ASUCI JUDICIAL BOARD

Ryan Pavey

v.

John Robb,
Ivan Fonseca,
Reema Saad.

Petitioner represented by Mr. Anthony Mansfield.
Respondent represented by Ms. Aleena Malik.

Ruling

Dated: November 14th, 2020

Synopsis:

On November 2nd, Petitioner's Counsel petitioned the Judicial Board for injunction against the ASUCI Senate for the improper appropriation of the enumerated constitutional power of the Elections Commission to call elections (ASUCI Constitution, Art. 12 Sec. 4). The Elections Commission had called the Election in question to "occur week 7 of winter" as seen in their email correspondence (Appendix A). Respondents contended in R56-38 that this call did not occur. Respondents then determined that they had the extra-constitutional authority to call the election themselves. Based on the precedent of Wang v. Robb Et. al. (20200, the Judicial board issued injunctive relief on November 2nd, based on reasonability and harm, thus ordering a halt on R56-38 (Injunction 07).

During the ASUCI Senate meeting on November 3rd, the respondents in Pavey v. Robb Et. al. (2020) violated Injunction 07 by passing R56-38. In response, the Judicial Board overturned R56-38 on November 5th.

The Judicial Board finds that the Election Commissioner shall be given deference in calling elections due to the enumeration of this power in the ASUCI Constitution. When an office has an enumerated power in the ASUCI Constitution, another office cannot simply decide to take it over. If the ASUCI Senate is unsatisfied with the conduct of the Elections Commissioner, the proper remedy is to either file suit to the Judicial Board for incompetence or formally impeach and remove them.

Knight L., Gandall K., Craw M., Mendez H., Wolfe J., Ortiz N., and Lopez M. joined the majority.

Justice Knight delivered the unanimous opinion of the Judicial Board,

On October 29th, ASUCI Elections Commissioner Ryan Pavey (herein petitioner) certified that the signatures necessary to trigger the constitutional provisions of a special election for recall had been met (Appendix A). Due to the ruling in *Knight v. Elections Commission* (2020), there was no elections code to operate any special elections. Regardless, petitioner called a special election as the ASUCI Constitution demands under Article 12 Section 4: "The Commission will propose the date of the special election at this time." Petitioner set deadlines for an elections code to be sent by the ASUCI Senate to the Elections Commission, after which an election would be announced along with a timeline. The deadline for the new elections code was Week 4 of Winter Quarter, with the election to be announced in Week 5 of Winter Quarter if the new elections code was agreed to by the Elections Commission. According to this timeline, a necessary condition of a finalized elections code being agreed to was created in order to hold the Election in Week 7 of Winter Quarter. The election was thus called to occur in Week 7 of Winter Quarter if the condition was met, with petitioner reserving the right to amend the date depending on the process adopted by the Senate.

On November 2nd, Special Counsel Anthony Mansfield, on behalf of petitioner, filed a motion for injunction against R56-38 (Fall Special Election Timeline), requesting that the legislation be halted and then overturned after trial (Appendix B). Petitioner alleged that the ASUCI Senate had improperly appropriated the enumerated constitutional power of the Elections Commission to call elections (ASUCI Constitution, Art. 12 Sec. 4). The Elections Commission had called the Election in question to "occur week 7 of winter" as seen in their email correspondence (Appendix A). Respondents contended in R56-38 that this call did not occur. Respondents then determined that they had the extra-constitutional authority to call the election themselves. Following the *Wang v. Robb Et. al.* (2020) precedent for injunctive relief, the Judicial Board examined this motion on the basis of reasonability and potential harm.

The Judicial Board found the case to be reasonable given that the Elections Commissioner's email seemed to have called an election. Following the precedent set in *Injunction 02: Pavey Et al v. Robb Et al.*, we defer to the Elections Commission in implementing specific timelines for elections. Additionally, given that the Elections Commission has the sole and enumerated power to call elections, we found it reasonable to contend against the jurisdiction of the Senate to call special elections, avoiding the need for judicial review.

The Judicial Board found the case to have potential for harm for two reasons. First, the calling of an election may expend ASUCI resources, which is beyond the realm of judicial relief. Second, the actions taken by respondents could mean a body of the government was, de facto, permitted to engage in extra-constitutional actions.

Thus, the Judicial Board issued Injunction 07 on November 2nd, ordering a halt on R56-38 in order to properly examine the issue. On November 3rd, the respondents in *Pavey v. Robb Et. al.* (2020) violated Injunction 07 by passing R56-38 (ASUCI Senate Minutes - November 3rd). In response, the Judicial Board overturned R56-38 on November 5th.

Due to the continuing pattern of the ASUCI Senate defying injunctions, the Judicial Board decided to continue the trial process and issue declaratory relief as needed. The issue in question is whether the Senate can call a special election at odds with the special election timeline given by the Elections Commissioner.

I.

A.

The ASUCI Constitution states in Article 12 Section 4(e) that in the case of recalls, "within three days from receiving the signatures, the Elections Commission must validate them and call a special election if the requirements are met." Further, the Commission will propose the date of the special election at this time (ASUCI Constitution Article 12 Section 4(f)). The ASUCI Constitution also enumerates the power of the Elections Commission to "plan and manage all ASUCI elections," to "regulate direct democracy petitions outlined in this Constitution," and to "call, and set dates for, special elections" (ASUCI Constitution Article 10 Sec 2 (a)(e)(l)).

The ASUCI Constitution only allows the ASUCI Senate to approve the dates for special elections that are set by the Elections Commission (ASUCI Constitution Article 10 Sec 2(l)). Aside from this role, the Senate does not have any other involvement in the recall special election process.

B.

