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."

Opinion on Investigative Authority in Elections-Related Cases

November 6, 2024

BOLEK, C. delivered the opinion of the Board. MALANI, A.; KARATAS, Z.; MARIN, R.; and MENG, S.; and MOVAHEDI, N. approve of what is written.[1]

I

On August 12, 2024, the Judicial Board was requested to review the Constitutional provisions by which elections-related complaints are received, investigated, and ultimately, adjudicated. Historically, the Elections Commission has solely exercised the power to investigate such complaints, which it has received by making available an online complaint form through which candidates or members of the public may allege violations of the Elections Code or other relevant governing documents. However, the Student Advocate General's constitutionally enumerated duties — which it has, to the knowledge of this Board, not historically exercised — include the power to "receive, investigate, and address student complaints with regards to ASUCI elections," as well as the authority to "review non-financial instances of nonfeasance,

[1] RINGDAHL, N. did not participate in the decision of this opinion.

misfeasance, and malfeasance regarding ASUCI elections." ASUCI Const. Art 9 § 3(B)(3-4). We are tasked today with determining whether this historical order is conducive to the mandates of the governing documents, particularly as it pertains to four questions[2] of significant interest to the Association and the student body it serves in preserving fair and effective elections. Namely, they are:

I. Do the powers afforded to the Student Advocate General fundamentally contravene the Elections Commission's authority over all matters related to ASUCI elections?
II. Can the powers listed as belonging to the Student Advocate General be reasonably construed to apply solely to the actions of the Elections Commission and not other aspects of ASUCI elections?
III. In the event that both the Student Advocate General and the Elections Commission receive the same complaint and investigate accordingly, does one party's findings take precedence over that of the other?
IV. In the event the Elections Commission receives a complaint that is not received by the Student Advocate General, should the former be required to share the complaint with the latter, and vice versa?

On review, the Board finds that the ASUCI Constitution establishes a concurrent structure by which accountability and due process in the course of elections are maintained. It is here that we clarify this concurrent structure.

II

Art. 10 § 2 of the ASUCI Constitution gives the Elections Commission "all authority for ASUCI elections and related activities, which extends to the enumerated power of the Commission to "investigate, on their own initiative, possibilities of electoral nonfeasance, misfeasance, and malfeasance, including any action that could affect the outcome of an election." ASUCI Const. Art. 10 § 2(o). Most controversially in this matter, the language of this power is closely mirrored by that afforded to the Student Advocate

[2] While edited slightly for clarity and style, these questions otherwise appear as they were presented to the Board by the Petitioner in their Request for Formal Interpretation.

General themself to "receive, investigate, and address student complaints with regards to ASUCI elections," as well as the authority to "review non-financial instances of nonfeasance, misfeasance, and malfeasance regarding ASUCI elections." ASUCI Const. Art. 9 § 3(B)(3-4).

It is prudent here to briefly detour from the question of the specific powers held by the Student Advocate General and the Elections Commission, respectively, to review the general purviews of the former office. Although the Student Advocate General's authorities — either in themself or through the various positions under their office designed to ensure accountability and transparency across the Associated Students — most frequently involve complaints and disciplinary proceedings within the Association, its functions along these lines are not exclusive to the organization. Indeed, this responsibility to "receive, investigate, and address *student* complaints with regards to ASUCI elections," [emphasis added] is further substantiated by the Internal Student Advocate General's various duties to provide avenues for student input regarding the governance of the Association. ASUCI Const. Art. 9 § 3(b)(3), (c)(2-3). Consequently, while the Elections Commission is delegated "the electoral authority of ASUCI," this power does not in itself provide justification to override the Student Advocate General's mandate to protect the student interest. ASUCI Const. Art. 4 § 1(c)(5). Such override, impacting numerous rights guaranteed under Art. 3, compel us to exercise the highest level of scrutiny on this matter. As such, all limitations on this mandate — including as it pertains to elections-related matters — must be founded in a compelling government interest in the effective administration of elections. We follow with an inquiry into the grounds on which such compelling interest may be found.

