ASUCI Judicial Board

Keaun Ali Janani

v.

ASUCI Senate

Petitioner represented by Mr. Alan Calderon.
Defendant represented by Mr. Bryce Lindsey, Mr. Bassam Elsherif, and Mr. Nick Ortiz.

Ruling

Dated: May 17, 2020

Synopsis:

On April 22nd, 2020, petitioner brought suit against defense alleging a violation of the ASUCI Constitution. More specifically, the petitioner alleged that the ASUCI Senate, having failed to approve the call for a special election, conjoined with a report published by the Student Advocate General, sufficed to a violation of Article 3, §1, which guarantees the right to transparent government. On May 10th, Chief Justice Gandall set the preliminary trial to be held on Thursday, May 14th. On May 13th, the defendant formally responded, arguing the Senate had the constitutional right to approve or disprove the special elections, pursuant to Art. X, §2(l). On a grant of certiorari, but a rejection for a formal trial, the Judicial Board held that: (1) that this case is sufficiently a matter of law, not fact; (2) that the transparency clause does not apply to more specific mandates of the constitution; (3) that the special elections must be approved by the Senate; (4) that the elections commission cannot meet, and therefore all legislation and recommendations emerging from the elections commission is unlawful; (5) that the Judicial Board shall enjoin the petitioned legislation to recommend a special election.

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

Chief Justice Gandall delivered the unanimous opinion of the Judicial Board,

On March 5th, 2020, a petition was filed for the recall of twenty-three (23) senators. The next day, on March 6th, the petitions had received an adequate number of allegedly valid signatures to surpass the threshold necessary to call a special election. As a result, the Elections Commissioner confirmed the signatures and, pursuant to his powers under the ASUCI Constitution, Art. X §2, had legislation, under the title 'R55-54' submitted on his behalf by Senator Fonseca and Mallari. According to the brief by the petitioner, and as conceded by the respondent in oral testimony, the Senate did not pass the legislation. Instead, the legislation was referred to the ASUCI Senate Rules Committee for deliberation, and has not been taken up since.

On April 16th, a second piece of legislation, R55-62, was submitted to the Senate for consideration on the matter of the recall election. However, similar to R55-54, petitioner specifies that R55-62 was referred to the Senate Rules Committee, and remains there.

As a result of the Senate failing to call the special elections, petitioner brought suit to the Judicial Board on April 22nd, 2020 (Appendix A). The petitioner, amongst other arguments, contended that the Senate's failure to pass the legislation violated both the Article 3, §1 rights of students to a 'transparent government', as well as operating against the "welfare and interest of the undergraduate students." *See*: Petitioner brief, at 2 - 3. The petitioner thereby pleaded to the Judicial Board to enjoin a special election, either by working directly with the Elections Commissioner similar to the precedent of *Knight v. Elections Commission*, or to allow the Student Advocate General (SAG) to approve and run the election. *See*: Petitioner brief, at 4.

On May 10th, the Board granted the petition a hearing, and Chief Justice Gandall set the preliminary trial to be held on Thursday, May 14th.

Shortly thereafter, on May 13th, the respondent submitted a brief to the Judicial Board (Appendix B). The respondent presented two arguments in response to the petitioner: first, that the legislation submitted to the Senate was unlawful, as the Elections Commission, not Elections Commissioner, must validate signatures. Second, respondents contended that the verbiage "subject to approval" under Art. X, § 2(l) of the constitution inferred that the Senate was provided broad deference to matters of special elections. More specifically, respondents reasoned that the purpose of such a phrase was to "prevent an abusive minority," and thus operate as a "check and balance" on the Executive Branch. Thus, the respondent asked that the court not intervene.

Finally, as an additional procedural note, the respondent moved for the court to be in open session for the preliminary hearing. The petitioner concurred, and the preliminary hearing was open for the public.

