

ASUC Judicial Council

Direct Judgment

Appeal of Ratto v. Vakil

On this date, the Fifteenth of July, Two Thousand and Six

By Chair Sonya Banerjee, with whom
Associate Justices Aurora Masum-Javed, Stephanie Lam, and Carmel Levitan join

In the ruling of *Ratto v. Vakil*, the Judicial Council convicted Student Action Party Chair Suken Vakil of violating the witness rules for truthfulness¹ during the hearing of *ASUC v. Student Action Executive Slate* (hereafter “*ASUC v. SAES*”),² held him in contempt of Council, and therefore issued a default judgment against the four Student Action executive candidates he sought to benefit through his misleading testimony.³ In this appeal of *Ratto v. Vakil*, the petitioners, Vishal Gupta and Oren Gabriel, allege that violations of due process and misapplication of ASUC law led to a wrongful ruling.⁴ The appellants argue several points of contention against the respondents, Ben Narodick, Lauren Karasek, and Justin Azadivar. Since the burden of proof rests on the petitioner when appealing a decision, the original ruling is considered valid until it is proven that the decision involved an error regarding the application of law or a violation of due process. Hence, the Judicial Council will consider each point of contention presented by the appellants.

To begin, the Associated Students of the University of California (“ASUC”) is a microcosm of the US government, as it contains an executive branch, a legislative branch, and judicial branch. And, like the US government, the ASUC also has its own Constitution and By-Laws, which outline the rules that are both appropriate and applicable to the students of the University of California, Berkeley. Article IV of the ASUC Constitution explicitly delineates the role of the Judicial Council within the ASUC, stating under “Section 1: Authority”:

The Judicial Council of the Association shall be vested with the judicial authority of the Association. The council's authority shall extend to all judicial cases arising under this Constitution, the ASUC By-Laws, official actions of ASUC executive officers, employees, and the Senate, and any matters delegated to the council by the ASUC Senate or this Constitution.

¹ Judicial Rules of Procedure Section 4.12.3: “Witnesses must, to the best of their ability, provide the Council with relevant and truthful testimony.”

1. Witnesses who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council. The Council may issue such a finding at any time.”

² In *ASUC v. SAES*, the ASUC sought the disqualification of the Student Action Executive Slate for six counts of campaign chalking within poll station boundaries, in violation of Title IV Section 13.3.8: “Knowingly and actively campaigning within 100 feet of the polls, provided that the polls are properly marked off.” The Judicial Council convicted the Student Action slate of three counts with one censure each, falling short of the five-censure limit for disqualification.

³ Judicial Rules of Procedure Section 4.15.3.2: “Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit.”

⁴ Judicial Rules of Procedure Section 5.4.1: “When appealing, the burden of proof rests on the petitioner. Appeals may be granted for any of the following:

1. Demonstration that a reversible error with regard to a conclusion of law may exist.
2. Demonstration that judgment was significantly influenced by a violation of due process, as set forth in these rules of procedure.”

From this, it is clear that the Judicial Council is vested with the responsibility of upholding the laws of the ASUC as they are outlined within the ASUC Constitution and By-Laws. Additionally, Section 3, Article IV of the ASUC Constitution, mandates that the Judicial Council follow its rules of procedure, the Judicial Rules of Procedure (“JRP”), which is clearly a regulation of the Council. Furthermore, under ASUC Constitution Article IV §4: “Functions and Powers,” item C states that one of the functions of the Judicial Council is:

To review charges of violation of this Constitution, the By-Laws of the Association, and all other regulations of the Association.

Clearly then, the Judicial Council is also mandated to ensure that the regulations and provisions outlined within the Judicial Rules of Procedure, as a regulatory document for the third branch of the Association, are followed.

In the matter at hand, Mr. Vakil violated a provision of the Judicial Rules of Procedure, and after his conviction a penalty was issued against Vakil and the parties he represented, the Student Action Executive candidates, in accordance with the same body of rules. In this appeal, the disqualification of the candidates is contested for many practical reasons to be discussed, but also in principle – is it justifiable to disqualify candidates from an election in part due to an infraction before the judiciary, an infraction that students might never have seen? This begs the question of whether the rule of law can overrule the simple vote of the students, as the ASUC is a democratic institution modeled after the US government. In order to answer this question, it is important to note that the regulatory documents of the ASUC – the Constitution, By-Laws, and JRPs – are democratically constructed and democratically passed into law, whether through student referendum or the student-elected legislative Senate. If laws were passed that could prevent a winning candidate from taking office, this was done with the intention of protecting students who would not know of the candidate’s misconduct when casting votes in his/her favor. The rule of law is a democratic principle, just like that of democratically elected representatives, as it is these representatives who enact laws to promote the interests of the student body. It is the judiciary’s duty to ensure that these laws are followed, even if this means the disqualification of the Student Action Executive Slate. But in order to determine whether this disqualification from *Ratto v. Vakil* was merited, we must direct our attention to the individual points raised by the appellants.

The petitioners first argue in Appellant Brief Section I that Mr. Vakil’s due process rights were violated by unlawful deviations from the Judicial Rules of Procedure. Appellant Brief Subsection I.A contests the legitimacy of Vakil’s statement during *ASUC v. SAES* as recognized by the Judicial Council. The appellants claim that Vakil’s due process right to a transcript, per JRP 6.3.1, was violated, and thus the statement should not stand. JRP Section 6.3.1 states: “A written, audio, or video recording will be made at all official hearings for the future use of all Justices.” Nowhere does this clause mandate that hearing minutes shall be made available for general request. In fact, it specifically says recordings are “for the future use of all Justices,” and indeed Justices do make relevant recordings during hearings by taking notes, which are often used in deliberations and decision writing. On the other hand, the Permanent Record, which includes “charge sheet, briefs, decisions, and all other relevant material,”⁵ must be made available to “all members and employees of the Association.”⁶ This Permanent Record was provided for Mr. Vakil, but it was not required to contain a transcript. Although official recordings would be very helpful for cases such as *Ratto v.*

⁵ Judicial Rules of Procedure Section 6.3.2: “A Permanent Record of hearing material for all hearings shall be kept including the charge sheet, briefs, decisions, and all other relevant material.”

⁶ Judicial Rules of Procedure Section 6.3.3: “The permanent record shall be available to all members and employees of the Association.”

Vakil, the Judicial Council does not have the funds or expertise to set up conference-recording equipment to accurately and synchronously capture all participants of a hearing in the expansive ASUC Senate Chambers (which is the room where the Judicial Council holds many of its hearings). The petitioners argue that the Council could have afforded to purchase eight or nine individual recording devices at the close of the 2005-06 academic year, as the Council had approximately two hundred and eighty dollars remaining in their account. The petitioners, however, do not account for the cost of the individual tapes that would be required by each of these recording devices for dozens of hearings that last many hours, the fact that such inexpensive recording devices do not record outside the range of a few feet and would therefore only record people speaking directly into their microphones, the fact that such a recording would not be synchronized among all devices, or the fact that the funding provided to the Judicial Council by the ASUC is intended for reimbursement of expenses incurred by Council members (such as photocopies). Additionally, the petitioners argue that the Council could have approached the ASUC Senate about obtaining further funding with which to purchase more expensive equipment. However, testimony from Chaitanya Desai, the 2005-06 Finance Officer, and argumentation from the respondents imply that it is difficult for government offices outside of the Office of the President to obtain additional funding. Moreover, as testimony from Desai pointed out, the ASUC Senate Chambers is already undergoing renovations for expensive recording devices, and it therefore seems unlikely that the Council could have received additional funding for recording equipment. Also, Mr. Narodick, a respondent and also the 2005-06 Chair of the Finance Committee for the ASUC Senate, attested to the fact that former Judicial Council Chairperson Robert D. Gregg did approach him with the intent of procuring further funding for the Judicial Council, and was told that funding, in the amount of three hundred dollars, had already been allocated to the Council for the 2006-07 academic-year. The appellants further argue that it is the job of the Judicial Council's clerk to record minutes for Judicial Council hearings. However, because this duty is not expressly outlined in the duties required of a clerk,⁷ and because it would be unreasonable for the Council to ask a student to voluntarily sit through all Judicial Council hearings (which often last for several hours late into the night) to perform the task of a stenographer, without making any errors or adding any bias to his or her notes, it seems that this option is not, and would not have been, viable. Aside from this, the Council does not currently have a clerk and has not had one since Kate Feng, the Spring 2006 clerk, was appointed to the Judicial Council. Finally, we would like to reiterate that the Council is not required to maintain or produce hearing transcripts by the ASUC Constitution, By-laws, or Judicial Rules of Procedure. The lack of a transcript did not benefit either party in *Ratto v. Vakil* – the burden of proving Vakil's alleged statement rested on the plaintiff and was met according to the previous ruling:

