

ASSOCIATED STUDENTS JUDICIARY

California State College, Long Beach

CASE SUMMARY FORM

1. Type of Case: COMPLAINT DECLARATORY JUDGMENT APPEAL

Was an INJUNCTION issued? NO X  
YES \_\_\_\_\_

If YES, to who? \_\_\_\_\_

2. Case filed by Robert A. Medina

3. Date case received March 13, 1969

4. Case was: ACCEPTED March 13, 1969 (date)

Acceptance of Request for Hearing Sent? NO X

Notice of Hearing for Declaratory Judgment Sent? NO \_\_\_\_\_

If either sent, date sent \_\_\_\_\_

Parties Notified by Other Means Yes

REJECTED \_\_\_\_\_ (date)

Rejection of Request for Hearing Sent? NO \_\_\_\_\_

If yes, date sent \_\_\_\_\_

Parties Notified by Other Means \_\_\_\_\_

DROPPED \_\_\_\_\_ (date)

5. Hearing Date (s) March 13, 1969

6. Deliberation Date (s) March 13 & 14, 1969

7. Presiding Justice James Preston

Associates Larry Wilhelms Warren Wolfe

8. Date Case Was Adjudicated March 14, 1969

9. Date Case Was Filed 3/26/69

## Merlino vs. Elections Commission

The court finds that due to gross negligence and irresponsibility on the parts of many agencies of the A.S. Government, the election due to be held on March 17, 18 & 19 must be held. Not to hold these elections would be punishing those candidates who filed for office in good faith believing that the A.S. Government was capable of following the elections procedures which it has established.

There are two basic reasons for the court's decision. First, and of primary importance, is that with the campaign period, the electoral process has begun. Involved in this process are large amounts of time, money, and energy expended by the various candidates. The court feels that to halt the election process would unfairly punish those candidates for actions over which they had no control. As a secondary consideration, it has been noted that the time allotted for elections in Chapter I, Article V, Section 1 of the A.S. Bylaws would not allow for the A.S. Government-elect to properly form itself before taking office.

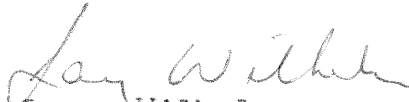
The elections commissioner and the A.S. President, who concurred in the scheduling of the elections, directly violated Chapter I, Article V, Section 1 of the A.S. Bylaws. However, the court recognizes that this section is in direct contradiction to Chapter II, Article 6, Section 7 of the A.S. Bylaws. This is an example of the inconsistencies and contradictions which riddle this, the basic document of student government. The court feels that the changing of Chapter II, and not Chapter I was a gross oversight on the part of the Senate when instigating changes to the ~~Const~~ A.S. Bylaws.

Furthermore, because Chapter I, Article V, Section 1 does not indicate the method by which the "last half of the spring semester" is to be decided, the Court construes "election" to include the entire process, from the beginning of campaigning to the end of ballot counting. If this is held, and if Finals Week and Dead Week are eliminated from the semester, the latter part of this election will fall within the last half of the semester.

  
Jim Preston

Associate Justice, Presiding , Concurring

Vote: 2-1

  
Larry Wilhelms

Associate Justice, Concurring

Warren Wolfe  
Associate Justice, Dissenting

March 15, 1969

Before adjournment, I would like to take this opportunity to explain the thoughts behind the decision of the court. In the short time which I have been working with the Associated Students Government, I have noticed many inequities and inconsistencies within the organization. This case is a prime example. It should never have come before the Court. Had the Elections Commissioner, Mr. Berens, concerned himself only with providing a sound election, our position as a governing body would be much better. This case, in fact, is a direct result of his irresponsibility in that position. In my opinion as a member of the A.S. Judiciary, I feel that this election procedure has been a battleground for immature personal vendettas fired back and forth across the A.S. Government. The Court feels that this is a gross misrepresentation of the trust which the student body has placed in the elected and appointed officials of government.

The Court, in its deliberations, has tried to do what no other body in the government has been willing to do for many days. That is, to be practical and objective about the issues at hand. To throw out the election process which has begun, would only have contributed to the growing confusion among the student body and the government. The court recognizes that there is a legal point which specifically states that elections must be held in the latter half of the semester (Chapter I of the A.S. Constitution). However, this is directly contradicted by Chapter II, which ordinarily would be of secondary importance. The court feels that the changing of Chapter II, and not Chapter I was a gross oversight on the part of the Senate when instigating changes to the Constitution. This is only one of the glaring irregularities which

permeates this document. The court, therefore, has decided on the basis of practicality, which section will be considered valid. This was done after examining the responsibilities which the new A.S. President will have to perform in the short time available before he takes office. I, along with my colleagues on the Court, recommend that the Senate establish a commission whose sole responsibility is to clean out such contradictions in the A.S. Constitution and By-Laws. If, as in the past, the Senate works its way around these issues, the Court has no alternative than to fulfill its responsibilities to the Student Body by determining what is valid and what is not. The Court envisions the day when failure to do this will lead to a situation in which the A.S. Government could become so involved in its own inward confusion that it misses the point that it exists as the guiding force for 24,000 students.