Upon deliberation of this matter, the Court made the preliminary conclusion that while factual contentions were made in the oral hearing, such arguments were not relevant to the question of approving the special elections. The court then tackled the question of interpreting constitutional provisions, holding two conclusions: first, that the law ought to be held as consistent when possible, and the Senate's interpretation of the clause is conceivably consistent within the bounds of governing documents. Second, that more general clauses, guaranteeing certain rights, were to be subordinate and inferior to more specific clauses mandating processes. In the context of the case here today, we therefore hold that, even assuming the general right to transparency is indeed related to political grievances, such must be tailored under the procedural requirements to call a special election. In this matter, that protocol would require approval from the Senate. Finally, we concur with the petitioner that the Board can, under injunction,[1] work with the Elections Commission in times that such an impossibility arises that conflicts with constitutional obligations. Holding consistent with our ruling in *Knight*, we further concur with the petitioner that we are compelled to fill this 'gap' in constitutional obligations to prevent an absurdity. In doing so, we set guidelines in working with the Elections Commissioner to call a special election, subject to the approval by the Senate.

I.

First, we examine if the case has a factual question. Judicial Board Policies and Procedures §7.2, *see also*: §7.1.5. To do so, we specify what we mean by 'fact finding' that is rather ambiguous in *Knight v. Elections Commissions* (2020) and *Wolfe v. Sparks* (2020). Second, as we explain, a factual question does not emerge for two reasons: firstmost, the facts alleged are not disputed by the respondent; and second, the nature or implications of a legal phrase insufficiently meet the trier of evidence standard necessary to constitute an issue of fact, and thus, is an issue of law.

A.

An issue of fact, in contrast to an issue of law, is one that requires the weighing of factual claims under a trier of law, i.e. evidence standards. *See, e.g. Steadman v. S. E. C.* 450 U.S. 91 (1981), at 95, in its analysis that administrative hearings may prescribe standards of evidence where not enumerated by statute: "Where Congress has not prescribed the degree of proof which must be adduced by the proponent of a rule or order to carry its burden of persuasion in an administrative proceeding, this Court has felt at liberty to prescribe the **standard**, for "[i]t is the kind of question which has traditionally been left to the judiciary to resolve." In contrast, questions of law are deduced, through the specific application of rules. These rules, furthermore, must not engage in disputed factual claims are the underlying premise to a deductive law: *Johnson v. Jones*, 515 U.S. 304 (1995), in explaining that defendants cannot appeal cases alleging incorrect factual

[1] Namely, the Elections Commission as we further specify.

interpretations: "The order in question resolved a *fact*-related dispute about the pretrial record, namely, whether or not the evidence in the pretrial record was sufficient to show a genuine issue of fact for trial. We hold that the defendants cannot immediately appeal this kind of fact-related district court determination."

Moverover, when the facts are undisputed, a mixed question of law and fact is a question of law: "we can reasonably interpret the statutory term 'questions of law' to encompass the application of law to undisputed facts." *Guerrero-Lasprilla v. Barr*, 140 S.Ct. 1062 (2020).

For this reason, we hold that for a question to sufficiently be one of fact, it must both be disputed and weighable under a standard of evidence, applicable to a temporal criteria of alleged events. In common parlance, a question of fact must be arguable as to its very existence, not merely to the threshold of violating or sufficing a rule.

B.

Next, we examine if the question presented today suffices to be factual. During the hearing, it is true that statements of fact were made; indeed, speculations were made by the plaintiff, multiple times, as to motives of the respondent. However, such facts are not in dispute: the SAG did indeed make the report, and correspondingly, the Senate did nothing of it. If the petitioner wishes to act on the report by the SAG, necessary conditions of due process protecting the autonomy of the Senate would need to be met, including that of impeachment.

Finally, the other questions of this case, such as the nature of a constitutional phrase, are clearly issues of law. There is no need, more specifically, to posture these under 'triers of evidence,' nor do such rules require factual investigation. For this reason, we decline to label this case as an issue of fact.

II.