III

We begin by examining the scope over which the Student Advocate General's authority may be exercised in elections-related cases. To return to our essential observation, the work of the Office of the Student Advocate General primarily concerns complaints and disciplinary proceedings within the Association. In direct response to Petitioner's second

question, the Elections Commission may indeed — as an entity of the Association — be subject to oversight of its internal conduct by the Office of the Student Advocate General. Non-exhaustively, this includes matters as broadly dispersed as minor personnel disputes and those constituting offenses of misfeasance, malfeasance, or nonfeasance fit for impeachment. Indeed, the Student Advocate General's oversight authority over the Elections Commission as an official body of the Associated Students is so broad as to include its powerful structural mandate authority, provided this authority is exercised in compliance with all applicable governing documents, to include, in this special area, the Elections Code. ASUCI Const. Art. 9 § 3(b)(2).

However, these observations do little to clarify the role of the Student Advocate General as it pertains to the conduct of elections in themselves. Indeed, outside of the central role of the Elections Commission and the Senate's few enumerated authorities regarding ratification of statutes and procedures for elections, ASUCI officials have not historically been involved in the official election process. It must be noted that, even in cases involving those holding office and running for re-election, the process of running for elected office is undertaken by individuals operating within their capacity as private persons. While this veil of privacy is not total — for instance, those running for office must comply with the strictures provided in the Elections Code, opening them to scrutiny by the Student Advocate General under its prosecutorial power — it is sufficient to invoke protection from the Office. Consequently, we read the Student Advocate General's authority to "receive, investigate, and address student complaints with regards to ASUCI elections" to include not only the plain text authority to receive and investigate complaints from students engaging in the elections process simply as voters, but also the authority to do the same for candidates operating in their capacity as private persons. ASUCI Const. Art. 9 § 3(b)(3).

It remains, however, to be stated how the Student Advocate General may "address" the complaints it receives and investigates, whether it be from the general student body or from individual students running as candidates. It is here that we on the Board wish to carefully emphasize the dual roles possessed by the Office of the Student Advocate General: the

office at once holds the "auditing … and prosecutorial authority of ASUCI.". ASUCI Const. Art. 4 § 1(c)(4). However, whereas the Student Advocate General possesses authorities like that to "impose appropriate structural measures" to improve the efficiency and efficacy of the Association, the exercise of such authorities is constrained to the Association as a durable entity. ASUCI Const. Art. 9 § 3(b)(2). As emphasized previously, this power could reasonably be exercised on the Elections Commission on the basis of disharmony or ineffectiveness within its official operations. However, the space over which this power may be exercised ends precisely where the space of an individual student's Art. 3 rights and rights to due process begins. At this point, the Student Advocate General must assume its prosecutorial function, pursuing its mandate through the judicial process.

In the case of elections, such pursuit must involve the receipt of a complaint or another such impetus to begin an investigation. If the complaint or investigation yields sufficient grounds to pursue judicial remedy, the Office may then pursue such remedy as it does in all other cases. It is here important to note that, unlike all other cases and controversies arising under ASUCI governing documents, primary jurisdiction in elections-related cases is possessed by the Elections Commission under its adjudicative authority. ASUCI Const. Art. 10 § 2(p). While we on the Board acknowledge that there may be cases arising from the conduct of elections that do not fall under this primary jurisdiction, we decline to define here the boundaries of this distinction. We instead wish simply to re-emphasize the conclusion of this section: that the Student Advocate General, while certainly retaining its traditionally exercised authorities over ASUCI entities, further possesses the constitutional authority to involve itself in elections-related disputes on behalf of all students, provided that such involvement is mediated through the judicial process as exercised by the Elections Commission or the Judicial Board.

We on the Board further wish to acknowledge a hypothetical which has frequently coincided with all discussions arising from this matter: that a member of the Office of the Student Advocate General becomes involved in an elections-related case at the same time as they are personally pursuing elected office. Would such a scenario preclude the Office of the Student

Advocate General from involving itself in such a case? While a particular instantiation of this scenario may exist which supplies a compelling government interest to remove the Office of the Student Advocate General from direct involvement, we decline to rule on this matter here for the simple reason that the Senate has already provided means by which such a conflict of interest is to be handled. In particular, Art. V of the ASUCI Student Advocate General Policies and Procedures enumerates procedures by which conflicts of interests are to be dealt with in the conduct of investigations and other duties of the Office. As such, we find now no reason to preliminarily dictate circumstances under which these procedures may be insufficient in a way that yet demands judicial intervention.

