

To be completed in triplicate

ASSOCIATED STUDENTS JUDICIARY
California State College, Long Beach

COMPLAINT TO REQUEST A DECLARATORY JUDGMENT

To: Associated Students Judiciary

From: STEVE FOSTER

Date: 5-2-72

The undersigned requests a review of the rights and duties pursuant to:

the power of the A.S. Senate to fill vacancies in the A.S. Senate membership.

Cause for request: If a senator elect resigns his office even though prior to taking the oath of office, does said resignation then not create a vacancy in the A.S. Senate membership subject to chapter II article I, section 8 and chapter I, article two, sec 7, para i?

Briefly explain the substance of your issue: Chapter I, article III, section 4 & 5 and Chapter II, article V, section 3 defines an elected candidate as an elected officer. Sturgis Standard Code of Parliamentary procedure page 160 and page 172 indicates that a vacancy in A.S. Senate membership does exist when an elected officer resigns. The election is finalized when certified by the elections committee and the elected officers are the declared winners of the election.

The undersigned does hereby request a judgment on the preceding issue.

Signed Steve Foster

ASSOCIATED STUDENTS JUDICIARY
California State College, Long Beach

DECLARATORY JUDGMENT

Plaintiff: Steve Foster
Adjudicated This 4th. Day of May, 1972

In this case, Mr. Foster asks the question: in the event a newly elected Associated Students Senator resigns before being officially installed, and before he assumes the rights and duties of his office, may the A.S. Senate fill that vacancy by appointment?

The Court, after extensive examination of the A.S. By-laws and Sturgis Standard Code of Parliamentary Procedure, finds no specific statutory provisions which could explicitly resolve the question at hand.

The A.S. Bylaws Chapter I, Article I, section 7-1 states:

"The A.S. Senate shall have the power to ...fill all vacancies in elected offices with the exception of the presidency."

The above A.S. Bylaw quotation is interpreted by the Court to indicate that the elected representatives of the people (A.S. Senate) shall have the power to fill any vacancy in elected offices. Yet, how is that "elective office" to be defined?

The A.S. Bylaws Chapter I, Article V, section 4 states:

"Each elected officer shall assume office and its duties on June first or on the day following the A.S. Awards and Installation Banquet to be held in May, whichever shall occur first..."

The Court realizes the problem posed by this statute. If the officer-elect was properly installed in his office, any vacancy created by his resignation could be filled by Senate appointment. But, if the officer-elect resigns before being officially installed, does the A.S. Senate still have the power to fill the vacancy by

appointment?

The Court can find no A.S. Bylaws statute which states that a vacancy created by an officer-elect's resignation before being installed, is of any substantial difference to said officer's resignation after being installed. Therefore, once the election results are finalized by the Elections Commission, any vacancy which occurs in an elected office, before or after installation, is within the powers of the A.S. Senate to fill by appointment.

In conclusion, the Court recognizes that the A.S. Senate has the legal power to appoint any eligible student they choose to fill a vacancy created by the resignation of an officer-elect. Yet, the Court would recommend that the Senate, before appointing a replacement, consider other more democratic means of filling the vacancy. The Court urges the the A.S. Senate to consider means which will allow the student body to have a more direct influence in the selection of their representatives.

It is so ordered.

Vote: 6-0-0 unanimous

Majority decision written by Presiding Justice G. Park

Justices Present: Montejano, Park, Leach, Walker, Wysocki, and
Fairbanks.

Justices Absent: None.

James Walker
James Walker- Associate Justice

Ronald Montejano- Associate Justice

Gayle Fairbanks
Gayle Fairbanks- Associate Justice

David L. Wysocki
David Wysocki- Associate Justice

Dennis Leach- Associate Justice

Gordon Park
Gordon Park- Chief Justice Pro Tem

ASSOCIATED STUDENTS JUDICIARY
California State College, Long Beach

DECLARATORY JUDGEMENT
CONCURRING OPINION

Plaintiff: Steve Foster

The primary question before the Court is whether or not the A.S. Senate has the authority to fill a vacancy on the Senate, which in the present case was caused by the resignation of a Senator-elect. The Senate, as provided in the A.S. Bylaws, does indeed have this authority.