Mr. Ratto submits as evidence the Daily Californian article from May 11, 2006 that summarizes the hearing of *ASUC v. Student Action Executive Slate*, which the reporter, Katlyn Carter, attended. This article states that at the hearing "Vakil added that in his experience, chalk disappears after one day." Although this is a paraphrase of a response Vakil offered when questioned by the Judicial Council, it is uncontested by both parties that Vakil claimed the lifetime of chalk to be one day. Moreover, when asked about the accuracy of the Daily Californian article, witness Justin Azadivar, who was taking notes at the *ASUC v. Student Action Executive Slate* hearing, made no objection to its account of the statements made at the hearing.⁸

It was uncontested at this hearing that Suken Vakil made this statement about the lifetime of chalk. Although the appellants claim that the DailyCal article and the witness testimony from the hearing

⁷ Judicial Rules of Procedure Section 6.10.1: "Judicial Council Clerks shall assist the Justices with the functions of the Council. Such duties shall include any tasks delegated to the Clerks including, but not limited to: delivering subpoenas, contacting participants in Judicial Council proceedings, collecting briefs and charge sheets, and making copies of Judicial Council documents."

⁸ Judicial Council Direct Judgment of *Ratto v. Vakil*, p. 2

Ratto v. Vakil do not accurately reflect Vakil's statement from the ASUC v. SAES hearing, no evidence to the contrary is presented and so the Council must rely on the factual conclusion from Ratto v. Vakil. Therefore, the Judicial Council finds that it did not violate the JRP by not creating official transcripts of hearings and that no due process rights were violated while establishing Vakil's statement without such a transcript.

In Subsection I.B, the appellants attest that Mr. Vakil was illegally compelled to be a witness against himself in Ratto v. Vakil. The Judicial Council decision states that "Suken Vakil was compelled to provide an affidavit in lieu of his [presence at] the hearing, so he could speak on his own behalf as the defendant," because Constitution XI Section 3 and Title IV Section 14.3 provide that the accused have the right to speak in their defense. Mr. Vakil was to leave the country so he was given that right to speak via affidavit, the only recognized method for entering out-of-court statements into evidence, which requires that cross-examination questions be answered.⁹ His counsel, Bret Manley, then effectively waived Vakil's right to appear by objecting to the entire affidavit, based on Vakil's right to not be compelled as a witness against himself. Although the motion was overruled at the time of the hearing, the Judicial Council later deliberated on its Constitutional grounds and agreed to strike the document in its entirety. On this point, the respondents claim that the content of Vakil's affidavit was not referenced anywhere in the decision. The appellants argue that because the Council had access to the affidavit at the Ratto v. Vakil hearing, during which parts were read aloud, that the affidavit unfairly prejudiced the Council against Mr. Vakil; that the affidavit was more prejudicial than probative and should have been stricken during pre-oral motions. However, because Judicial Council hearings are bench trials, the Justices who heard the case were knowledgeable about ASUC law, and were capable of separating themselves from the testimony held within Mr. Vakil's affidavit when determining the outcome of the case.¹⁰ And, when the appellants were asked to produce evidence that the content of Mr. Vakil's affidavit had impacted the decision, they were unable to do so. Therefore, the Council must agree that no rights were violated by the initial failure to suppress Vakil's affidavit.

A similar controversy arose during the appeal trial, when the appellants attempted to enter into evidence a statement from Suken Vakil to the Judicial Council for the purpose of allowing him the opportunity to speak on his own behalf. The appellants argued that the statement was only a direct message from Vakil to the Council and that it was in no way a witness statement. The respondents asserted that the statement was in fact a witness statement, explained that there is no procedure within the JRP that allows for the submission of individual statements, and objected to its admission based on JRP 4.12.5¹¹ and the fact that Vakil did not answer cross-examination questions that were sent to him. In fact, prior to the hearing, Mr. Gupta responded to Mr. Narodick's request for cross-examination and expressly informed Narodick that Mr. Vakil would not be answering any cross-examination questions for the statement. After the Council had the opportunity to look at the electronic copy of the statement that was originally submitted to all parties, and was able to compare this electronic copy with the hardcopy presented at trial by the appellants, it was clear that the appellants had tampered with the evidence they were presenting at the hearing by altering its

⁹ Judicial Rules of Procedure Section 4.12.5: "If a witness is unable to attend the hearing, they may submit an affidavit for the Council's consideration. Prior to the affidavit's submission to the Council, all parties in a hearing must be notified and have their questions addressed in the affidavit.

1. If all parties in a hearing have not had their questions addressed by the witness' affidavit, they may request the affidavit be suppressed."

¹⁰ Judicial Council Direct Judgment of Ratto v. Vakil, p. 2: "Therefore, in accordance with the Bill of Rights, Suken Vakil's affidavit is hereby officially stricken from the record and no part of the affidavit is considered in the formation of this judgment."

¹¹ Judicial Rules of Procedure Section 4.12.5: Ibid

content. In the original electronic copy of Suken Vakil's statement, submitted prior to the hearing,¹² the signed document contained the title: "Witness Statement." When the appellants were asked why the hardcopies of the statement they were trying to enter into evidence did not contain the title "Witness Statement" as the original version had, considering they were arguing that the document was in no way a witness statement, the appellants answered that they removed the title for "formatting reasons." The appellants explained that Vakil did author the statement and that the electronic version submitted to the Council, entitled "Witness Statement," was the version that Vakil had written and signed. Therefore, the Council struck this piece of evidence on the grounds that it was in fact a witness statement and the respondents had not had the opportunity to ask cross-examination questions,¹³ and were actually prevented from doing so by the appellants. We stand by this ruling.

Next, the appellants argue that because the four Student Action Executive Slate candidates were not specifically named as party opponents in *Ratto v. Vakil*, the punishment rendered should not be imputable to the four executives. According to JRP 3.6.1.4.2,¹⁴ petitioners must include "the list of persons charged" with the charge sheet. Mr. Ratto charged only Vakil with violating the rules for truthfulness, and so listed only Vakil as the defendant, since there is no requirement that petitioners name all persons ultimately affected by the requested remedy. However, in accordance with JRP 3.6.1.4.6,¹⁵ Mr. Ratto specifically mentioned the Student Action Executive candidates in the description of the charges and requested judicial relief.¹⁶ Also, at the end of the charge sheet, Mr. Ratto states:

If there are any claims that the Student Action executive candidates should not be responsible for the actions of their appointed [representative], I will be happy to argue against that claim at the hearing, but I believe it is evident that they can be found at fault for the actions of their designated representative.

The purpose of the charge sheet is to make the petitioner's grievances, allegations, and requested remedies clear for the Judicial Council's consideration of its merits.¹⁷ Once the Judicial Council accepts a case, the witness lists,¹⁸ evidence lists,¹⁹ and briefs^{20,21} are meant to further clarify the nature of the charges to all involved parties prior to the hearing. It is evident that Ratto followed this procedure (the specific content of Ratto's brief is discussed later in this decision). Moreover, at the time of the *Ratto v. Vakil* hearing, there is no question that the four Student Action Executive candidates knew the case could have an impact on them, beyond the fact that Ratto charged them in his pre-trial submissions. In the affidavits submitted by Oren Gabriel, Vishal Gupta, Joyce Liou, and

¹² Judicial Rules of Procedure Section 3.11.2.1: "All evidence relevant to a hearing must be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due."