Second, we analyze the application of Article 3, §1 'transparency clause' and its proper application to the question of special elections. Prior to application of rules governing our preference in clauses, we first show that the respondent is correct in arguing that the constitution asks for Senate approval. We then investigate the meaning of the constitutional phrase "subject to approval." To do so, we apply two rules: first, the *In Re R55-48* coherency requirement requiring preference away from absurdity; and second, in adhering to the legal maxim of ejusdem generis, which compels us to prefer more specific rules. Both rules, we explain, show that there is not an active conflict with the transparency clause.

A.

First, we analyze the direct texts in context of the ASUCI Constitution. In dispute are two articles: Article 3, §1(p) 'transparency clause' and Article 10 §2(l) or the 'Elections Commission power'. The former reads:

> Students have the right to transparency and freedom of information from their student government and student leaders, free of cost.

The latter, Article 10 §2(l), under the 'Elections Commission power' reads:

> To call, and set dates for, special elections, subject to approval by the Senate.

On face, neither of these seem to specifically contradict. Arguments, however, emerge from an interpretation under the latter for "subject to approval by the Senate," in which the petitioner argues that such does not infer that the Senate can indefinitely stall the proposal. To do so would, however, create several practical absurdities in contrast to the entire history of ASUCI: indeed, the phrase "subject to approval" is used eight times throughout the constitution, applying from Senate's approval of judges, to even later provisions of the Elections Commission power to draft the Elections Code. If this phrase was to be radically transformed to mean that the Senate, or whichever body the phrase applies to, **must** approve, rather than **may** approve, the entire system of ASUCI checks and balances would collapse. Moreover, the clause would become effectively meaningless, as any refusal would simply be met by judicial injunction; this, furthermore, yields to an even more scary reality, one of which the Judicial Board becomes the necessary condition to policy, not the Senate or Executive. In such a world, the Senate and Executive become rubber stamps to the Court, and at such a point we may as well submit to a kritarchy.

Of course, these 'practical' absurdities are not necessarily legal compulsions. And while the Judicial Board weighs these realities, it is important to measure tangible law to tangible objections. Thus, while it may be rather untraditional to hold this approach, one could conceive of a logically consistent society that still holds the aforementioned interpretation of the Senate operating as a 'rubber stamp'. However, if one is to take good law as stable and applicable to the common man, the additional reasons we examine to refute this interpretation are unnecessary.

B.

We will accept, for a moment, that it is conceivable that the Senate operates as nothing more than a rubber stamp for petitions. Even operating under this logic, however, the petitioner must then surpass the presumption of constitutionality, and display why the two phrases sufficiently conflict: "This doctrine is no more than a specific application of one of the first principles of **constitutional** adjudication—the basic **presumption** of the **constitutional** validity of a duly enacted [sic] law.." *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973), at 1311. The petitioner, however, is faced not only with this burden, but second requirement demanding that, short of his expected interpretation, the clause would be yielded incoherent: "when undertaking an interpretive role, it is not permissible to decide whether the drafters intended… to have this power; it is quite clearly in the Constitution and in our faithfully interpretation, we must believe that every clause of the Constitution was written with a purpose." *In Re R54-88*, at 4; "When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter

must be taken as the true meaning." RONR (11th ed.), p. 589, ll. 4 - 7. For this reason, petitioner must also show **why** the clause exists within the constitution, not merely **if** an interpretation can exist yielding the clause de facto void. Thus, petitioner must not only convince the Board that the Senate's act are affirmatively unconstitutional, but why Article 10 §2(l) is not applicable.