Following the precedent of *Wang v. Robb et Al.* (2020) and §7.1.4.1 of the Judicial Board Policies and Procedures, the Judicial Board has the statutory power to issue injunctions.

II.

Concerning the issue of the calling of elections, we find that when one office has an enumerated power in the ASUCI Constitution, another office cannot simply decide to take it over. Powers are enumerated to certain offices and branches for a reason, and ignoring the limits and borders of powers outlined by the Constitution is a clear affront to the function of the government as a whole.

If the ASUCI Senate is unsatisfied with the conduct of the Elections Commissioner, the proper remedy is to either file suit to the Judicial Board for incompetence or formally impeach and remove them.

Additionally, the Senate must adhere to all injunctions ordered by the Judicial Board. All legislations passed in defiance of injunctions will meet the same fate: "Overturned by Judicial Board."

* * *

As declaratory relief, we reiterate that R56-38 has been overturned for violating the ASUCI Constitution in addition to Injunction 07 .

Additionally, we order the Senate to defer to the Election Commissioner for calling elections as enumerated in the ASUCI Constitution.

It is so ordered.

Kimo Gandall	Madison Craw
Chief Justice	Vice Chief Justice
Joshua Wolfe	Heriberto Mendez
Associate Justice	Associate Justice
Nick Ortiz	Logan Knight
Associate Justice	Associate Justice
Mario Lopez	
Associate Justice	

Appendix A: Elections Commission Correspondence

Elections Commissioner Email Correspondence

To all those it may concern,

This is official correspondence by the Elections Commission that the signatures necessary to trigger the constitutional provisions of a special election for recall have been met.

Under my Article 10 Sec. 2 (L) authority, my commission is required to "To call, and set dates for, special elections, subject to approval by the Senate." However, because the Judicial ruling under *Knight v. Elections Commission* (2020), there is no election code to operate any special elections - whether it ranges from the timeframe protocol or the online tabulation procedure. Ultimately, it is up to the Senate, by approval of my Commission, to send us a full text of an operable elections code. At this time, we have not agreed to any specific code, as the current one requires several amendments to deal with both a special election timeline and COVID-19 special circumstances.

Regardless, we are calling a special election, as the ASUCI Constitution demands under Article 12 Sec. 4: "The Commission will propose the date of the special election at this time."

However, just have not yet finalized the procedures for it. However, **there will be an election** within the parameters set by our governing documents and according to relevant Judicial rulings.

Because of this, and in coordination with my commission, we have set the following preliminary deadlines, at which time my commission will send out official announcements. If certain deadlines are met earlier, we may act earlier, as would be desirable. The following is the proposed timeline:

1. Week 4, Winter: Deadline for Elections Code.
2. Week 5, Winter: Announce Election and Timeline.

Following this timeline, **only if** a finalized Elections Code is agreed to, **the Election will**

occur week 7 of winter, with voting occurring on the Wednesday of week 7. For purposes of the constitution, this is the preliminary date of the election, subject to the deadline set in (1). We reserve the right to amend this date, depending on the process or lack thereof adopted by the Senate. Further procedures will be announced.

As a note, per the constitution, these procedures are subject to approval by the Senate, and may be amended as the circumstances necessitate. While we look forward to working with the Senate for a date that may occur this quarter, the soonest we could possibly even logistically organize one would be week 7 or 8.

We look forward to hearing the voices of the students.

Ryan Pavey
ASUCI Elections Commissioner
Student Government of the University of California, Irvine

Appendix B: Motion and Petition

Special Counsel Petition for Hearing

ASUCI JUDICIAL BOARD

Ryan Pavey,

v.

John Robb,
Ivan Fonseca,
Reema Saad

November 2nd, 2020

PETITION FOR A HEARING

ISSUES PRESENTED

1. Can the Senate call a special election at odds with the special election timeline given by the Elections Commissioner?

TABLE OF AUTHORITIES

GOVERNING DOCUMENTS

ASUCI Constitution, Art. 12 Sec. 4.

PETITION FOR A HEARING

Statement of the Case

On November 3rd, the Senate intends to vote on R56-38, which effectively calls a special election. This election is at odds with the validly called election of the Elections Commission (see Appendix A).

Argument

The ASUCI Constitution offers broad deference to the provides broad deference to the Elections Commission, and not Senate, in calling and setting

special election dates: "Within three days from receiving the signatures, the Elections Commission must validate them and call a special election if the requirements are met." ASUCI Constitution, Art. 12 Sec. 4. The Elections Commission called a special election, pursuant to their constitutional duties. The Senate, disagreeing with the timeline, has set a different timeline, in contrast to the procedure in the constitution.

Therefore, R56-38 is at odds with the procedure in the constitution and must be struck down.

Prayer for Relief

We ask the Judicial Board to overturn this unconstitutional legislation.

Special Counsel Motion

ASUCI JUDICIAL BOARD

Ryan Pavey
V
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Reema Saad

Plaintiff is being represented by Mr. Anthony Mansfield

Motion to ....

Dated: November 2, 2020

TABLE OF AUTHORITIES

GOVERNING DOCUMENTS

ASUCI Constitution
ASUCI Bylaws

LEGISLATION
R56-38 Fall Special Election Timeline

CASES

Injunction 01:R56-09
Injunction 02: Pavey et al. v. Robb et al.

MEMORANDUM OF FACTS AND LAW

The reason that this petition is reasonable is because the constitution gives the power directly to the elections commission. Further, this piece of legislation is harmful because it violates a constitutional appropriation of power. Further, this case already been evaluated and ruled upon with the decision of Injunction 01: R56-09

CONCLUSION

In conclusion, I'm asking that R56-38 be halted, pending the results of the petition.