¹³ Judicial Rules of Procedure Section 4.12.5.1: "If all parties in a hearing have not had their questions addressed by the witness' affidavit, they may request the affidavit be suppressed."

¹⁴ Judicial Rules of Procedure Section 3.6.1.4.2: "The list of persons charged, along with e-mail addresses and phone numbers when available."

¹⁵ Judicial Rules of Procedure Section 3.6.1.4.6: "The type of judicial relief sought"

¹⁶ Charge Sheet of *Ratto v. Vakil*, p. 3 under Remedy: "...we would only seek penalties against those directly affected by the perjury, the SA Executives."

¹⁷ Judicial Rules of Procedure Section 3.6.2.1: "After the filing of a charge sheet, the Council shall meet as soon as possible to determine if the case should be accepted."

¹⁸ Judicial Rules of Procedure Section 3.11.1: "A list of all witnesses testifying in a hearing shall be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due."

¹⁹ Judicial Rules of Procedure Section 3.11.2.1: "All evidence relevant to a hearing must be submitted to the Council and opposing parties forty-eight hours prior to the time briefs are due."

²⁰ Judicial Rules of Procedure Section 3.12.1: "A brief shall include a summary of the party's arguments, and all relevant evidence"

²¹ Judicial Rules of Procedure Section 3.12.2: "A written brief must be filed and e-mailed to the Council by both the plaintiff(s) and the defendant(s) no later than forty-eight hours before a general hearing..."

Jason Chu in this appeal hearing, all four Student Action Executive candidates stated that they were present for the ASUC v. SAES hearing, despite the fact that they were not called as witnesses and were not acting as spokespersons, and all four individuals were called by defense representative Bret Manley as witnesses for Ratto v. Vakil, although only three of the four candidates were present at the hearing. As is customary before hearings, the Judicial Council notified the four Student Action Executive candidates via e-mail that they were involved in the charges and should follow up with Mr. Vakil to aide in the defense. Of additional importance is the fact that, despite the presence of Oren Gabriel, Vishal Gupta, and Joyce Liou at the Ratto v. Vakil hearing, none of them motioned for a severance of party^{22,23} or to be recognized spokespersons²⁴ during the publicly conducted pre-trial motions, as JRP 4.2.2 states: “Pre-Oral Arguments motions may be made by any concerned party until the Council has recognized a Spokesperson for a party.” Their right to a defense separate from that of Vakil was never formally invoked nor was it denied, as they knew of the charges and instead entrusted Bret Manley with the defense, just as they had entrusted Vakil with the defense in ASUC v. SAES.

Furthermore, because Title IV of the ASUC By-Laws contains an agency clause, whereby candidates are held responsible for the actions taken on their behalf by their designated agents, then the fact that the four Student Action Executive slate candidates were not explicitly named in the hearing Ratto v. Vakil does not change the fact that they should be held accountable for the actions taken by their expressly designated representative, Suken Vakil. The Direct Judgment for Ratto v. Vakil addresses this matter:

...it is legally justified that the candidates be held responsible for the actions taken by their designated representative, or agent acting on their behalf. Article 13 Section 8 of Title IV of the ASUC By-laws states, “A candidate, but not his/her party, shall be considered guilty of a violation of the Campaign Rules by an agent of that candidate acting within the scope of his/her delegated authority.” The “Campaign Rules” that are mentioned in this clause refer to Title IV of the ASUC By-Laws, specifically Article 13: Campaign Rules. This means that if the agent of the candidate commits a violation of the Campaign By-Laws, then the candidate is held responsible for the agent’s actions.

Additionally, JRP 4.15.3.2²⁵ establishes an agency rule for participant’s held in contempt of Council, stipulating that a “default judgment [be] issued against the party the participant sought to benefit.” Both litigants and witnesses are subject to being held in contempt of Council should they violate the rules for truthfulness mandated by the JRP.^{26,27} Mr. Vakil violated the rules for truthfulness while defending the four Student Action candidates, so the default judgment was issued against those individuals he sought to benefit. It should be noted that during Ratto v. Vakil, as well as this appeal case, the appellants never claimed that Suken Vakil was not acting as their designated representative in the ASUC v. SAES hearing. Additionally, when prompted at the appeal hearing, the appellants

²² Judicial Rules of Procedure Section 4.2.3.3: “Motion for Severance of Party”

²³ Judicial Rules of Procedure Section 4.4.2: “A motion for severance of party must be made by the concerned parties before the beginning of oral arguments. The parties must demonstrate to the Council that there exists a sufficient difference in the alleged violations against each member of one party such that it would adversely affect the outcome if severance were not granted, or that the individual interests would not be substantially protected by the overall interests of the entire party.”

²⁴ Judicial Rules of Procedure Section 4.2.3.5: “Motion for the Council to recognize a Spokesperson for a Party in the hearing.”

²⁵ Judicial Rules of Procedure Section 4.15.3.2: “Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit.”

²⁶ Judicial Rules of Procedure Section 4.12.3.1 “Witnesses who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council.”

²⁷ Judicial Rules of Procedure Section 4.15.3.1 “The Council may declare, either during or after a Council hearing, a participant to be held in contempt of Council for any of the following actions before the Judicial Council:
(JRP Section 4.15.3.1.6) Knowingly providing false or misleading testimony before the Council.”

were unable to provide evidence from the ASUC Constitution, By-Laws, or JRPs that a candidate must be expressly named as a party to the charges to be punished for actions taken by a designated representative. However, ASUC Constitution Article XI Section 3, "Rights of the Accused," does contain a relevant clause: "The accused shall enjoy the right to a speedy and public trial, and to be informed of the nature and cause of the accusation..." As discussed above, the Student Action Executive candidates were certainly aware of the charges and simply entrusted Bret Manley with their defense in *Ratto v. Vakil*. Therefore, as a result of Title IV Article 13 Section 8 and JRP 4.15.3.2, and due to the fact that the appellants were aware of their involvement in the charges prior to the hearing, the Judicial Council has determined that the four SAES candidates are liable for a violation of the rules for truthfulness, committed by their designated representative, as outlined in the Judicial Rules of Procedure.

The appellants argue in Subsection I.D of their brief that the issued remedy of contempt of Council, and the resulting default judgment, was not among the plaintiff's requested remedies: censures for the campaign rules against violating a lawful order of the Judicial Council and interfering with an investigation of the Attorney General. Since the Judicial Council did not address the alleged campaign violations in *Ratto v. Vakil*, the appellants assert that the Council violated Vakil's due process rights when declaring him in contempt of Council and issuing censures as a result of the default judgment. Despite the petitioners' claims, Mr. Ratto's charge sheet does in fact reference JRP 4.12.3.1 regarding the witness rules for truthfulness, which states: "Witnesses who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council. The Council may issue such a finding at any time." Mr. Ratto's formal brief contains the following quote:

I would argue that the actions of Vakil should lead to censures for the Student Action candidates for a couple of key reasons:

1) The first is for contempt of court. [JRP 4.15.3.2]

Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit.

I believe that the Judicial Council can use 4.15.3.1.6 to find Vakil in contempt "either during or after a Council hearing."

