

ASUC Judicial Council

Advisory Opinion

On this date, the Fifteenth of April, Two Thousand and Eight

By Chair Allison Day, with whom
Assistant Chair Kiira Johal, and
Associate Justices Joseph Guzman, Lara Palanjian, Kiesha Oliver,
Jason Koo, and Lucero Chavez join.

The ASUC Judicial Council met at the request of Attorney General Alex Kozak in order to consider several related questions regarding when the ASUC Elections are considered legally over, how this limits a candidate's ability to withdraw from the election, and the powers of Party Signatories.

First we address the question of when the elections are considered legally over. We determined that the ASUC Constitution and the Elections By-Laws provide for two distinct interpretations of *election*. The first use of *election* refers to the voting period provided for in Article 7 Section 2 Subsection A of the ASUC Constitution¹ and is further defined by Title IV Section 3.1.3 of the By-Laws.² As stated in Title IV Section 3.1.3, "the default dates for ASUC Elections shall be the Tuesday, Wednesday and Thursday of the second week following Spring Break." Therefore, the first use of *election*, which refers to the voting period, is legally over once voting is complete at 12:00AM on Friday.

The second use of *election* refers to the general process of selecting new representatives for the UC Berkeley student body as provided for in Article 7 Section 1 of the ASUC Constitution.³ This second interpretation of *election* is further provided for by Title IV Article 1.1 of the By-Laws, stating that the purpose of the Elections By-Laws is to "provide for the conduct of all ASUC Elections." As the Elections By-Laws' scope extends beyond the three day voting period, we believe that *election* as the general process extends until the election results become effective after being certified by the Judicial Council and read into the Minutes of a Senate meeting.⁴

For these reasons, the Judicial Council has determined that while the election period ends on Thursday at 11:59 PM, the election as a general process does not end until the election results are certified.

¹ ASUC Constitution Article VII Section 2 Subsection A: "The specific dates for regular elections and for any special elections shall be set by the ASUC Senate. The election period for special elections must be during the Spring or Fall semester, not on a Saturday or Sunday, and not on an official school holiday. The election period for regular elections must be during the Spring semester, not on a Saturday or Sunday, and not on an official school holiday."

² Title IV Section 3.1.3: "The default dates for ASUC Elections shall be the Tuesday, Wednesday and Thursday of the second week following Spring Break."

³ ASUC Constitution Article VII Section 1: "Control of all Association elections and related activities shall rest with an Elections Council as empowered by the ASUC By-Laws."

⁴ Title IV Section 15.1.5: "The election results for all elected officials positions, as certified by the Elections Council, shall become effective by their being read into the Minutes of a Senate Meeting following their certification by the Judicial Council."

With regards to a candidate's ability to withdraw, the *election* identified in Title IV Article 6.3.5⁵ refers to the election process. The clause providing that candidates may withdraw "at any time" reinforces the use of a broader interpretation of "election" insofar as this clause indicates that a candidates' ability to withdraw should not be limited. Therefore, candidates retain the right to withdraw from the election up until the election results have been certified and read into the Senate Minutes.

Given that candidates retain the right to withdraw after preliminary tabulation has occurred up until the results are certified, re-tabulation must occur if a candidate drops out. The procedure for re-tabulation following withdrawal would be the same as those followed when a candidate is disqualified as provided for in Title IV Section 15.1.2, which states that "if any candidate is disqualified following the preliminary tabulation, a second and final ballot tabulation will commence following all decisions and settlements of lawsuits regarding elections by the Judicial Council."

We have also considered whether designated Party Signatories have the power to withdraw a candidate from the election, and if this power as provided for in Title IV Section 5.2⁶ is in conflict with Article XI Section 1 of the ASUC Constitution⁷ and Title IV Section 1.2 of the ASUC By-Laws.⁸ Section 5.2 provides the only definition of the Party Signatories' power, and therefore the extent of their power stems from the interpretation of this section. Section 5.2 states that "a Party Signatory has the power to act on behalf of the party, and has delegated authority as an agent for all members of that party." We interpret the second clause, "and has delegated authority as an agent for all members of that party," as qualifying the first clause which provides the Party Signatory with "the power to act on behalf of the party." In the second clause, "delegated" refers to the candidates' acts of bestowing authority to the Party Signatory by agreeing to run with the party, and "authority" refers back to the Party Signatory's "power to act on behalf of the party" in the first clause.

Therefore, the second clause indicates that the Party Signatory's power to act on behalf of the party transfers to a power to act on behalf of the individual members of the party. As this permits the Party Signatory to act in the name of a candidate, it enables them to withdraw a candidate from the election on the candidate's behalf.

Further, the power of the Party Signatories is not in conflict with the sections of the ASUC Constitution and By-Laws cited because the candidates have freely chosen to run with a party and are not required to do so in order to participate in the election. By choosing to run with a party candidates delegate authority to the Party Signatory as outlined above and the relationship established through the delegation of authority is not in violation of equal protection afforded by the Constitution and By-Laws.

⁵ Title IV Section 6.3.5: "A candidate may withdraw from the election at any time."

⁶ Title IV Section 5.2: "A Party Signatory is any person who has become a Party Signatory through the procedures stated herein. A Party Signatory has the power to act on behalf of the party, and has delegated authority as an agent for all members of that party."

⁷ ASUC Constitution Article XI Section 1: "The ASUC shall not deprive any person of liberty or property without due process of law, nor shall the ASUC deny to any person within its jurisdiction the equal protection of the laws."

⁸ Title IV Section 1.2: "These by-laws are intended to insure ensure that each candidate is afforded an opportunity for election equal to that of any other candidate for that office, and proponents and opponents of referenda and propositions are afforded an equal opportunity for their respective victory."