American Civil Liberties Union, 521 U.S. 844 (2000).
Hatch v. Superior Court, 80 Cal.App.4th 170 (2000).
Klekas v. EMI Films, Inc., 150 Cal.App.3d 1102 (1984).
Weitzenkorn v. Lesser, 40 Cal.2d 778 (1953).
Carpenter Foundation v. Oakes, 26 Cal.App.3d 784 (1972).
Read v. Turner, 239 Cal.App.2d 504 (1966).
Smith v. Paul, 174 Cal.App.2d 744 (1959).
Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).
Board of Regents of State Colleges v. Roth, 408 U.S. 564 (1972).
Bolling v. Sharpe, 347 U.S. 497 (1954).
Meyer v. Nebraska, 262 U.S. 390 (1923).
UCSD v. Martin et. al., College Republicans (2018).
Bell v. Vista Unified School Dist., 82 Cal. App. 4th 672 (2000).
Freedom Newspapers, Inc. v. Orange County Employees Retirement System, 6 Cal.4th 821(1993).
Boyle v. City of Redondo Beach, 70 Cal.App.4th 1109 (1999).
Doe v. Regents of University of California, 28 Cal.App.5th 44 (2018).
Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969).
Steffel v. Thompson, 415 U.S. 452 (1974).
U.S. v. Williams, 553 U.S. 285 (2008).
Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982).
Gandall v. ASUCI (2017).
Nken v. Holder, 556 U.S. 418 (2009).

PETITION FOR A HEARING

STATEMENT OF THE CASE

The following facts have been stipulated in the official record, per the ASUCI Election Commissions notice. On March 27th, Randy Yan of the "IGNITE" slate posted to Facebook his campaign (Appendix A). According to the record, several days later, the petitioner posted a Facebook announcement of his campaign (Appendix B).

Subsequently, the ASUCI Election Commission - without any formal reasoning, justification, or cause - ruled that the plaintiff had plagiarized Yan's post (Appendix E). The Commission, instead, simply reported that the "plagiarized" post in question constituted a violation of UCI's Academic Integrity Policies, Art. XI §C(1). As such, the Commission, under the broad jurisdiction provided in Art. XXI §C(4) of the ASUCI Elections Code, issued a level 4 punitive measure against the petitioner, and thus, suspended his campaign.

Finally, petitioner submitted motion for a stay on the injunction by the Elections Commission, in order to equitably participate in the democratic function of campaigning. (Appendix F).

ARGUMENT SUMMARY

When the state implements a broad sanction, it must both be merited and constitutional. Firstly, the plaintiff argues that petitioner's post was not plagiarized. We do so both in arguing the definition and application of the term "plagiarized," as well as applying relevant mechanisms to prove plagiarism - under which, we argue, none substantiates the charge.

Secondly, we argue that the Elections Commission, in determining the petitioner committed the charge of plagiarism without providing an equitable opportunity to respond, violated his right to due process. We argue this right emerges not only out of his constitutionally protected right to due process in a public institution, but out of the very code the Election Commission wishes to charge him with: "The student will have ten (10) instructional days to schedule the meeting to review the case." UCI Academic Integrity Policies, Art. XI §III; *see also*: "If the Instructor suspects that there is evidence of an Academic Integrity Policy Violation, he or she should submit a formal charge describing the alleged Academic Integrity Policy Violation to the AIAO and the AIAO will send a copy of the charge to the Student." UCI Academic Integrity Policies, §II ¶1. The Elections Commission failed to either provide an opportunity for hearing or to issue notice of charge with their reasoning of the charge. Finally, the Elections Commission denied the petitioner his right to defense. When contesting the results, the Elections Commission informed Representative Gandall he was not allowed to be present. This is in contrast to Judicial Board practices, which permit, "representatives during the hearing." *ASUCI Senate v. Safady*, Procedural Document 1 (Appendix C). Furthermore, advisors and representatives are permitted in cases of academic violations that result in injunctive administrative sanctions, pursuant to university procedures: "Students are allowed to have an advisor. An advisor can be an attorney, parent, friend, etc. During the hearing, an

advisor may act as a consultant for the student." UCI Academic Integrity Policies, §VII ¶ 4. All of these, we contest, violates the plaintiff's right to due process.