Additionally, in the summary of his requested remedies, Ratto says, "I am seeking first a direct judgment against the SA executive candidates for contempt of court on their behalf by their representative." It is clear from these documents, as well as the trial arguments analyzed in the *Ratto v. Vakil* decision, that Mr. Ratto was indeed seeking a declaration of contempt of Council and the sanctions that directly follow in the Judicial Rules of Procedure. Furthermore, JRP 4.12.3.1 states that the Council may declare someone in contempt of Council for perjury "at any time," and JRP 4.15.3.1 states that the Council may declare someone in contempt of Council for any of the listed reasons "either during or after a Council hearing." A declaration of contempt of Council and a default judgment cannot necessarily be charged the same way a campaign violation is, as explained in Respondent Brief §IV:

From the very beginning of the process in *Ratto v. Vakil*, it was made explicitly clear that Mr. Vakil was expected to defend the validity of the comments he had made in *ASUC v. SA Executive Slate*. Additionally, it must be pointed out that contempt of Council is not a charge – it is a penalty of giving untruthful testimony. The avenue which Mr. Ratto pursued was, and still is, the only valid avenue of addressing the false claims made by Mr. Vakil.

The trial of Ratto v. Vakil was necessary in accordance with Title IV Section 14.3, which requires that an offending party be heard before issuing sanctions for contempt of Council.²⁸ After the facts regarding the alleged perjury were established, the Judicial Council decided to issue the contempt of Council ruling and disregard the additional campaign violation charges that had become moot.²⁹ Therefore, Mr. Vakil's right to defend himself against known charges was not violated.

In Subsection I.E of their brief, the appellants assert that Mr. Vakil served as an advocate and not a witness during Ratto v. Vakil, and therefore he cannot be held accountable to the witness rules for truthfulness. In particular, the appellants contest the Judicial Council's legal finding that an advocate can also serve as a witness: "...it seems that there are only two capacities in which a person can appear before the Council: as a witness or as a spokesperson (the audience consists of non-participants so are not included). It also seems that if one serves as a witness in a hearing then that person is not precluded from also being a spokesperson, and vice versa." Although Mr. Gabriel and Mr. Gupta express their disagreement with this interpretation of the Judicial Rules of Procedure, they do not provide a compelling legal analysis to prove it wrong. They do, however, make an interesting argument in spirit:

Witnesses do not argue points; advocates argue points. Therefore, [the decision's] citation is referring to an argument made by Mr. Vakil as an advocate before the Council, yet the Council is attempting to show this as witness testimony when it is clear that he was acting as an advocate by arguing his case. Furthermore, advocates do not state facts on which to base a charge of perjury – they do not lie or tell the truth but merely make arguments that are either supported in the testimony or not.

The Judicial Council agrees with this breakdown of the separate roles of advocate and witness, but we must point out that the advocate's arguments about the longevity of chalk's campaign purposes must be founded on a factual premise. Because Mr. Vakil did not provide witnesses to be questioned or evidence regarding the lifetime of chalk, on which he based his argument, the Judicial Council was obliged to ask him questions on matters of fact, thus introducing his role as a witness wherein he provided testimony. Without this questioning, the arguments made by Vakil would hold no weight in the decision-making process, and so there would be no way for the Council to know if Student Action accidentally placed the chalk within the poll boundaries, which they claimed were determined and clearly marked after they placed the chalk. This certainly would have affected the fairness of the proceedings and judgment, and the Council moved to avoid such a problem.³⁰

The appellants also claim "the Council charged Mr. Vakil as a witness but then improperly applied the punishment as if he were a litigant," referring to the fact that Vakil was held in contempt according to JRP 4.12.3.1³¹ and punished under a separate section, by default judgment from JRP 4.15.3.2.³² Mr. Vakil was found guilty of having violated the rules for truthfulness within the Judicial Rules of Procedure in his capacity as a witness. According to JRP 4.12.3, "Witnesses must, to the best of their ability, provide the Council with relevant and truthful testimony." Furthermore, JRP 4.12.3.1 explains the consequence for witnesses who violate this rule for truthfulness: "Witnesses

²⁸ Title IV Article 14 Section 3: "The imposition of sanctions for contempt of court for violations of campaign rules shall be imposed by the Judicial Council after a hearing at which the offending party appears and is heard."

²⁹ Judicial Council Direct Judgment of Ratto v. Vakil, p. 9: "As the outcome of the default judgment makes Mr. Ratto's additional requested remedies irrelevant, the merit of his charges regarding new campaign violations is not considered in this decision."

³⁰ Judicial Rules of Procedure Section 4.14.1: "The Chairperson may deviate from these rules to facilitate or ease the progress of a hearing."

³¹ Judicial Rules of Procedure Section 4.12.3.1: "Witnesses who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council. The Council may issue such a finding at any time."

³² Judicial Rules of Procedure Section 4.15.3.2: "Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit."

who knowingly provide untruthful testimony may be found to have committed perjury, and declared in contempt of Council. The Council may issue such a finding at any time.” Therefore, because Vakil was found guilty of having “committed perjury” he was thereby declared in contempt of Council. And, the ramifications for being held in contempt of Council are only outlined once within the Judicial Rules of Procedure in Section 4.15.3: “Contempt of Council,” although the possibility of being held in contempt of Council is mentioned more than once (and in different sections). While the title heading for JRP 4.15 says “Behavior of Litigants,” it is important to note that the term “litigant” is not again referenced anywhere in the three points contained within JRP 4.15 (one of these points being 4.15.3 “Contempt of Council”) or their subsections. Instead, within section 4.15 the JRP reference “participants,” and in particular JRP 4.15.1 states: “All participants in a Judicial Council hearing shall truthfully, accurately, and concisely answer any question addressed to them.” It appears that this “Behavior of Litigants” section establishes the general rules for all participants in a hearing, which is not solely confined to litigants. Since a witness is a participant, this section must also apply to violations under JRP 4.12.3, which establishes the specific rules for witness behavior (particularly regarding truthfulness). As the Council considers Vakil to be a participant in the hearing ASUC v. SAES in his capacity as a witness, it is then appropriate that the Council follow the sanctions for contempt of Council laid forth in JRP 4.15.3.2:

Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit.

As a result, we believe that we acted appropriately in following through with the remedies listed within the Judicial Rules of Procedure for a participant in a hearing who is declared in contempt of Council.

The petitioners also propose a series of arguments in Appellant Brief Section II that the Judicial Council misapplied ASUC law and in fact had no power to disqualify the four Student Action candidates. In Subsection II.A, the appellants claim that the sanction of default judgment, outlined in the Judicial Rules of Procedure, is not clearly delineated in the By-Laws as required by Title IV Article 13 §10 cl. 6:

Sanctions for any acts or violations by a candidate or his/her party, whether before, during, or after the Judicial Council hearing, which are not specifically addressed in the ASUC By-Laws shall not be imposed by the ASUC Judicial Council at any time.

However, as discussed in the Ratto decision,³³ Title IV Article 13 §10 cl. 1 of the By-Laws states: “The Judicial Council shall be vested with the authority to hear and decide allegations of violations of this Article XIII, pursuant to its rules and regulations as set forth in ASUC Bylaws.” Appearing before the above-mentioned 13.10.6 in Section 10, “Punishment for violations of Article XIII,” this item specifically addresses the Judicial Council’s “rules” when hearing and punishing campaign violations. This authorizes the Judicial Council to exercise its elections responsibilities according to its own rules, which include hearing decorum and means of enforcement. And the Judicial Council’s regulatory document, the Judicial Rules of Procedure, clearly delineates the rules for truthfulness and the punishment for violating these rules. Additionally, Respondent Brief Section VIII describes the other areas of the By-Laws that address the Judicial Rules of Procedure:

³³ Judicial Council Direct Judgment of Ratto v. Vakil, p. 6: “Therefore, these candidates should have been aware that at a Judicial Council hearing for campaign violation charges, the hearing is governed according to “its rules,” which are the Judicial Rules of Procedure.”

Title IV has many provisions dictating that candidates must respect and obey the decisions and rules of the Judicial Council, including Article XIII Sections 13.3.1, 13.3.3, 13.3.9, & 13.3.10; Article XIV Section 1; and, most importantly, Article XIV Section 3, which allows for the Judicial Council "...[the] imposition of sanctions for contempt of court for violations of campaign rules... after a hearing at which the offending party appears and is heard."