IV

Our analysis now turns to the issue of greatest practical importance in this matter. Perhaps most contentiously, the Elections Commission has historically created and used a mechanism by which it receives and investigates student complaints — to include complaints by candidates — via an online form on the ASUCI Elections website. elections.uci.edu. We hereby examine whether the Elections Commission may investigate issues that originate from such complaints, or whether this responsibility lies solely with the Office of the Student Advocate General.

While the Student Advocate General is given the explicit authority to "receive" student complaints regarding elections, this authority is not explicitly granted to the Elections Commission. ASUCI Const. Art. 9 § 3(b)(3). Instead, the Elections Commission is delegated the authority to "investigate, *on their own initiative*, possibilities of electoral nonfeasance, misfeasance, and malfeasance, including any action that could affect the outcome of an election" [emphasis added]. ASUCI Const. Art 10 § 2(o). At issue is thus whether the Constitution's provision for self-initiated investigations permits the creation and use of an online complaint form as has been the historical practice of the Elections Commission.

We first find it imperative to note that the legislature has, through the Elections Code, substantiated the role of Elections Commission in the elections process. While not conclusive in

itself, the Elections Commission is charged with "investigat[ing] alleged violations or infractions committed by any candidates," which may be gathered under current statute through "official complaints submitted online." ASUCI Elections Code Art. X § C, F. Given the authority vested in the Senate to "ratify elections procedures" and "create and amend the governing documents of ASUCI," including the Elections Code, we consider this persuasive evidence of the acceptability of an interpretation of the self-initiated provision which includes an online complaint form as historically practiced. However, if these subsidiary provisions were afforded to the Elections Commission unconstitutionally, we would be forced to overturn them in spite of this precedent.

We decline to do so. To elucidate our reasoning, let us consider a hypothetical: a member of the Elections Commission, duly afforded the authority to investigate potential elections offenses of their own volition, is approached by a concerned student who believes they have witnessed a violation of the Elections Code. Does the member of the Commission have the authority to pursue an investigation from this complaint? We conclude they do. To conclude otherwise would be to conclude that only those alleged infractions which are discovered by the Commission by happenstance may be investigated by the Commission, which would in turn be to place an arbitrarily severe restriction — unfounded anywhere in constitutional or statutory text or principle — on the authority of the Elections Commission to effectively administer ASUCI elections. We instead read the self-initiated provision as explicit permission to the Elections Commission to conduct investigations in the absence of impetus by an outside entity, such as the Office of the Student Advocate General. Consequently, the virtual complaint form at issue in this case is to be read merely as an avenue which the Elections Commission provides for students to ensure their right to an effective election is upheld, consistent with the Commission's constitutional responsibility to "Conduct all ASUCI elections … in ways that ensure students' rights are protected." ASUCI Const. Art. 10 § 3(a).

V

The sole issue which remains to be addressed is the potential for conflict between the Office of the Student Advocate General and the Elections Commission which arises from the concurrent structure of authorities which has heretofore been elaborated. We find this question to be ultimately reducible to the dual function imbued in the Elections Commission by the Constitution. While the Commission's duty is primarily administrative — that is, to administer ASUCI elections as set forth in the Elections Code and other relevant governing documents — it is simultaneously given an adjudicative function under Art. 10 § 2(p) of the Constitution. Under its administrative capacity, the Elections Commission operates much like the Federal Elections Commission or its various analogues in the several states, making preliminary, quasi-judicial decisions to enforce the elections procedures it has been charged to uphold and, if necessary, defending them in full courts of law.

The ASUCI Constitution presents us with a unique departure from this pattern, however, in that it delegates to the Elections Commission the position of a full judicial body. Whereas the aforementioned analogues to the Elections Commission may focus solely on their administrative capacities, outsourcing all judicial functions to distinct courts of law, the Elections Commission's primary jurisdiction forces an ordering in such cases where these roles may contradict one another. On the core legal principle that a body cannot in the same case exercise administrative and adjudicative powers — it cannot be judge and jury, as it were — we preclude the possibility that the Elections Commission may pursue an investigation at the same time as the Student Advocate General pursues judicial relief under its primary jurisdiction. Instead, we conclude that the Elections Commission may invoke its investigative and attendant administrative powers so long as no individual, including the Student Advocate General, pursues judicial relief through their adjudicative powers.