Lastly, we contend that broad interpretation of "University Policy, which includes Housing Complex Rules and State and Federal Law," without being tailored to the actual code of those policies, creates a chilling effect on the plaintiff's 1st amendment right to freedom of speech. The Supreme Court ruled unanimously that restrictions on speech must be "narrowly tailored," cannot be vague or overbroad, and must consider less restrictive alternatives. *Reno v. American Civil Liberties Union*, 521 U.S. 844 (2000). *See also*: "the defect in the statute is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech." *Hatch v. Superior Court*, 80 Cal.App.4th 170 (2000).

ARGUMENTS

I. The Elections Commission claim that the plaintiff plagiarized Yan's post is without merit.

We contend there is no significant evidence of plagiarism. More specifically, the Academic Senate has defined plagiarism as: "... intellectual theft." The statute more specifically requires that such 'theft' emerge as either: "1. To steal or pass off as one's own the ideas or words, images, or other creative works of another," or, "2. To use a creative production without crediting the source, even if only minimal information is available to identify it for citation." *Appendix VIII UCI Academic Senate Policy on Academic Honesty*. This standard, however, has not been violated in any reasonable manner.

A short review of case law makes these definitions slightly clearer. In order to steal an individual's words, ideas, or works, one must establish the uniquity of a 'substantial similarity' of those words, ideas, or works to the individual in the context of the posts. "In order for the complaint to state a cause of action for plagiarism, there must be some substantial similarity between the screenplay and the protectible portions of plaintiff's work." *Klekas v. EMI Films, Inc.*, 150 Cal.App.3d 1102 (1984); *see also*: "No finding of fact is binding upon an appellate court if it is not supported by substantial evidence. The function of this court, when the contention of insufficiency is made, is to examine the record to ascertain whether there is evidence to support the verdict…" *Weitzenkorn v. Lesser*, 40 Cal.2d 778 (1953). Furthermore, that idea cannot already be present in the status quo, and must be unique to the individual proposing it, either in an officially published paper or in a copyright protected by statute. Simply put, an idea is not protected if it is already in use by the greater public. *Klekas* continues: "The common law rights recognized… continue until the creator allows a "general" publication of his work to occur; the work then passes into the public domain and, unless the creator has obtained a statutory copyright, anyone can copy, distribute or sell it for his or her own benefit." *See also*: "General publication has been

defined as 'such a disclosure, communication, circulation, exhibition, or distribution of the subject of copyright, tendered or given to one or more members of the general public, as implies an abandonment of the right of copyright or its dedication to the public." *Carpenter Foundation v. Oakes*, 26 Cal.App.3d 784 (1972); *Read v. Turner*, 239 Cal.App.2d 504 (1966); *Smith v. Paul*, 174 Cal.App.2d 744 (1959).

Furthermore, abstract ideas, rather than specific, are not protected by this standard. The *Klekas* standard reiterates: "An action for plagiarism may prevail only if similarities exist with respect to "protectible expression." Ideas, titles, themes, locales, and even the basic plot do not constitute protectible material." *See also*: "Abstract ideas, however, are not entitled to protection... for plagiarism." *Klekas v. EMI Films, Inc*., 150 Cal.App.3d 1102 (1984). As such, the complaint must also prove that the petitioner's ideas were not already in common use by the public.

In the context of the case provided by the petitioner, all of the plaintiff's words and thoughts are completely unique, and do not find marking to that which the defense alleges. The only similarity, of ideas, in fact, emerges from a similarity in the belief to "address basic needs."

Below is a table of the two unique and distinctive ideas, as found in Appendix A and B:

Brian Damavandi	Randy Yan
"Address Basic Needs (Food and Housing) Insecurity."	"Address Basic Needs Insecurity."
"Advocate for Fair Funding."	"Increase for Transparency in ASUCI."
"Increase Diversity on the ASUCI Campus Advisory Boards."	"Increase Accountability in the ASUCI Administration."
"Advocate for Efficient Bus Lines."	"Increase Accountability in the ASUCI Administration."
"Address Parking Issues."	"Increase Scholarship Resources.
	"Promote Academic and Community Engagement."

We argue that no reasonable person could find substantial similarity in the holistic platform. However, we understand that the Elections Commission, untrained in the dynamic of law and thus incapable to draft an even partly understandable or clear opinion, most likely saw any similarity to constitute a violation. We respond in threefold: firstmost, that candidates ought to be allowed to bear similarities; if anything, this constitutes a fair and just institution of ideas, something protected by the first amendment (see argument IV). Secondmost, the plaintiff created these ideas - word for word - before the complainant had even published his Facebook post, as required by the ASUCI Elections code (Appendix D). It is thereby clear to this petitioner that either the Elections Commission, in their unwisdom, is incapable of referring to their own documents or that there is an elaborate conspiracy to gain access to Mr. Yan's work before it was publicly published - a theory that bares neither truth in reality, nor in the evidence presented today.