The role of Title IV Section 14.3³⁴ is especially important because it upholds the Council's ability to declare individuals in contempt for behavior during campaign violation cases and impose sanctions after the offending party is properly convicted. Moreover, the content of the default judgment from *Ratto v. Vakil* was the requested penalty in censures from a campaign violation case, *ASUC v. SAES*, so the number of censures is adopted from a controversy arising under Title IV Article 13: "Campaign Rules" (we later consider whether this poses double jeopardy). Finally, the appellants assert that "the Judicial Council cannot use the JRP to supersede the Elections By-Laws as approved by the ASUC Senate." Amendments to the Judicial Rules of Procedure are subject to line-item veto when proposed to the ASUC Senate, and the Senate's approval officially puts the rules into law.³⁵ These rules hold the authority of the legislative branch of the ASUC, just as the By-Laws do. And, in this case, the Judicial Rules of Procedure and ASUC By-Laws do not conflict.

The topic of double jeopardy raised in Appellant Brief Subsection II.B is discussed at the end of this decision.

The appellants also claim that the Student Action executive candidates are already in office, citing Constitution Article II Section 1.A which states that the ASUC Executives "shall be elected during the Spring semester, and their term of office shall be for one year, beginning the first day of the regular Summer Semester." They further argue that Title IV Section 16.1.4, which stipulates the election results be certified by the Judicial Council before becoming effective,³⁶ is unconstitutional since it conflicts with the first day of office mandated by the Constitution. Although the Constitution certainly does specify the beginning date of the executive terms, the Judicial Council believes the Constitution allows for the offices to be vacant during these terms (nowhere does the Constitution require that the offices be filled on the first day). The Constitution addresses the possibility of vacancy directly in Article II Section 1.B³⁷ and grants the Presidential power of Executive Order (hereafter "E.O.") when the Senate cannot consider such vacancies.³⁸ In fact, 2005-2006 ASUC President Buenrostro used this power to extend the outgoing executive terms (including his own) in E.O.#5 and to appoint Oren Gabriel with temporary Presidential powers in E.O.#8, which was already subject to judicial review³⁹ and given limited approval.⁴⁰ Hence, because By-Law

³⁴ Title IV Article 14 Section 3: "The imposition of sanctions for contempt of court for violations of campaign rules shall be imposed by the Judicial Council after a hearing at which the offending party appears and is heard."

³⁵ ASUC Constitution Article IV Section 3: "The Judicial Council shall frame, approve, and revise, during well-advertised open hearings, rules and procedures for the exercise of its responsibilities. Changes in rules of procedure shall be forwarded to the Senate. Proposed rules shall not be open to amendment by the Senate, except for deletion of individual clauses. Should the Senate fail to reject, by majority vote of the entire Senate, changes within three (3) regular meetings after their receipt by the Senate, the rules will be automatically approved."

³⁶ Title IV Article 16 Section 1.4: "The election results, 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."

³⁷ ASUC Constitution Article II Section 1.B: "In the event of a vacancy occurring in any executive officer positions before the end of the normal term, the nomination for replacement shall be made in accordance with the ASUC By-Laws. The Senate shall consider such nominations, and shall, by a two-thirds (2/3) vote of the entire Senate, approve a replacement."

³⁸ ASUC Constitution Article II Section 2.C: "To direct by Executive Order the taking of actions which are urgent and necessary to maintain the functioning of the A. S.U.C. until the Senate can again meet..."

³⁹ ASUC Constitution Article IV Section 1: "The council's authority shall extend to all judicial cases arising under this Constitution, the ASUC By-Laws, official actions of ASUC executive officers..."

⁴⁰ Judicial Council Direct Judgment of *Azadivar v. Buenrostro* (E.O.#8) – In this ruling, Gabriel's appointed powers were confined to those "urgent and necessary" to the functioning of the ASUC.

Title IV Section 16.1.4⁴¹ is constitutional and the Judicial Council has not certified the election results, the Student Action executive candidates were not already elected and in office prior to *Ratto v. Vakil*. Finally, the appellants claim that the certification responsibility of Title IV Section 16.1.4 is entirely perfunctory and limited to acknowledging the veracity of the votes.⁴² It is argued that the Judicial Council cannot extend its power to hear election cases after the executives have been elected. However, the Senate has the Constitutional power to enact law for the ASUC Elections in Title IV,⁴³ and these laws establish the Judicial Council's authority to adjudicate elections violation cases,⁴⁴ as well as the Judicial Council's discretion to determine when all cases are resolved and the election results are complete per Title IV Section 16.1.4. As it is a responsibility mandated by such a law, it is our responsibility to fulfill it, and the role of the Council is then not perfunctory – that is, it is not a cursory function, but one important to the elections process as outlined by ASUC law. The matter of *Ratto v. Vakil* has not yet been resolved, the Student Action executive candidates have not yet been properly elected, and the incoming executive seats remain unconfirmed until certification occurs.

Appellant Brief Section II.E claims that the Judicial Council did not meet quorum, the presence of “the majority of the eligible Justices,”⁴⁵ to conduct the hearing of *Ratto v. Vakil* for two reasons: Associate Justice Alexander Olssen and Chair Robert D. Gregg's resignations were improper and Associate Justice Carmel Levitan was ineligible to sit for the hearing due to her absence at the ASUC v. SAES hearing. Regarding the first assertion, the appellants point out that a resigning Justice must “provide verifiable documentation of their resignation to the Chair or the Council en banc.”⁴⁶ They argue that Chair Gregg cannot resign to himself “since he is the Chair and the Chair cannot resign to himself while Chair,” and that Chair Gregg did not provide this documentation to the Judicial Council en banc.⁴⁷ However, according to Mr. Gregg's clarification e-mail, submitted into evidence by the respondent, the resignation letter was in fact sent to the Judicial Council en banc through the Council's private e-mail listserv, which was suppressed via “blind carbon copy” for privacy reasons. Additionally, during the appeal hearing, the appellants were asked to provide evidence to corroborate their claims that Chair Gregg and Associate Justice Olssen did not resign properly – they were unable to do so. Mr. Gabriel then conceded that if presiding Chair Sonya Banerjee recognized their resignations as lawful, then the appellants would likewise find them to be acceptable. Therefore, it is clear that seven Justices (and not eight or nine) were holding office during the time of *Ratto v. Vakil*. The last assertion regarding quorum is that Associate Justice Carmel Levitan, one of the four sitting Justices during *Ratto v. Vakil*, was ineligible to hear the case because she was not present during ASUC v. SAES. Given the requirement from JRP 6.4.3, which states that “Justices must have been participating during oral arguments and deliberations in order to

⁴¹ Title IV Article 16 Section 1.4: Ibid

⁴² Title IV Section 18.1: “The computer printouts must be certified by ASUC Judicial Council and kept permanently, as provided for elsewhere in these By-laws.”

⁴³ ASUC Constitution Article VII Section 1.A: “Control of all Association elections and related activities shall rest with an Elections Council as empowered by the ASUC By-Laws.”

⁴⁴ Title IV Section 13.10.1: “The Judicial Council shall be vested with the authority to hear and decide allegations of violations of this Article XIII, pursuant to its rules and regulations as set forth in ASUC Bylaws.”

⁴⁵ Judicial Rules of Procedure Section 6.1: “For the conduct of a proper hearing, or a proper meeting, a quorum shall consist the majority of the eligible Justices.”

⁴⁶ Judicial Rules of Procedure Section 6.9: “A Justice is considered resigned from the Council when they provide verifiable documentation of their resignation to the Chair or the Council en banc.”