In other words, as soon as its judicial capacity is engaged, the Elections Commission must recuse its administrative capacity to the extent necessary to reasonably guarantee impartiality for the case for which judicial relief has been sought. To return to the relative roles of the Elections Commission and the Office

of the Student Advocate General, if the Student Advocate General receives and investigates a complaint in a manner compliant with the Elections Code which then leads to a case which comes before the Elections Commission acting in its adjudicative capacity, it shall, pursuant to Art. X § C, D of the Elections Code, turn over the complaint it received and all information it possesses pertaining to the alleged violation for judicial review by the Commission. While the Board recognizes and acknowledges the unorthodoxy of this structure, it is our view that "proper judicial restraint demands that we … deal with the Governing Documents as they are available to us." *See* Vu v. Dimalanta et al., asuci.uci.edu (2023). If, after this complex process is complete, the decision of the Elections Commission is unsatisfactory to any party, including the Student Advocate General, the right to appellate review by this Board remains as final recourse.

VI

The Judicial Board finds that the ASUCI Constitution and governing documents provide for a concurrent structure by which elections-related cases are administered and, if necessary, investigated and adjudicated. We have herein elucidated this concurrent structure, simultaneously upholding the historical role of the Elections Commission and clarifying the role of the Student Advocate General in such matters. Finally, the Board orders the Elections Commission, in all future matters concerning elections-related controversies, to take care to consider and justify its adoption of an administrative or adjudicative posture.

It is so ordered.

Appendix A: November 2, 2024

Relevant Sections of the ASUCI Constitution

Article 4: Student Government Student Media
Section 1: Authority and Organization
Subsection C
"ASUCI is organized into the following branches:"
Clause 4: "The Office of the Student Advocate General, to which is given the investigative, auditing, and prosecutorial authority of ASUCI;"
Clause 5: "The Elections Commission, to which is given the electoral authority of ASUCI;"

Article 9: Office of the Student Advocate General
Section 3: Authority and Powers
Subsection B: Student Advocate General
Clause 2: "To impose appropriate structural measures on ASUCI offices such as mandating more training or better record management;"
Clause 3: "To receive, investigate, and address student complaints with regards to ASUCI elections;"
Clause 4: "To review non-financial instances of nonfeasance, misfeasance, and malfeasance regarding ASUCI elections;"
Subsection C
"The Internal Student Advocate General has the delegated power to:"
Clause 2: "To create communications channels for students to anonymously report cases where misuse of student funds is suspected, both online and by other means;"
Clause 3: "To provide opportunities for student suggestions to influence which projects, programs, departments, and offices it audits each year;"

Article 10: Elections Commission
Section 2: Authority and Powers
"The Elections Commission has all authority for ASUCI elections and related activities, and under this authority has the power to:"
Clause O: "To investigate, on their own initiative, possibilities of electoral nonfeasance, misfeasance, and malfeasance,

including any action that could affect the outcome of an election;"
Clause P: "To adjudicate electoral disputes, including allegations of Elections Code violations, subject to appeal to the Judicial Board;"
Section 3: Responsibilities
"This section describes the core responsibilities of the Elections Commission and serves as a contract between the Commission and the undergraduate students of UCI regarding the conduct of the elections process. Under this, the Commission must:"
Clause A: "Conduct all ASUCI elections fairly, impartially, and with integrity, in ways that ensure students' rights are protected;"

Relevant Sections of the ASUCI Elections Code

Article X: Elections Commission
Clause C: "This Commission shall meet daily during the election week to review all official complaints submitted online."
Clause D: "This Commission shall review all violations and all official complaints filed by individuals."
Clause F: "The Elections Commission shall verify the Financial Statements and investigate alleged violations or infractions committed by any candidate. In addition, they shall be responsible for acknowledging and verifying all Endorsement Forms within one (1) school day."