In the context of the case presented today, neither necessary condition is fulfilled; firstmost, the idea of transparency does not conflict with the notion that the Senate is offered discretion in matters of election approval. The petitioner seems to imply that the democratic means of a petition supersede the rules; that is, that a petition of constituents can surpass the will of an elected body. This idea, while perhaps a sufficient assumption in a purely democratic society, does not hold either under rule of law, or more specifically in ASUCI's context, a republican form of governance (that is, a set of elected officials). The specific definition of transparency, moreover, does not apply to the context of open rejection; indeed, as Black's Law Dictionary defines it, transparency is: " Openness; clarity; unobstructed access, esp. to business and governmental records." In application to the alleged grievances, the Senate did not hide the fact there were special elections, nor did the petitioner make any arguments that the Senate attempted to obstruct access to the petition or other relevant government documents. If anything, the very act of the petition, and subsequent signatures the petition collected, reflects the opposite: that information is open, and available. The petitioner may find the action the Senate took in regards to the information undesirable, but the access in regards to said information itself was never in dispute.

Second, the petitioner fails to show why Article 10 §2(l) should be discounted. Indeed, no specific argument is made that the Senate cannot reject the recall, only that the specific implied intent of the Senate in rejecting the recall is invalid. This, however, ignores the requirement set forth by Justice Abundis in *In Re R54-88*, which functionally requires we "believe that every clause of the Constitution was written with a purpose." At 4. Even with a factual argument, the petitioner would have no rule to sufficiently undermine Article 10 §2(l), and thus, we would be unable to apply any facts. For these reasons, we must again reject the petitioner's argument.

C.

Finally, it is a general rule of common law, ejusdem generis, and of parliamentary procedure, 'principle of interpretation (3)', that general or ambiguous rules hold less authority and yield to more specific ones: "the maxim ***ejusdem generis,*** the statutory canon that "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105 (2001), at 1308 - 9; "A general statement or rule is always of less authority than a specific statement or rule and yields to it. It is not practical to state a rule in its full detail every time it is referred to. General statements of rules are seldom strictly correct in every possible application… No one has a right to quote a general statement as of authority

against a specific statement." RONR (11th ed.), p. 589, ll. 17 - 32. *See also:* "The rule of ejusdem generis, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily, it limits general terms which follow specific ones to matters similar to those specified." *Gooch v. U.S., 297 U.S. 124* (1936), at 128; "...*ejusdem generis,* counsels: "[W] here general words follow specific words in a statutory enumeration, the general words are [usually] construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words." *Yates v. US*, 574 U.S. 528 (2015), at 545. As such, we favor the authority of a more specific rule, in a more specific manner, as regards to a certain idea or action.

Let our analysis again assume there even is a link between transparency and allegedly poor practice. Even if this assumption holds, there is no reason to believe that the transparency clause, written into a generic section on student rights, is more specific than a provision of Election Commission powers written into a section explicitly titled "Elections Commission - Authority and Powers." And even if we rip each rule from its given context, the transparency clause makes no reference to special elections, while the Elections Commissioner clause not only enumerates the power to call special elections, but the power to dictate preferable dates. For these reasons, both in the whole constitutional context and because the phrase "subject to approval" falls directly into the clause regarding the power to call special elections, we find that Article 3, §1(p) is a general statement and Article 10 §2(l) is a specific one.

We therefore reject the argument that Article 3 §1(p) can supersede the procedural requirement held in Article 10 §2(l). In sum, we reject that the transparency clause could be more specific than the special elections process rule.

III.

Finally, we maintain our precedent held in *Knight*, that requires we intervene when the Elections Commission faces an impossibility in a constitutional mandate, under the general legal maxim of Lex non cogit ad impossibilia, or, the law requires nothing impossible: "When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning." RONR (11th ed.), p. 589, ll. 4 - 7. *See also: Merck Sharp & Dohme Corp. v. Albrecht*, 139 S.Ct. 1668 (2019). In the case today, the law requires that the Elections Commission must, eventually, call a special election: "the Elections Commission must validate them and call a special election if the requirements are met."[2] ASUCI Constitution, Art. 12 §4(e). The Elections Commission, per *Knight*, cannot meet as there is no quorum. For this reason, we extend our appellate jurisdiction over the Elections Commission to enjoin action to send legislation to the Senate, subject to approval by the Senate.

[2] This opinion is narrowly tailored to impossibility by the Elections Commission, not inaction. An inactive Elections Commission can only be removed through the enumerated impeachment procedures.