⁴⁷ Robert D. Gregg's Letter of Resignation from the Judicial Council, submitted into evidence: “I want to clarify for those involved parties that my resignation was submitted to the Judicial Council en banc through the private e-mail listserv, which I suppressed from the public by BCC (Blind Carbon Copy) in line with the usual procedure for Judicial Council press releases. I am attaching the resignation e-mail that every Council member (including myself as I was not removed from the list until after this letter) received from the list server (asucjudicialcouncil@lists.berkeley.edu).”

participate in a judgment,” the appellants elaborate that Justice Levitan lacked the “benefit of having heard [Suken Vakil’s] testimony in person” and could not issue a default judgment for a hearing in which she did not sit. However, the Judicial Council members did not rely on their personal accounts of Vakil’s statement when making conclusions of fact in *Ratto v. Vakil*, but instead evaluated the evidence and witness testimony presented. And, when asked to show evidence that Council members relied on evidence or argumentation from the *ASUC v. SAES* hearing in the Direct Judgment of *Ratto v. Vakil*, the appellants were unable to do so. Additionally, in cases that are brought for contempt of Council, such as *Ratto v. Vakil*, the remedy of default judgment is not issued from the hearing in which the contempt originates but rather from the hearing to establish contempt, as required by Title IV Article 14 Section 3: “The imposition of sanctions for contempt of court for violations of campaign rules shall be imposed by the Judicial Council after a hearing at which the offending party appears and is heard.” Default judgment is a punishment for contempt and is by definition default, so the hearing proceedings (concerning illegal chalking) in which the contemptible behavior took place are irrelevant beyond the facts presented during the hearing concerning perjury/contempt. Therefore, Justice Levitan only had to be present for the hearing of *Ratto v. Vakil* to participate in its judgment, and the Judicial Council did meet the quorum requirement of four out of seven members.

The argument about the Student Action Executive Slate not being party to the charges is revisited in Appellant Brief Subsection II.F. The earlier parts of this decision address this due process complaint in its entirety.

In the next section, the appellants argue that Mr. Ratto did not file the original charges in good faith, and thus the case should never have been accepted for trial. Mr. Gabriel and Mr. Gupta claim that Ratto personally disliked Vakil, was not present to hear the contested statement during *ASUC v. SAES*, was not classified as a student at the time of *Ratto v. Vakil*, and inappropriately filed within the time period to “invalidate an election” given the charges sought. It should be noted that the Judicial Council already overruled a motion for dismissal on these grounds during pre-trial arguments for *Ratto v. Vakil*, and the appellants do not introduce any arguments not already considered during this ruling. However, we believe the matter is worth addressing in more depth. First, there are no provisions within the ASUC Constitution, By-Laws, or JRP that mandate that all cases accepted by the Council be brought forth by individuals harboring goodwill towards the accused. There is a clear distinction between the description of bad faith in ASUC law, which includes JRP 3.6.2.2.4⁴⁸ and Title IV Section 13.11.7,⁴⁹ and the appellants’ argument regarding the necessity for goodwill between parties in a hearing. Mr. Ratto’s presence during the *ASUC v. SAES* trial is irrelevant, as he did not present his own testimony to Vakil’s statements. Mr. Ratto’s status as a student was confirmed by the UC Registrar website during the *Ratto v. Vakil* hearing, and a mutual agreement allowed both Ratto and Bret Manley, a recent graduate representing Vakil, to appear as spokespersons before the Council. Additionally, the Judicial Council has found on multiple occasions that the ASUC Constitution and By-Laws are too vague to exactly classify the extent of ASUC membership, most recently in *DAAP v. Elections Council Chair Wren*,⁵⁰ and the Senate has yet to clarify these ambiguities. Regarding the last bad faith point, the appellants’ argument that the deadline for appeals should apply is flawed because the Ratto case was not an appeal but a new charge related to perjury. In order to explain the applicable deadline, it should be re-iterated that an ASUC election is not complete until the Judicial Council certifies the results, which had not yet been

⁴⁸ Judicial Rules of Procedure Section 3.6.2.2.4 “The case is filed in good faith. The following are non-restrictive guidelines for determining this condition...”

⁴⁹ Title IV Section 13.11.7: “Bad faith is defined as ‘Intentional dishonesty or deception.’”

⁵⁰ Judicial Council Direct Judgment of *DAAP v. Elections Council Chair Wren*, authored by Chair Robert D. Gregg IV

done at the time of Ratto filing suit. Mr. Ratto contested the election in so far as the results were incorrect because he believed the Student Action Executive Slate had committed perjury through Vakil's testimony, which affected the ruling of ASUC v. SAES. In the ensuing decision of Ratto v. Vakil, the Judicial Council agreed to invalidate the executive results with the disqualification of the Student Action Executive Slate. Because Ratto's case to invalidate the election results was "filed within seven days after the election count," it should be considered in good faith according to JRP 3.6.2.2.4.3.⁵¹ Additionally, the Judicial Council does not introduce any new campaign violations in the Ratto decision, so the "seven days after the close of polls" deadline does not apply. Even if this were a campaign violations case, the alleged violation took place after the filing deadline – the Judicial Council found in Lafata v. DAAP II⁵² that campaign violation cases filed after the deadline can be accepted if the alleged violation took place after the deadline. Finally, JRP 3.6.2.2.4 states that the listed deadlines are "non-restrictive guidelines" for determining good faith,⁵³ so the Council has flexibility to accommodate unexpected circumstances like this. In other words, meeting the listed deadlines is one way to demonstrate good faith, but not the only way (as it would be impossible to meet a deadline if the alleged violation occurred after the deadline). Therefore, the Council finds that Ratto did not file charges in bad faith.

It is now necessary to consider the argument presented by the appellants regarding double jeopardy. Article XI, Section 3 of the ASUC Constitution states, "No person shall be subject for the same offense to be twice put in jeopardy," which the appellants explain protects individuals from being punished twice for the same crime. They explain that the Student Action Executive Slate candidates were punished twice for the same campaign violation: the first punishment being the three censures for ASUC v. SAES and the second punishment being the default judgment from Ratto v. Vakil which resulted in the disqualification of the Student Action Executive candidates. Mr. Gupta argues that it is because the Council replaced the decision from ASUC v. SAES that double jeopardy then occurred. Moreover, the appellants explain that if the Council had issued a separate sanction against the party charged and convicted of perjury, then there would not have been double jeopardy. The respondent, however, argues that double jeopardy does not apply in this matter, as there were two separate offenses for which there were two separate hearings. It is not immediately obvious from Article XI Section 3 that double jeopardy has occurred – this section only establishes the spirit of the law for double jeopardy protection, whereas the Ratto default judgment follows primarily from the letter of the law. After considering both arguments and the spirit of double jeopardy protection, we have concluded that the Judicial Council erred in its decision by replacing the punishment issued for ASUC v. SAES with the default judgment from Ratto v. Vakil. The Council feels that the key part within the aforementioned Constitutional clause (regarding double jeopardy) is that which states "same offense." We agree that there are two separate crimes at hand – the first being the chalking violation for which the Council issued three censures per candidate, and the second being a violation of the rules for truthfulness as held within the JRPs for which the Council issued a default judgment. However, because the seven-day grace period, wherein appeals to elections violations cases can be filed, had already passed, ASUC v. SAES was a closed case at the time of Ratto v. Vakil. And, because Ratto v. Vakil was not such an appeal hearing, the Judicial Council was unable to issue a replacement punishment (the second punishment) for the ASUC v. SAES case (the "same offense") without committing double jeopardy.

⁵¹ Judicial Rules of Procedure Section 3.6.2.2.4.3: "Cases to invalidate an election are considered filed in good faith if they are filed within seven days after the election count."

⁵² Judicial Council Direct Judgment of Lafata v. DAAP II, authored by Chair Michael J. Davis

⁵³ Judicial Rules of Procedure Section 3.6.2.2.4 "The case is filed in good faith. The following are non-restrictive guidelines for determining this condition..."

To elaborate, Vakil was found to have committed perjury in ASUC v. SAES and was held in contempt of Council, and JRP 4.15.2 states:

Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit.