Thirdmost, even both of our prior objections are found unconvincing, any in depth analysis of the form and diction portrayed in the message indicates sufficient difference. During our work, we carefully ran both statements through a plagiarism generator:

First Content	Second Content
47% Matched	47% Matched
Hello friends **I will be campaigning to run for ASUCI (Associated Stud ents of UC Irvine)$_2$**	Hi friends As you may or may not know, **I will be campaigning to run for ASUCI (Associated Stud ents of UC Irvine)$_2$**
Internal Vice President for the next two weeks **Here is a$_8$**	President in the coming weeks **Here is a$_8$**
brief overview of my platform -Address Basic Needs$_5$	**brief overview of my platform -Address Basic Needs$_5$**
(Food and Housing) Insecurity -Increase Mental Health R esources -Advocate for fair funding -Increase Diversity on the ASUCI Campus Advisory Boards -Advocate for Efficie nt Bus lines -Address Parking Issues **Here is a$_8$**	Insecurity -Increase Transparency in ASUCI -Increase Acc ountability in the ASUCI Administration -Increase Scholar ship Resources -Promote Academic and Community Enga gement **Here is a$_8$**
direct link to a copy of my platform in full detail httptinyu rl.comBriandamavandi4IVP **While you're at it,$_7$**	direct link to a copy of my platform in full detail httpsdriv e.google.com 1ifQjZWTT7z5NIPlW9S2Xfs-nview **While you're at it,$_7$**
please **like and share my Facebook page$_6$**	**like and share my Facebook page$_6$**
httpswww.facebook.comBrian4IVP **Elections Week will be held Week 3 of Spring Quarter (April 15th - 19th)$_1$**	httpswww.facebook.comRandyForASUCIPresident **Elections Week will be held Week 3 of Spring Quarter (A pril 15th - 19th)$_1$**
For More information visit www.elections.uci.eduIf **you have any questions regarding my platforms or any thing$_4$**	More information at www.elections.uci.edu If **you have any questions regarding my platforms or any thing$_4$**
pertaining to school, do not hesitate to message me **With that being said, I hope to have your full support$_3$**	about school, feel free to message me) **With that being said, I hope to have your full support$_3$**
during elections week and beyondZot Zot ZotBrian Dama vandi	as I embark on my next great big adventure at UCI Zot Zo t Zot

This generator showed that the while the messages themselves were 47% similar, 95.08% of these are, under any reasonable fashion, completely unrelated to the content of the draft. Instead, these are abstract headers such as, "While you're at it, please like and share my Facebook page." These statements are very similar to sentiments every candidate has shared - and no candidate has a monopoly over

any subset of words simply indicating a predictable, normative action, such as liking a Facebook page. Furthermore, for even the 5% of words marking any reasonable similarity to an idea, those interpretations of the abstraction - as both candidates have made explicit - are fundamentally different. More specifically, the plaintiff's interpretation of the words specifically references "Food and Housing," wherein Mr. Yan does not - a marked difference, and if anything, reverses the contention of today's problem to Mr. Yan, not Mr. Damavandi, as both candidates published original statements at the same time. As such, the openness of these statements indicates no statement of fact, idea, or work. Indeed, to constitute a protectable idea you must have more than a merely similar word or phrase - it must insintituate an idea or concept.

Finally, these words have already been commonly utilized in the public and under public documents. R54-77 already stipulated support for, "Requests of the Basic Needs Coalition," reiterating the state's concern in, "new studies that show there is a high prevalence of basic needs insecurity." Thus, neither the Elections Commission nor Mr. Yan can claim title to 'Basic Needs' as a new and unique idea, because it is a concept already, in abstract, controlled by public discourse. No further reasoning should even be necessary in this case; both Mr. Damavandi and Mr. Yan control an equal political stake in utilizing these concise and exact words, to purport a general idea. The Election Commission's interpretation, therefore, continues to run afoul with the *Klekas* standard, which surrenders the protection of general ideas once they become public discourse.

In summary, we contend that no evidence of plagiarism, either in the legal definition or the normative, exists. These posts were uniquely different, signaling to different ideas and concepts; and while similarities exist, no candidate controls the rights to ask people to investigate a platform, follow a page, or click on a link.