* * *

As a unanimous observation, this court would note that all too often these cases involve politicizing the judiciary - it is, to some extent, that many unfortunately see judges as 'politicians wearing robes.' In fulfilling our commission to the law, however, principle supersedes convenience or expedience. Perhaps our idea of fidelity to the law is best written by Justice Gorsuch, in his spirited romanticization of the judge's role in *A.M v. Holmes*, 830 F. 3d 1123 (2016):

> Often enough the law can be 'a ass – a idiot,' Charles Dickens, Oliver Twist 520 (Dodd, Mead & Co. 1941) (1838) – and there is little we judges can do about it, for it is (or should be) emphatically our job to apply, not rewrite, the law enacted by the people's representatives. Indeed, a judge who likes every result he reaches is likely a bad judge, reaching for results he prefers than those the law compels.

As Gorsuch reminds us, it is our duty to interpret and apply the law, not to maximize the utility of the rules to bring our own sense of justice.

Therefore, pursuant to our aforementioned opinion, we hereby order the Elections Commissioner to provide a new recommendation on special elections to this board, and upon approval by this Board, it shall be sent to the Senate for consideration.

The full relief requested by the petitioner is denied, and we enjoin the Elections Commission pursuant to this opinion.

It is ordered.

Kimo Gandall
Chief Justice

Madison Craw
Vice Chief Justice

Kulsoom Naqvi
Associate Justice

Heriberto Mendez
Associate Justice

Jeremy Bunda
Associate Justice

Appendix A

MEMORANDUM OF FACTS AND LAW

On March 5th, 2020 petitions were posted onto the UCI Student Government and Media page that called for the recall of 23 ASUCI senators. In less than 72 hours every petition filed hit quorum. The ASUCI constitution states in Article 12 § 4 that the student body has the right to call for the recall of ASUCI officials. In Article 12 §4.e the constitution states that " Within three days from receiving the signatures, the Elections Commission must validate them and call a special election if the requirements are met". Since the petitions hit quorum then each senator on that petition must be on the special election ballot. The issue lies with the senate being the governing branch that approves the timeline for the special election. The legislation R55-54 "Recall Special Election Timeline" (2020) was not voted on and sent to the rules committee where it was nullified. A second legislation was drafted, R55-62 "Revised Special Election Timeline" (2020). As of April 19th 2020, legislation R55-62 is still in the Rules Committee of the ASUCI Senate. In Article 3, §1.p of the ASUCI Constitution it states that "Students have the right to transparency and freedom of information from their student government and student leaders, free of cost" if the special election is stalled then this violates the constitution since ASUCI is not being transparent with the student body with accountability of ASUCI officials. Looking at the 2018 case of the removal of the social ecology senator, the board looked at a case where a senator was impeached. The board agreed with the 2018 Senate that senators have certain responsibilities to serve their constituents:"R53-47 impeaches Social Ecology Senator Melissa Safady for the inability to properly execute all of the duties expected of

3

their position as an elected ASUCI official". Although this case does look at impeachment and not recall it serves to show that senators can be removed if they fail to properly execute all duties expected of them. One of these duties as previously stated is confirming the election's timeline for a special election. If they fail to move forward with this approval then they are not executing the duties expected of them from the student body. In the same case the board also stated that under Article 6, Section 2 (a) of the ASUCI Constitution that the Senate ASUCI aims to enact legislation for the welfare and interest of the undergraduate students, Citing Article 6, Section 2 (a) of the constitution. It is in the interest of the undergraduate student population to hold a recall election since all the petitions hit quorum therefore the senate must pass the special elections timeline since it is in the best interest of the undergrad student population.