Based on this clause, the Judicial Council issued a default judgment, using the remedy originally requested by the plaintiff (AG Nathan Royer) in ASUC v. SAES, which then ultimately disqualified the four Student Action Executive candidates. The Council has the ability to change its rulings according to Article IV, Section 5 of the ASUC Constitution (under Finality): “All decisions of the Judicial Council shall be final unless reversed by subsequent council action.” However, it seems that the Council is only able to exercise this power through rehearing or appeal, as these types of hearings directly pertain to the original case and allow the case to remain “open.” In fact, Judicial Rules of Procedure §5.3.2, under “Rehearing,” specifically outlines the recourse for when perjury has influenced a judgment:

The Council will grant a rehearing for any of the following reasons:

1. Introduction of newly discovered evidence of a significant nature which could not have been introduced before.
2. Demonstration that previously introduced evidence is false.
3. Demonstration that a material witness committed perjury.

After the ruling of ASUC v. SAES, Mr. Ratto and Attorney General Royer could have requested a rehearing, and in the new trial Ratto could have presented his case against Vakil to either seek a new direct judgment or a declaration of contempt of Council with a default judgment. Additionally, JRP 3.6.2.2.4.2 states, “Appeals for election violation cases are considered filed in good faith if they are filed within seven days following the release of the original decision” – the appeals process includes both rehearing under JRP 5.3 and appeal under JRP 5.4, so “appeal” generally refers to both procedures. Ratto v. Vakil was not an appeal case and was not filed within the appeals period, and therefore in determining its outcome, the Council should not have gone back to ASUC v. SAES, a closed case at the time of Ratto v. Vakil. It is important for the Council to consider the types of hearings that can alter a Direct Judgment, and the timeframe during which such hearings are acceptable; otherwise, cases would never be closed, and their outcomes could be changed long after the initial judgment. To elucidate this point, if Ratto v. Vakil were filed six months after the decision for ASUC v. SAES was released, after the elections results had been certified, and the Council arrived at the same conclusion – that Vakil did perjure himself – then it seems that it would be inappropriate for the Council to issue a remedy that would alter the outcome of a case that was decided upon six months prior.

It can also be argued that because there were two separate crimes, there should be two separate punishments in order to avoid double jeopardy. By replacing the punishment for ASUC v. SAES (and effectively ignoring the three originally allocated censures per candidate) the Judicial Council effectively rendered the first crime of illegal chalking unpunished. As this could be considered a reversible error in the judgment of Ratto v. Vakil,⁵⁴ it would be necessary to correct that error as allowed through this appeals process. This would mandate the striking of the portion of the decision in Ratto v. Vakil that replaced the original decision in ASUC v. SAES with a default

⁵⁴ Judicial Rules of Procedure Section 5.4.1: “...Appeals may be granted for any of the following:

1. Demonstration that a reversible error with regard to a conclusion of law may exist...”

judgment. The default judgment would remain as the remedy for perjury, issued separately from the violation of chalking within poll boundaries. However, this would still pose double jeopardy to the candidates. Default judgment as a punishment for perjury is taken from the Judicial Rules of Procedure, rather than the Campaign Rules, and the Council is only authorized to issue censures when a campaign violation is opened before them (note that the Campaign Rules do not establish a scale of punishment for perjury). The ASUC v. SAES case empowered the Council to issue censures, hypothetically through direct judgment or default judgment, but that case has since been closed. Thus, although a default judgment is procedurally valid (as discussed earlier), using the closed ASUC v. SAES case as authorization for the perjury punishment, or the source of the censures, poses a double jeopardy conflict. This exemplifies the limited remedies available to the Judicial Council for adjudicating elections cases. The Council is bound to the Campaign Rules of Title IV, which only allow the Council to issue symbolic censures or disqualification for limited campaign violations, per Title IV Section 13.10.2.⁵⁵ These campaign laws may be flawed by neglecting a scale of remedies for violation of perjury and contempt of Council, as this is only briefly mentioned in Title IV Section 14.3,⁵⁶ but such a matter is legislative in nature and to be considered only by the Senate. The Judicial Council must follow the existing laws so long as they are constitutional, and although existing laws offer a default judgment as punishment, *Ratto v. Vakil* was not an appeal case and hence a default judgment poses double jeopardy.

Therefore, when considering the spirit of the law, we believe that the Direct Judgment of *Ratto v. Vakil* should not have issued a default judgment, as such a remedy would only have been appropriate if *Ratto v. Vakil* was an appeal case filed within the seven day period after the ASUC v. SAES decision was released. Moreover, it would be unjustified for the Council to arbitrarily issue censures for the crime of perjury, as Title IV of the ASUC By-Laws does not authorize the issuance of censures for contempt outside the window of a campaign violation case (which is why an appeal would be an exception). According to Article IV, Section 5 of the ASUC Constitution, “All decisions of the Judicial Council shall be final unless reversed by subsequent council action.” And, as the Judicial Council committed a reversible error in the judgment of *Ratto v. Vakil*,⁵⁷ we find that it is necessary to correct that error as allowed through this appeals process. Therefore, the Judicial Council hereby strikes the part of the Direct Judgment for *Ratto v. Vakil* that issues a default judgment for the disqualification of the four Student Action Executive candidates, and we re-instate the original ruling of ASUC v. SAES and the subsequent issuance of three censures against each of the Student Action Executive candidates.

The appellants conclude their argument in chief by claiming that the *Ratto* decision provides an inequitable remedy and violates the standard for issuing a default judgment. While the legality of issuing a default judgment in *Ratto v. Vakil* is discussed above, we feel that had *Vakil* been held in contempt of Council during an appeal hearing for perjury that the severity of the offense would have warranted a default judgment. In their argument against the default judgment, Mr. Gabriel and Mr. Gupta rest the first assertion on JRP 5.1.2.3, which states: “The remedy arrived at is proportionate to the severity of the offense and in full compliance with the ASUC Constitution and By-Laws.” They argue that punishment of eighteen censures against the four candidates, because of their

⁵⁵ Title IV Section 13.10.2: “Punishment for violation of this Article XIII shall be in the form of disqualification and censure, which may be from one to five, for the conduct at issue. Five censures in any one election shall require disqualification from participation in that election on the part of the offending party. All candidates are warned of the consequences of these censures at the candidate’s meeting, pursuant to Section 12.2.3, supra.”

⁵⁶ Title IV Section 14.3: “The imposition of sanctions for contempt of court for violations of campaign rules shall be imposed by the Judicial Council after a hearing at which the offending party appears and is heard.”

⁵⁷ Judicial Rules of Procedure Section 5.4.1: “...Appeals may be granted for any of the following:

1. Demonstration that a reversible error with regard to a conclusion of law may exist...”

representative's statement, is excessively harsh and not proportional to the crime. However, they do not offer an alternative remedy that could be considered less harsh and in compliance with ASUC law. Moreover, it is important to note that once a candidate receives five censures, they are automatically disqualified so the fact that the candidates each received eighteen censures does not show that the punishment was overly harsh. The candidates could potentially have been issued five censures, ten censures, or an infinite number of censures – all of which could have resulted in the disqualification of the Student Action Executive Slate candidates. The number of censures issued per person, eighteen, was used because this was the number of censures requested by AG Nathan Royer within ASUC v. SAES. While we have determined that issuing a default judgment in Ratto v. Vakil was erroneous, had this case been an appeal, the Judicial Council already established in Ratto v. Vakil the severity of the offense for warranting such a punishment,⁵⁸ and no evidence has been proffered in this appeal hearing to convince the Council that such a conclusion would have been inequitable or even that another legal alternative would have been available.

The appellants further argue that the process of arriving at the remedy of default judgment violated JRP 4.1, which states:

If either party fails to meet any of the requirements set forth in Article III of these rules of procedure, or fails to appear at the hearing, the Council may declare a default judgment if a majority determines that the violation prevented the opposing party from receiving a fair hearing. In applying this rule, the Council shall first consider all other judicial remedies.

