

Decision in regards to Appeal on Robert A. Merlino vs. Elections Commission.

Upon extensive review and deliberation, the Associated Students Judiciary, under the authority of Chapter I, Article III, Section 6a which reads: "Duties and power of the Judiciary. The Judiciary shall: a) Interpret the provisions of the A.S. By-laws or any other A.S. document when a dispute arises." and "c) Render final decisions in election disputes." submits the following final decision on the Appeal in regards Robert A. Merlino vs. Elections Commission.

As a preliminary statement, the Associated Students Judiciary, constituting the final authority of the Associated Students (Chapter I, Article III, Section 7) interprets Chapter I as establishing a general framework of A.S. government. It further interprets Chapter II as establishing the supplementary and definitive enumerated powers of said body. We feel that Chapter II builds, upon the foundation of Chapter I, a specific edifice for the day-to-day functioning of student government. Within this framework, the A.S. Judiciary acts at once as a Court of Original Jurisdiction, an Appellate Court and in some circumstances as a Court of Equity.

As defined by Black's Law Dictionary, the established authority on legal definitions, equity "In its broadest and most general signification, this term denotes the spirit and the habit of fairness, justice, and right dealing . . . and - in this sense its obligation is ethical rather than jural, and its discussion belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law." According to American Jurisprudence (2nd) "All great systems of jurisprudence have a mitigating principle or set of principles, by the application of which substantial justice

may be attained in particular cases wherein the prescribed or customary forms of ordinary law seem to be inadequate . . . In a juridicial sense, the term 'equity' is employed usually in contradistinction to strict law." To further quote Black,

"As old rules become too narrow, or are felt to be out of harmony with advancing civilization, a machinery is needed for their gradual enlargement and adaptation to new views of society. One mode of accomplishing this object on a large scale, without appearing to disregard existing law, is the introduction, by the prerogative of some high functionary, of a more perfect body of rules, discoverable in his judicial conscience, which is to stand side by side with the law of the land, overriding it in case of conflict. . ."

The A.S. Judiciary, in this case sitting as a Court of Equity, finds Chapter I, Article 5, 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." to be ". . . out of harmony with advancing civilization . . ." Holl. Jur. 59. To further support this contention the court quotes from Words and Phrases, Volume 15 "the nature of 'equity' is the correction of the law where by reason of its universality it is deficient." Kingshighway Bridge Co. vs. Farrell. Mo. App., 136 S.W. 2d 335, 338. This is such a case. The Court feels Chapter II, Article VI, Section 7b must override Chapter I, Article V, Section 1 due to the laws of equity. The Courts original decision took into account the inequities which would result from a rescheduling of the election. To reiterate, some of these inequities were:

- 1) The direct loss of money through campaign expenditures;
- 2) The indirect loss of funds resulting from work missed and and time invested in the campaign and election;

- 3) The extreme difficulty of forming a student government capable of successfully meeting the constant challenges present in todays college community; and finally,
- 4) The inability of the Elections Commission to successfully initiate and carry out a second election.

However, the greatest inequity of all devolves on the candidates themselves, who filed in good faith believing that the A.S. government was capable of scheduling its own elections under the law.

Therefore, the adjudication of this tribunal is to uphold the original courts decision based on the aforementioned arguements.

The Rule Shall Be Discharged.

Vote: 6 - 0 in favor

Unanimous Decision

James Preston, Chief Justice

Dave Campbell, Associate Justice

Larry Wilhelms, Associate Justice

Warren Wolfe, Associate Justice

William A. Graham, Associate
Justice

April 11, 1969

Ocie Marchel
Court Clerk

Robert C. Bland, Jr. Associate
Justice