Relevant Sections of the ASUCI Student Advocate General Policies and Procedures

Article V: Recusal
Section A: "Members of the Office of the Student Advocate General shall disqualify themselves from particular reviews or investigations by process of recusal as soon as they believe their impartiality or transparency in such matters may be compromised or reasonably questioned, including but not limited to a conflict of interest or a personal relationship outside of the Associated Students with an individual involved in a case."
Section B: "The recusal process shall consist of the member petitioning the Student Advocate General to allow for the recusal from the review or investigation. If the Student Advocate General approves the petition, that member shall not

participate in the review or investigation for which the petition was made."
Subsection 1: "If the Student Advocate General denies the request, the member is not recused from the case at hand and must actively participate to the extent of their enumerated or assigned duties."
Section C: "Once a petition for recusal has been approved by the Student Advocate General,"
Subsection 1: "Recused officers or interns may not speak on matters related to the review or investigation for which they are recused at any point in which said review or investigation is active."
Subsection 2: "Recused officers or interns shall not engage in or be present in any meeting when the active investigation or review for which they are recused is being discussed."
Subsection 3: "For the purposes of transparency, the investigation or review report and summary shall contain the names of the members of the Office of the Student Advocate General who have recused themselves for the report in question."
Section D: "If the Student Advocate General wishes to recuse themselves from an investigation, the Student Advocate General shall inform the investigating party. The investigating party shall then be empowered to execute all duties of the Student Advocate General under Article III Section H of this document in the investigation or review for which the Student Advocate General is recused."

Relevant Judicial Board Case Law
Vu v. Dimalanta et al.

Appendix B: March 15, 2025

On February 20, 2025, the ASUCI Senate passed legislation R60-81: Elections Code Reform Act, which significantly altered the form and content of the Elections Code from its previous version. Included in this revision were amendments to Art. X § C, Art. X § D, and Art. X § F of the Code as cited in this Opinion.

Upon the request of Elections Commissioner Jun Jang, the Judicial Board's ruling in this Opinion was found to remain in force. See *On the Ability of the Judicial Board to Update Interpretive Opinions in Response to Certain Amendments of Law* (2025). Furthermore, the Board found that adding this appendix to this Opinion was permissible and compliant with the documentary function these appendices are intended to serve. See *On the Ability of the Judicial Board to Update Interpretive Opinions in Response to Certain Amendments of Law* (2025). It is with this context that this appendix is included herein.

Relevant Sections of the ASUCI Elections Code

Amended clauses sufficiently similarly situated in purpose and application as to be analogous to those cited in this Opinion are as follows:

Article XIV: Complaints and Sanctions

"Pursuant to the purpose of this Code to promote free and fair ASUCI elections, the Elections Commission shall be empowered under the authorities of the ASUCI Constitution to receive formal complaints from students regarding the elections and levy appropriate sanctions on Candidates or Initiative Coordinators found to be in violation of this Code."

Section A: Complaint Process

Subsection 1: "All complaints must be submitted to the official ASUCI Elections Complaint Form on the Elections website and should include:"

Clause A: "Who is allegedly in violation;"

Clause B: "Where the alleged violation occurred;"

Clause C: "When the alleged violation occurred;"

Clause D: "The specific section of this Code or other ASUCI governing document that has allegedly been violated; and

Clause E: Any applicable supporting evidence."

Subsection 2: "The deadline for students to file a formal Complaint Form to the Elections Commission during the Spring General Elections shall be the Sunday preceding Week 4 at 5:00 p.m."

Subsection 3: "Once a complaint has been received, the Elections Commission shall have (3) days to release their findings and their ruling."

Clause A: "To maintain uniformity with the procedures of the Judicial Board, complainants shall be referred to as

'Petitioners,' while subjects of complaints shall be referred to as 'Respondents.'"

Clause B: "To assist with the process of determining an appropriate ruling, the Elections Commission may request the presence of the Petitioner(s) and the Respondent(s) at separate Evidentiary Hearings to receive various perspectives on the complaint at hand."

Subclause i: "Should a Petitioner(s) refuse to attend an Evidentiary Hearing, the Elections Commission shall dismiss the complaint, subject to appeal to the Judicial Board."

Subclause ii: "Should a Respondent(s) refuse to attend an Evidentiary Hearing, the Elections Commission shall issue a summary judgment with the information available to them."

Clause C: "All decisions of the Elections Commission regarding complaints during the Spring General Elections, including decisions on sanctions or lack thereof, shall be released by Wednesday of Week 4 at 5:00 pm at the latest on the Elections website."

Relevant Legislation

R60-81: Elections Code Reform Act

Relevant Judicial Board Case Law

On the Ability of the Judicial Board to Update Interpretive Opinions in Response to Certain Amendments of Law