

Attorney General's Statement Concerning the Failure & Remedy of the Temporary
Committee on the Selection of the Elections Council Chair

In light of the absence of an appointed Elections Council Chair (ECC) by the 8th week of the Fall session, I would like to take the opportunity to clarify what the ASUC Senate has decided to do. Their decisions are justified (for reasons I will outline below), despite facing some uncertainties with the language of the Constitution and By-Laws. The decisions they've made do not solve some of the larger ambiguities found within the Constitution and By-Laws, but they do allow the Senate body to operate efficiently and serve the students of this university properly. When addressing the issue, I will not quote the procedural documents directly but make clear references to them by title, article, and so forth (as they are publicly available to view online).

The selection of the ECC is mandated by Title IV, Article II of the ASUC By-Laws, which states that the appointed position must be filled by the 8th week of the Fall session (Section 1). Since (for undetermined reasons) an ECC has not been selected at this point in time (the 11th week of the Fall Session), any consideration of "official business" would be in violation of the By-Laws (Section 2). In order to resume consideration of official business, an ECC must be appointed.

Since the selection process of an ECC is itself considered to be official business, the By-Laws have outlined a contingency scenario that empowers the President of the ASUC to immediately appoint a person to the position (Section 4). However, since the President is currently out-of-town, she is unable to properly nominate an ECC. The By-Laws do not provide a solution to this scenario, and thus the Senate has improvised a solution of their own.

Because the President's nomination would require 14 votes of the Senate (Section 4), their consent may reasonably be construed to take precedent over the President's own nomination. Therefore, given the following ambiguity in the By-Laws, the Senate has decided to proceed with the selection on their own, posting an application online and starting the interview process. In order to fully empower the selection process, the Senate must however suspend the By-Laws (particularly T-IV, A-II, S-2) so as to validly conduct official business.

This leads to the next procedural quandary, whereby a suspension of the By-Laws is defined by the By-Laws to be a Main Motion (Con., A-X, S-2). Since the By-Laws further require all main motions (except those of appointment approvals, veto overrides, and actions on subsidiary bodies) to be in the form of a bill (T-I, A-IV, S-4), the suspension would require a bill to be passed. To be clear, it is not possible to construe the action the Senate has taken to be in anyway the approval of an appointment, which would void the passage of a bill (although it will ultimately lead to an appointment). The action they have taken is a suspension and therefore requires a bill to be passed.

However, given that the Senate may not consider any official business due to their lack of appointing an ECC, they would not be able to validly pass such a bill. Because of their inability to suspend the By-Laws, the procedure outlining the ECC selection has empowered the President to appoint a person to the role. As previously mentioned, the President is not currently able to appoint an ECC, and thus a circular argument forms in determining who has the power to appoint an ECC while the conducting of official business has been suspended.

In light of this ambiguity, the Senate has decided to pass an informal 'verbal' main motion, which suspends the By-Laws and allows them to overcome the suspension of official business imposed by the ECC selection guidelines. This is procedurally valid since the By-Laws do not address the scenario currently faced whereby the President is unable to make an appointment herself.

However, since the suspension of the By-Laws is considered to be a main motion (as previously mentioned and found in Con., A-X, S-2), and since the clause they have suspended does not address the matter of main motions but rather that of conducting official business, the ASUC Senate cannot take action on their informal 'verbal' main motion until that motion has been publicly posted for at least one week (Con., A-IX, S-2).

This statement will therefore be publicly posted on the ASUC web site so as to allow the main motion to be enacted. Since the suspension will therefore be enacted next Wednesday (11/12/08), the Senate then faces the dilemma of being unable to carry out the ECC selection process. By utilizing the ambiguity found within the ECC selection guidelines, the Senate has essentially allowed itself to overcome the procedural dilemma. By the time the informal main motion is enacted next Wednesday, they will have already appointed an ECC, retroactively validating all other special steps they have taken.

After close and careful study of the relevant procedural documents and the situation at hand, I have determined that the actions the ASUC Senate has taken during the Regular Meeting on 11/05/08 are in compliance with the ASUC Constitution and By-Laws.

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