II. The Elections Commission violated the Petitioner's right to due process.

A. ASUCI Elections Code.

ASUCI, in general, must provide candidates due process when charging any candidate with an infraction: " The Elections Commission shall provide the accused candidate or slate with an opportunity to respond to the charges in writing or a recorded meeting. The Elections Commission will meet with the accused candidate or slate and the complainant." ASUCI Elections Code Art. XXI §H. The Elections Commission, however, failed to even inform the plaintiff of the charge prior to issuance of a sanction. Furthermore, the ASUCI Bylaws requires the Elections Commission, in interpreting the code, to refer to the ASUCI Parliamentary Manual. ASUCI Bylaws Art. V §A. As such, the plaintiff holds a right to at the very minimum have his case before the issuance of sanctions or public findings: "If thus accused, he has the right to due process - that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated." RONR (11th ed.), p. 656, ll. 3 - 6.

B. Due Process Protections and Jurisdictions.

We argue that the ASUCI Elections Commission has erred in several manners to adjudicate this contention: first, that the ASUCI Elections Commission has no jurisdiction to hear cases of fact - only after-the-fact implementations of verdicts - in the realm of academic sanctions, as such findings are reserved to the UCI Office of Academic Integrity and Student Conduct (AIAO); and second, that even if the ASUCI Elections Commission held the jurisdiction to do so, it failed to hear the, "student's description of the disagreement with the facts of the charge," prior to making a ruling, violating the statutory protections of due process.

Firstmost, the Elections Commission cannot hear cases of fact in regards to Academic Integrity. The Manual of the Irvine Division of the Academic Senate Art. VI makes this jurisdiction very clear:

> *The responsibility for maintaining the standards of academic integrity rests with two University authorities: the Instructor and the AIAO. Under the Standing Orders of the Regents, discipline is the exclusive responsibility of the campus administration while authority over courses and curricula is under the exclusive authority of the Instructor through the Academic Senate.*

It is clear, as by "standing orders of the Regents" that only instructors and the AIAO may investigate cases of "discipline"; furthermore, such authority, the rules dictate, is "exclusive" these entities, and cannot be infringed by the arbitrary dictates of the Elections Commission. There is pressing governmental interest in this: many student organizations cannot pass affirmative judgement, as dictated by the parliamentary manual of ASUCI, and therefore, are potentially subject to libel: "neither the society nor any of its members has the right to make public the charge of which an officer or member has been found guilty… To make any of the facts public may constitute libel." RONR (11th ed.), p. 655, ll. 17 - 19. Simply put, by the Elections Commission exceeding the traditional jurisdictions laid out in The Manual of the Irvine Division of the Academic Senate, they lay the entirety of ASUCI subject to lawsuits of libel, given that the plaintiff was neither offered due process, nor actually found guilty. For this reason alone, the Judicial Board ought to strike down the Election Commissions verdict of guilt by plagiarism.

Secondmost, the Elections Commission failed to implement the correct standards of due process. We contend, therefore, that cases of academic integrity are unique for their implications on the life of the student, as well as his reputation. For this reason, the Elections Commission attached not a definition of plagiarism, nor any indictment or specific charge issued by the AIAO, but the rules of procedure to discover such charge. Included that procedure was the explicit requirement of due process: "The AIAO will conduct the review by collecting the relevant documents, including the facts of the charge and the Student's description of the disagreement with the facts of the charge." UCI

Academic Integrity Policies, §III ¶2. In order for the review to have occurred, the Commission was required to to have collected the Student's description of the disagreement, which the office failed to do. And, as we have contended, "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Thus, the Elections Commission, in their ruling of fact, violated §III ¶2 UCI's Academic Integrity policies, running afoul with the petitioner's due process rights.

C. US Constitutional Protections.

Functionally, the Supreme Court has already described the necessity of these due process rights in public universities for contexts that such action by the government should infringe a claimant's liberty, i.e. a negative right to speak political language in public: "The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty…In a Constitution for a free people, there can be no doubt that the meaning of 'liberty' must be broad indeed." *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *see also*: "that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective." *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Such a right, furthermore, may not be infringed merely by contention for benefit to a public interest: "The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competence of the state to effect." *Meyer v. Nebraska*, 262 U.S. 390 (1923).