The Court also feels that the press, in the form of the 49'er, should become more responsible in its duties. As the only form of communication between the A.S. Government and the Student Body, the paper should take upon itself the responsibility to efficiently report the operations of the government. As applies specifically to the court, when questions of Judicial practice come up, the paper should check its facts with the Judiciary before unjustly lambasting the operations of that body.

It is high time that the leaders of the A.S. Government, and irresponsible factions within the Student Body quit using the Senate floor, the A.S. By-Laws, and the institutions of government as sounding boards for personal conflicts. In the eyes of the Court, the quality of student government has been grossly maligned by the issues of the past few days. We would highly recommend

that the officials involved, take mind of their responsibilities to provide a relevant, mature, and objective climate in which such vital operations as the election of student officers may be performed. The Court wishes the best of luck to all candidates, and hopes that the new A.S. administration will take note of these observations. <sup>Relative to the minority opinion,</sup> Justices Wolfe and Preston are in complete concurrence with me concerning the position stated in this paper. The Court wishes to take this opportunity to record its feelings that an irresponsible government is irrelevant to this institution.

*Larry M. Wilhelms*

Larry Wilhelms, Associate Justice

*James R. Preston*

Jim Preston, Chairman Pro Tempore,  
Associated Students Judiciary

Warren Wolfe, Associate Justice

ASSOCIATED STUDENTS JUDICIARY  
California State College  
Long Beach

Robert A. Merlino vs. Associated Students Elections Commission  
Formal Hearing

MINORITY OPINION

Robert A. Merlino, Member, Associated Students, Plaintiff, In propria persona  
John Gorey, A.S. Administrator, Counsel for Associated Students

It is felt, in this dissenting opinion, that Robert A. Merlino, having just cause to bring his complaint before the Associated Students Judiciary under Chapter IX, Section 5 of the Elections Code of California State College, Long Beach which reads: "Any student may file a complaint with the A.S. Judiciary against a candidate or the Elections Commission, if either or both fail to observe the Elections Code, Bylaws, and/or supplementary regulations" was a proper complaint and should have been adjudicated, according to established precedence, in his favor.

His complaint, charging that the Elections Commission, by scheduling the Regular Spring Elections on March 17, 18 & 19 was in direct violation of A.S. Bylaws Chapter I, Article V, Section 1 which reads: "There shall be two general elections during the academic year. One shall be held in the last half of the fall semester, and one shall be held in the last half of the spring semester" was a sound complaint with which there can be little deliberation.

The A.S. Judiciary (as are all judicial bodies) is required to consider the doctrine of precedence as established by previous cases in rendering a decision. It is within the authority of any justice to take judicial notice of this fact and consult such texts as may help him to render a decision. Recognizing such authority, the following sections are cited: In the case of State vs. Carswell, 50 S.E. 2d at page 631 that court held:

"Where there is such an utter disregard by election officials of statutory provisions as to an essential element of election as to infect the election as a whole with the taint of illegality, the disregarded provisions of the statute cannot be held to be directory merely, but are mandatory."

The authoritative text on precedence, Corpus Juris Secundum, "A Complete Restatement of the entire American Law as developed by all Reported Cases", Volume 29 entitled "Elections" states that "The omission of an essential pre-requisite to the holding of a valid election invalidates the election." Page 601, Section 214(1). The book further states "an act done in violation of a mandatory provision is void." Section 214(2) and "that the provisions of the election laws are mandatory if enforcement is sought before the election." Section 214(2).

Additionally, the argument by the defense that the provisions of the A.S. Bylaws are meant as guidelines and not as restrictions or mandatory clauses has no validity in this case. Chapter I, Article V, Section 1 clearly states one election shall be held in the last half of the spring semester. Webster's Third New International Dictionary defines the word "shall" as: "Used in laws, regulations, or directives to express what is mandatory." A mandatory provision cannot be referred to as a guideline.

Due to the fact that the Elections were scheduled in direct violation of an existing Bylaw; that established cases illustrate the invalidity of such an election and that the wording of the Bylaw makes it mandatory upon the elections commission, the elections, according to the rule of law, should have been postponed. Such a postponement would have been a proper exercise of judicial authority.

That there is an internal conflict between Chapter I and Chapter II of the Bylaws regarding the scheduling of A.S. Elections is not disputed. However, the proper approach would be to recognize that section having the highest legal authority (in this case, Chapter I) until such time as the contradiction is solved through a Bylaw Amendment.

To misconstrue mandatory provisions of the A.S. Bylaws on the basis of "practicality" to an immediate situation alone is a dubious practice and one which cannot be considered to be within the judicial powers of this court. The A.S. Judiciary was not created to be a panacea for the incompetent operations of any A.S. Commission. The Elections

Commission, whose purpose is to assure a fair and accurate election cannot do so by violating the Bylaws and expect the court to sanction their illegal activity.

In order to prevent such an unfortunate situation from coming before the A.S. Judiciary again, the following recommendations are made: (1) That the A.S. Senate be requested to propose an amendment to Chapter I, Article V, Section 1 of the Bylaws to comply with the provisions of Chapter II, Article VI, Section 7. (2) That a special committee be appointed by the A.S. Senate to correct any internal contradictions within the Bylaws. Any document which proports to be the Bylaws of a student body of 26,000 individuals should not be riddled with internal contradictions.

Adjudicated this 14th day of March, 1969.

  
WARREN J. WOLFE  
Associate Justice