They contest that the Ratto decision only speculates that Vakil's actions prevented the ASUC from receiving a fair hearing and that there is no evidence to show the Judicial Council considered less harsh judicial remedies before issuing the default judgment. The Judicial Council believes that the appellants misapply JRP 4.1. Being the first section under "Hearing Procedure," this default judgment section immediately follows Pre-Hearing Procedure and immediately precedes the rules for pre-oral argument motions. Based on the proximity of the section and its wording "if either party fails to meet any of the requirements set forth in Article III of these rules of procedure, or fails to appear at the hearing," it is clear that this default judgment provision only applies to violations of Article III (Pre-Hearing Procedure) or party attendance. The appellants incorrectly apply the pre-trial provision for default judgment to the separate Contempt of Council provision for default judgment, which appears under "Behavior of Litigants" in JRP 4.15.3.^{59,60} This specifically says "either during or after a Council hearing," whereas JRP 4.1 only deals with pre-hearing procedure. In the contempt of Council situation, the Judicial Council does not have to consider "all other judicial remedies" nor does the Council have to consider whether the perjury actually prevented the ASUC from receiving a fair hearing. However, the Council must comply with JRP 5.1.2.3⁶¹ and Title IV Section 13.10.5⁶² to ensure that the remedy is legally justified and equitable (a "fair and just" result). Hence, in Ratto v. Vakil, the Council brings up the possibility of the perjury influencing the ruling of

⁵⁸ Judicial Council Direct Judgment of Ratto v. Vakil, p. 8: "The Judicial Council unanimously feels that, given the clear and convincing nature of the evidence presented, the severity of the violation, and the consequence mandated in the Judicial Rules of Procedure, a default judgment must be issued."

⁵⁹ Judicial Rules of Procedure Section 4.15.3.1: "The Council may declare, either during or after a Council hearing, a participant to be held in contempt of Council for any of the following actions before the Judicial Council"

⁶⁰ Judicial Rules of Procedure Section 4.15.3.2: "Individuals found in contempt may be asked to leave the proceedings, may be forcibly removed from proceedings, may be disallowed from appearing again before the Council, and a default judgment issued against the party the participant sought to benefit."

⁶¹ Judicial Rules of Procedure Section 5.1.2.3: "The remedy arrived at is proportionate to the severity of the offense and in full compliance with the ASUC Constitution and By-Laws."

⁶² Title IV Section 13.10.5: "In addition to the authority granted the Judicial Council herein, it shall have equitable power to assure that the punishment levied fits the violation found to occur so as to assure a fair and just result..."

ASUC v. SAES in order to establish the crime's severity. The fact that the defendant potentially influenced the decision by misleading the Council shows that it affected the trial's fairness for the plaintiff. Additionally, the perjury took place during a case that charged for the disqualification of the entire Student Action Executive Slate for campaign violations, so the potential impact of Vakil's statement is significant and appropriately considered in the Ratto decision. Even if the Judicial Council was bound to consider all other judicial remedies, it is discussed above that the appellants did not provide any legal alternatives for the Council to consider, and the content of the Council's closed deliberations is privy information.^{63,64}

In conclusion, the evidence has shown that the four Student Action Executive candidates were fully aware that they could be held responsible for the actions taken by a designated representative on their behalf. And, because all four candidates were present at the ASUC v. SAES hearing, they were all witnesses to Vakil's misleading statements to the Council. After that hearing, prior to the Ratto hearing, during the Ratto hearing, and after the Ratto hearing, not one of the four Student Action Executive candidates tried to disassociate themselves from their designated representative, Vakil. They have maintained, despite all evidence to the contrary, that Vakil did not provide the Council with misleading information in ASUC v. SAES and instead have argued that Vakil was not lying, but simply providing argumentation that need not be based on fact, and that if Vakil was lying he did not do so for their benefit. The four Student Action Executive candidates have not demonstrated, at any time, a belief that committing perjury during a judicial hearing is a serious offense. And in the case at hand, it seems that Student Action members engaged in the most serious violation of the rules for truthfulness within the Judicial Rules of Procedure, because while it has not been proven that the candidates directly colluded with Vakil to present misleading testimony during ASUC v. SAES, the decision of Ratto v. Vakil describes the unacceptable behavior of Student Action members at the Ratto hearing:

...witnesses Emilie Saleh, Joyce Liou, Jason Dixon, and Bret Manley repeatedly gave evasive answers, often verbatim repeats of answers that the previously questioned witness had given, to the plaintiff and the Council when asked questions about Vakil. Student Action members also attempted to interfere with witness testimony by whispering to each other when directed to answer controversial questions; the witnesses had not requested legal counsel.

All of this compounded with the fact that the appellants made an abrupt attempt to withdraw from this appeals process after claiming a lack of Council jurisdiction, and the fact that they tried to submit evidence that had been directly tampered with, which leads us to question the originality and veracity of other evidence submitted by the appellants, points to an effort by the Student Action Executive candidates to subvert the judicial process. We believe this to be a very serious offense, but given the circumstances these candidates cannot be punished. However, Mr. Vakil is still held in contempt of Council, and as a result of his deceitful actions during ASUC v. SAES, he can never again appear before the Council per JRP 4.15.3.2.⁶⁵ We condemn Vakil's actions and, as the evidence shows to be the case, the Student Action Executive candidates' knowing acceptance of Vakil's dishonesty. We maintain that had the evidence brought forth in Ratto v. Vakil about party chalking tactics been presented in ASUC v. SAES, it is likely that the Judicial Council would have arrived at a more severe judgment. Regardless, we hereby re-instate Oren Gabriel, Vishal Gupta, Joyce Liou, and

⁶³ ASUC Constitution Article IX Section 1.B.4: "Deliberation on a case in order to arrive at a judgment, for the ASUC Judicial Council only."

⁶⁴ Title XXI Section 2.1: "Malfeasance or dereliction of duty shall be defined as having committed one of the following acts:
1. Disclosure of closed session deliberations."

⁶⁵ Judicial Rules of Procedure Section 4.15.3.2: Ibid

Jason Chu into the 2006 ASUC Elections. The Council will soon meet to consider certification of these election results and to administer the executive oaths of office.⁶⁶

⁶⁶ Title I Article 16 Section 2: “Each Elected Officer, before they enter into their respective office, shall take and subscribe the following oath or affirmation...”

Dissenting Opinion

By Senior Associate Justice Amaris White,
with whom Associate Justice Marisa Cuevas joins

When the Council is asked to consider the concerns surrounding double jeopardy, the appellants cite Article XI, Section 3 of the ASUC Constitution: “No person shall be subject for the same offense to be twice put in jeopardy.” They use this to show that they were being held liable twice for the same offense because of the default judgment issued in place of the original decision for ASUC v. SAES. However, we maintain that this is not the case - the Constitution mentions “the same offense,” and we believe that in the first case the defendants were on trial for an elections chalking violation, and in the second case they were on trial for perjury. Clearly, this constitutes two separate violations, even if the remedies implemented in the second case affected the prior case. Although we note the appellants claim that double jeopardy has been incurred because of the two different resolutions to a single case, the existence of two separate violations of elections rules and perjury is clearly maintained.

Furthermore, we believe the Council does retain the right to replace a former decision while not engaging in double jeopardy. As we are dealing with a separate charge of perjury, the defendants are not subjected to being twice put in jeopardy for the same offense. This is further supported by the Council’s power to reverse any decision as granted in Article IV, Section 5 of the ASUC Constitution: “All decision of the Judicial Council shall be final unless reversed by subsequent council action.”

Also, as the appellant, it was their duty to meet the burden of proof to convince the Council that there was indeed a constitutional error on our part. Since we are not convinced by their reasoning, we find in favor of the respondent.