Chapter I, Article I, Section 7-i and Chapter II, Article I, Section 2-i state: "The Senate shall have the power to...i. Fill all vacancies in elected offices with the exception of the Presidency" and Chapter II, Article I, Section 10-a states: "Senate Vacancies: Vacancies in the A.S. Senate shall be filled by a majority vote of the A.S. Senate...". However, the A.S. Senate, or any other elected body, should not have the authority to fill the vacancy of any elected office.

Chapter I, Article I, Section 2 states:

"The Senate shall be composed of the following elected members..." The Senate shall be composed of elected members, not appointed members. The Senators are to be elected by the members of the A.S., either At Large or within the particular School of the Senator and not elected by the members of the A.S. Senate. The filling of Senate vacancies by the Senate itself is a rather weak attempt at representative government.

While the membership of the Senate is composed of representatives from the A.S. At Large and the several Schools (possibly at an unproportional ratio), the election is most democratically achieved when those who are to be represented are allowed to exercise their right to choose their own representatives. Chapter II, Article I, Section 9-c states

"General Requirements: Each Senator shall be responsible to the Associated Student Body for representing the members of his constituency...". This statement is empty and meaningless if the members of his constituency did not elect him as their representati

All vacant elected offices should be filled by representatives elected, at special regular elections when necessary, by the constituency of the office. One possible exception is the Presidency.

Chapter I, Article II, Section 5 states:

"The Vice-President shall:... b. Assume the duties of the President in case the latter is incapacitated or resigns." The Vice-President should succeed the President only if the President has been installed into office. If a President-elect resigns prior to his installation into office, then a special regular election should be held to fill the vacancy. If the vacancy occurs after installation, the Vice-President would become the President. However, the Senate should not select a new Vice-President under any circumstances.

One of the most important principles of representative government is the separation of governmental powers. The Executive, the Legislative, and the Judicial branches of government work at their respective finest when each functions with independent authority from each other, but using this independence to work together to create a cohesive unit known as government. However, this principle is violated when the Vice-President, Chairman of the Senate and a member of the Executive branch, is elected by the Senate, the Legislative branch. In order for the government to function in a fair and democratic manner, the Vice-President must be elected by the people, not by the members of the Senate.

The new Vice-President would be elected by the student body in a special regular election, held as soon as possible after the vacancy occurs. The Chairman Pro Tempore of the Senate would assume the duties of the Vice-President until the election and installation of the new Vice-President. Clearly, it is not in the best interests of representative government for the Vice-President, who is the independent Chairman of the Senate, to be chosen by his fellow Senators. Such an election belongs to people. Clearly, the need for special regular elections for vacant elected offices is necessary and is in the best interests of representative government.

Chapter I, Article V, Section 1 states;

"There shall be two general elections during the academic year...", Chapter II, Article VI, Section 5 states:

"A. All campus elections to elect Associated Students officers are called regular elections...", Chapter II, Article VI, Section 6 states:

"A. All campus elections held for the purpose other than that of the election of Associated Students officers shall be called a Special Election.

B. Special Elections may be held for the following purposes:

1. To elect people to positions other than Associated Students offices...", which Chapter VII, Section 1 of the A.S. Elections Code states:

"Special Elections shall be those elections to fill offices or positions having a California State College at Long Beach Associated Students Body constituency, other than scheduled regular elections..."

Elected A.S. offices obviously have a CSCLB ASB constituency, yet the current A.S. Bylaws do not provide for special regular elections although such elections are needed. The present provisions create a restrictive, archaic, and undemocratic restraint upon the members of the Associated Students. These provisions are neither fair nor proper and should be changed in order to create a more representative government.

CONCURRING DECISION DELIVERED BY JUSTICE RONALD MONTEJANO
MAY 9, 1972.