CONCLUSION There are several options that the Judicial Board could look upon, either option would suffice to solve this issue. The Judicial board could mandate the ASUCI senate to pass the special election by the next senate meeting in order to hold the special election as soon as possible. The Judicial Board could deem this a special circumstance and work with the election's commissioner to set the special election into

motion since having the senate approve it is a conflict of interest. Finally the Judicial Board could allow the Student Advocate General and elections commissioner approve the elections timeline and set it into motion since the SAG is an impartial body in ASUCI and would not have any conflicts of interest. Even though we are going into Week Four of instruction, the recall still needs to take place since the senators are being paid and if the student body votes for the Freshman Senator's recall then a new Freshman Senator must be found for the Fall 2020 quarter. As I stated in this petition, the special election must be passed in a timely manner in order to maintain transparency with the undergraduate student body.

APPENDIX

Recall petitions:
https://petitions.asuci.uci.edu/petition/archive/

Appendix B

Response to Petition

Statement of the Case

After the impeachment of ASUCI President Randy Yan, ASUCI members, including staffers from the ASUCI Executive branches, submitted petitions to recall Senators. The petition counts were reached, and the Elections Commissioner then improperly called for a special election as specified in R55-54, Recall Special Election Timeline (2020). This legislation was referred to the Rules and Oversight Committee because of concerns regarding its adherence to ASUCI governing documents. After the proposed timeline within R55-54 had passed, the Elections Commissioner again improperly called for another special election as specified in R55-62, Revised Special Election Timeline (2020). This legislation was also referred to the Rules and Oversight Committee because of concerns regarding its adherence to ASUCI governing documents. These concerns were confirmed by the ASUCI Judicial Board ruling actions undertaken by the Elections Commission as null and void in *Knight v. Elections Commissioner (2020).* Because of this ruling, there is no pending special election to approve.

The plaintiff alleges that the Senate must confirm the special election's timeline.

The plaintiff further alleges that the Senate is not being transparent with the student body with regards to accountability of ASUCI Officials.

4

Argument

There is no special election to approve because one has not been properly called. The ASUCI Judicial Board ruled in *Knight v. Elections Commissioner (2020)* that the Elections Commissioner can not act as the sole embodiment of the Elections Commission and all decisions must be made by the Elections Commission as a whole. Because the Elections Commissioner acted as the sole agent of the Elections Commission when calling the special elections, R55-54 and R55-62 are thereby null and void and the Senate can not vote on them.

If a special election was properly called, the ASUCI Constitution does not mandate that the Senate must confirm it. The ASUCI Constitution Art. X, § 2(l) rather gives the Senate the authority to approve a special election. This differs from “confirm”, as “subject to approval” allows the Senate to approve or not to approve. The required approval by the Senate serves as a check and balance on the Executive branch. The purpose of this check and balance is to prevent an abusive minority to overturn the results of an election. Currently, 97% of a Senator's constituents can approve of their performance, but if 3% disapprove, then this small minority can attempt to remove them from office by recall. To prevent this abuse, the Senate has the authority to approve a special election.

The Plaintiff’s argument of the Senate’s alleged lack of transparency is also unsubstantiated. Legislation

being reviewed within the Rules and Oversight Committee does not violate students' right

5

to transparency as described in ASUCI Constitution, Art. II, § 1(p). If this were the case, the Constitution would prohibit such actions. The ASUCI Constitution stands in contrast to this by requiring the Urgency Amendment Process to begin with amendments being referred to the Rules and Oversight Committee as specified in ASUCI Constitution, Art. XV, § 2(b(1)). Thus, there is a constitutional understanding that the Rules and Oversight Committee has the authority to review legislation.

The Rules and Oversight Committee also maintains transparency by keeping minutes. The Senate further maintains transparency by live-streaming meetings to Facebook and keeping minutes. At no point has any member motioned to prevent the Facebook livestream except for the purpose to enter executive session.

The plaintiff's concerns that the Senate is not being transparent with the student body with regards to accountability of ASUCI Officials, while unjustified, should be taken to the Chief Accountability Officer under the Office of the Student Advocate General, as there exists no judicial remedy to an individual's opinion regarding their perceived performance of the Senate.

Prayer for Relief

The Senate requests that the case be dismissed.