Furthermore, California Law protects the plaintiff from unlawful infringements on his due process protections. More specifically, the Brown Act §54950 requires that deliberative bodies, i.e. a body that can make independent decisions, provide 24 hour notices of a meeting to the accused, in the case of a specific grievance:

> *As a condition to holding a closed session on specific complaints or charges... [the individual].. shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.*
> Brown's Act, §54957.

The courts, more broadly, have interpreted this to generally apply to members of the school that will be compensated: "The Brown Act's requirement that public

meetings be open ensures the public's right to attend meetings of local legislative bodies, subject to statutory exceptions… The Brown Act was designed to facilitate public participation in local governmental decisions and to curb misuse of the democratic process by secret legislation." *Bell v. Vista Unified School Dist*., 82 Cal. App. 4th 672 (2000). Accordingly, if a member contending, and part of the university institution - such as an ASUCI member - must be: (1) charged with a specific grievance and (2) provided a 24 hour notice. *Freedom Newspapers, Inc. v. Orange County Employees Retirement System*, 6 Cal.4th 821(1993); *see also*: *Boyle v. City of Redondo Beach*, 70 Cal.App.4th 1109 (1999). The plaintiff was, however, was neither provided notice of meeting nor notice of charge brought by the defense. And, to reiterate the court's finding in *Mullane:* "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." Therefore, the plaintiff's due process right to notice, under the Brown Act, was violated.

D. Right to Counsel.

We argue that the Election Commission's decision to forcefully exclude any of the Petitioner's representatives to be both a violation of judicial, common law norms as well as a violation of due process standards in academic integrity cases. We surmise that a similar standard will be attempted to be held to the Judicial Board, as the Elections Commission has indicated to the plaintiff.

First, the Judicial Board has always held to a standard of allowing the right to counsel. In ASUCI Senate v. Safady, Procedural Document 1, prior Chief Justice Raj ruled that the plaintiff may assign, "representatives during the hearing." (Appendix C). Significant caselaw outlines the importance of Raj's assigned counsel in our society; most recently, in *Doe v. Regents of University of California*, 28 Cal.App.5th 44 (2018), the Court considered a sexual assault case emerging from UCSB, in which the defense was denied his right to counsel, despite the university - and similar to the circumstances today - being permitted unfettered access. The court wrote: "This unfairness is magnified when UCSB's general counsel is allowed to make formal evidentiary objections, which UCSB's policies and procedures do not permit. A **student**, whose **counsel** cannot actively participate, is set up for failure because he or she lacks the legal training and experience to respond effectively to formal evidentiary objections." Most significantly, wrote the court, "The Committee's refusal to hear John's evidence… was prejudicial." In a similar matter today, the Court is faced with a rogue bureaucrat favoring a complainant by disregarding the due process right the plaintiff had to counsel, thereby prejudicing the Election Commissions decision. To cite the Court:

> *It is ironic that an institution of higher learning, where American history and government are taught, should stray so far from the principles that underlie our democracy. This case turned on the Committee's determination*

> *of the credibility of the witnesses. Credibility cannot be properly decided until the accused is given the opportunity to adequately respond to the accusation. The lack of due process in the hearing here precluded a fair evaluation of the witnesses' credibility. In this respect, neither Jane nor John received a fair hearing.*

And in today's case, neither Damavandi nor Yan received a fair case; instead, mired in prejudice for the defense, the Elections Commission both issued an unwarranted sanction and denied the plaintiff his right to counsel.

Second, in cases of academic integrity, students are allowed to have representatives or 'advisors' present for hearings: "Students are allowed to have an advisor. An advisor can be an attorney, parent, friend, etc. During the hearing, an advisor may act as a consultant for the student." UCI Academic Integrity Policies, §VII ¶4. As such, it seems that UCI has held to a strong standard of permitting the right to counsel in the severe accusation of plagiarism.

In summary, we argue that both the Judicial norms of UCI, along with its corresponding caselaw, conjoined with the statutory regulations present in UCI's Academic Integrity Policies, guarantees the plaintiff his right to counsel.

III. The Elections Commission interpretation of the statute violates the Plaintiff's 1st Amendment Right to Freedom of Speech.

We argue that statute, on grounds of vagueness, necessarily chills the plaintiff's right to free speech. The statute specifically asserts that that plaintiff is required to adhere to, "University Policy, which includes Housing Complex Rules and State and Federal Law." More importantly, however, the Elections Commission has, arbitrarily, decided to interpret themselves as also the fact finders of these rules, informing the plaintiff that:

> *As you know, UCI has zero tolerance towards plagiarism of any kind and we, the Elections Commission, have deemed this as an act of plagiarism and must be punished accordingly.*

In doing so, the Elections Commission has decided to appropriate the authority of not only University policy, but also State and Federal policy; and even if this didn't bare consider detriments to an independent judiciary, the regulation itself is inconsistent with the text of the law.

And even if the implementation wasn't inconsistent, the statute remains unacceptably vague and impactful. The word "University Policy," as it refers to the spirit of the text, rather than its actual implementation, i.e. the adjudication of all procedural steps through the AIAO, has grown into a double pronged attack to sever the plaintiff's right to speech, both through severe consequences and by the vague, unrationalized findings of the Elections Commission.

Such a conclusion - that the consequence of an action coupled with the vagueness of the statute is of special concern - has been reiterated by the court multiple times: "As a practical matter, this increased deterrent effect, coupled with the "risk of discriminatory enforcement" of vague regulations, poses greater First Amendment concerns than those implicated by the civil regulation." *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997); "the defect in the statute is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech." *Hatch v. Superior Court*, 80 Cal.App.4th 170 (2000); "Neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969).

Moreso, even if such coupling was not a detrimental deterrent, it is unclear what speech concisely falls under 'plagiarism' per the Election Commission's definition. And such irregularity of speech regulations results in a overly vague and unconstitutional law: "Although ordinarily "[a] plaintiff who engages in some conduct that is clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others," we have relaxed that requirement in the First Amendment context, permitting plaintiffs to argue that a statute is overbroad because it is unclear whether it regulates a substantial amount of protected speech." *U.S. v. Williams,* 553 U.S. 285 (2008); *see also*: *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489 (1982).

As we portrayed in the merit of our case, the interpretation by the Elections Commission is mired in uncertainties: what constitutes a plagiarized 'word'? Would merely the repetition of adjectives constitute 'plagiarism'? None of these questions can be answered with certainty, in part because the decision process of the AIAO was stripped. Additionally, as portrayed in the merit, the evidentiary structures necessary to prove plagiarism were never clarified, and instead, were preassumed to have existed, despite the preexistence of these statements enumerated by the mandate in the Elections Code which required their submission to the Elections Commission prior to publication. Unless an elaborate conspiracy exists between the Demanvandi and Yan, or unless Yan had published prior to Demanvandi, in violation of the ASUCI Election Code, it would be impossible for this violation to emerge. And finally, and perhaps most impactfully, the Elections Commission never issued any reasoning to the conviction; and, contrary to the AIAO code, which requires both notice of the charge and an opportunity to contest the charge, the Elections Commission never provided such, despite connecting the code to the email of the verdict. The code, indeed, is explicit: "AIAO shall notify the Student in writing and via email that the Student is charged with an Academic Integrity Policy Violation." UCI Academic Integrity Procedure, §III ¶ 1.

Simply put, the regulations established by the Elections Commission were not tailored to concise standards, but vaguely interpretable norms, of which existed despite - not because of - the regulations under UCI's Academic Integrity

Procedure. In doing so, they have created an unconstitutionally vague interpretation of the law, one of which allows impermissible harms of first amendment violations.

Prayer for Relief

We ask for two methods of relief:

(1). Overrule the Elections Commission's ruling that the petitioner committed plagiarism.

This method is provided under the Judicial Board's constitutional authority to judicial review: "To nullify any measure that is considered unconstitutional and ordering the immediate halt of those actions." ASUCI Constitution, Art. 8 §2(f).We contend the ruling was both flawed in merit, and unconstitutional, and therefore ask it be overturned.

(2). Provide Declaratory Relief to protect Due Process.

The court ought to provide declaratory relief in the form of a censure of behaviors that undermine free speech and due process. This includes recommending to the Senate to revise the Elections Code to provide more specificity to the Election Commissions authority. This relief is required under postsecondary institution that has made or enforced any rule in violation of subdivision (a) may commence a civil action to obtain appropriate injunctive and declaratory relief as determined by the court." California Leonard Law, Section 94367 (b). "Punishments that a society can impose generally fall under the headings of censure, fine (if authorized in the Bylaws), suspension, or expulsion." RONR (11th ed.), p. 643, ll. 12-14.

Therefore, because the courts cannot provide injunctive relief in the form of a fine (not in the bylaws), nor would it appropriate to suspend or expel any specific member, the plaintiff asks for the censure of the general law, a form of declaratory relief.