

ASSOCIATED STUDENTS JUDICIARY
California State College
Long Beach

Ron Kelley vs. Associated Students Elections Commission
Informal Hearing

Ron Kelley, Member, Associated Students, Plaintiff

Marty Flinn, A.S. Deputy Attorney General, Counsel for Associated Students
Barry Schenbaum, A.S. Deputy Attorney General, Co-Counsel

MAJORITY DECISION

In this case the court was asked to decide three questions. First, whether or not the legal advisors to the administration of the college could render a judicial interpretation of the A.S. Bylaws. Second, what is the legal "majority" needed in an election. Third, was such "majority" obtained in the last election.

1. Outside advice may be sought but this does not relieve the Judiciary of their responsibility of making the final interpretation.

A.S. Bylaws, Chapter 1

Article 3

Section 6 The Judiciary shall:

- a. Interpret the provisions of the A.S. Bylaws, or any other A.S. document when a dispute arises.
- c. Render final decisions in election disputes.

Section 7 Decisions of the Judiciary shall constitute the final authority of the Associated Students.

2. This court interprets Chapter 1, Article 5, Section 6 of the By-laws which reads, "A majority of all votes cast in the balloting procedure shall be necessary to elect all A.S. officers. . .", to mean "A majority of all legal votes cast for the specific office in the balloting procedure shall be necessary to elect all A.S. officers."

3. The question, whether or not a majority, fifty per-cent plus one, of all legal votes

cast for the specific office, was obtained by a candidate for president or vice-president was difficult to determine.

This campus needs continuing relevant leadership that has workable relationships with the students. Students must be able to understand the election processes, to feel that there has been a fair and equitable election, and to feel that they have an equal voice in choosing their officials in order to have faith in the A.S. government. People who mistrust this election will tend to mistrust the elections of our society.

The objects of this corporation as established by the Bylaws, Chapter 1, Preamble are:

"...in order to (3) insure the full and equal representation in the affairs and government of this Association and all its members, and (4) achieve a better awareness of, and competence in, the practices of democratic citizenship among the members of this Association, do establish and adopt these Bylaws."

We should try to make our system of government as much like the "real world" as possible. Elections patterned after federal elections, one man one vote, would eliminate confusion and reinforce the learning process necessary to develop competent democratic citizenship among the members of this corporation. A continuing system of government must provide for the orderly and peaceful handing over of power from one group to another.

In the opinion of this court this election did not result in a clear legal majority for one candidate.

The Bylaws, Chapter 1, Article 3, Section 6-c:

By the power vested in this court, we direct that a run-off election be held for the offices of president and vice-president. The run-off shall be between the two candidates receiving the most votes for each office in the last election.

ROLL CALL VOTES, PER ISSUE:

Issue One - Whether the legal advisors to the administration of the college could render an interpretation of the A.S. Bylaws.

Green - concur with majority decision
Graham - concur with majority decision
Wilhelms - concur with majority decision
Wolfe - concur with majority decision

VOTE: 4 - 0

Issue Two - Interpretation of Chapter 1, Article 5, Section 6 of A.S. Bylaws.

Green - concur with majority decision
Graham - concur with majority decision
Wilhelms - concur with majority decision
Wolfe - concur with majority decision

VOTE: 4 - 0

Issue Three - Was majority obtained in last election.

Green - concur with majority decision
Graham - concur with majority decision
Wilhelms - concur with majority decision

VOTE: 3 - 1

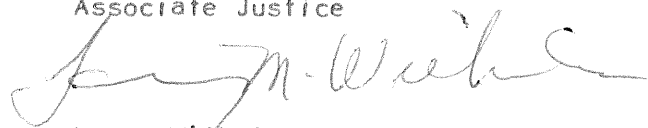
Wolfe - does not concur with majority decision



Terris Green
Presiding Justice



William Graham
Associate Justice



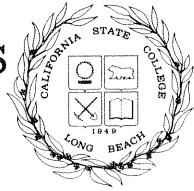
Larry Wilhelms
Associate Justice



Warren J. Wolfe
Chief Justice

Justices Green and Graham prepared the majority decision.

ASSOCIATED STUDENTS



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ASSOCIATED STUDENTS JUDICIARY California State College Long Beach

APPEAL

Ron Kelley vs. Associated Students Elections Commission

Robert Fenton, A.S. Attorney General, Counsel for Appellants

Ron Kelley, Member, Associated Students, Respondent

Before we proceed with the opinion of this court, we would like to commend all of the parties concerned for their individual and collective efforts to work within this sometimes ill-defined and ambiguous system. The court can fully empathize with the Appellants and Respondants in regards to the preparation and diligence required to present their cases. Again, thank you for your sincerity and recognize that it is appreciated.

OPINION OF THE JUDICIARY

This appellate court is in full and complete agreement with the first section of the decision of the original court:

"Outside advice may be sought but this does not relieve the Judiciary of their responsibility of making the final interpretation.

A.S. Bylaws, Chapter I

Article III

Section 6 The Judiciary shall:

- a. Interpret the provisions of the A.S. Bylaws, or any other A.S. document when a dispute arises.
- c. Render final decisions in elections disputes.

Section 7 Decisions of the Judiciary shall constitute the final authority of the Associated Students.

This court would simply state that it feels the Judiciary, pursuant to Bylaws, Chapter I, Article III, Section 6a and c, has the right and obligation to hear other than just the one outside interpretation and

that it shall remain the final authority of the Associated Students pursuant to Bylaws Chapter I, Article III, Section 7.

This court also is in complete concurrence with the second section of the original decision:

This court interprets Chapter I, Article V, Section 6 of the Bylaws which reads, "A majority of all votes cast in the balloting procedure shall be necessary to elect all A.S. officers. . ." to mean "A majority of all legal votes cast for the specific office in the balloting procedure shall be necessary to elect all A.S. officers."

This court feels the definition is complete, concise, and explicit.

The action brought before this appellate court centers around the appellants vigorous attack of the third and final section of the original decision. Indeed, this section is the very core of the dispute. It is the intent of this court to clear up and define the necessary terms and phrases in order to facilitate smoother operation of future elections. Also, a complete definition and operational explanation of the preferential balloting system, as used on this campus, will be given to be followed in all future elections using this system.

First, a definition of "legal ballot:"

A legal ballot shall be any ballot legibly and accurately marked as prescribed by the legally adopted voting procedures of the Elections Commission as approved by the Associated Students Senate.

Second, this court defines "abstention" or "blank" ballots as:

Ballots which did not register a vote for a particular office are to be considered blank ballots as to that particular office and would not be included in the total number of votes cast in determining the necessary majority of votes required to elect. (Exhibit 2)

Third, an explanation of the preferential balloting system:

Preferential balloting is employed to eliminate the necessity of having a run-off election by allowing the voter to switch his ballot from a losing candidate to another candidate until it is registered for one of the two remaining candidates who ultimately received the greatest number of votes.

The voter upon casting his vote knows or should know of the method used in ultimately registering his vote as to the several candidates,

therefore if he marks his ballot in such a way as to vote for the same candidate as his first, second, third, etc. choice, he is in effect stating that if the candidate of his first choice is not elected he has no other preference. Such ballots are therefore blank ballots as to preferences and are therefore not to be counted in the total number of votes cast for purposes of determining whether a candidate has received a majority of the votes cast. To do otherwise would enable such persons to frustrate the purpose of the preferential balloting. (Exhibit 2)

The Elections Commissioner shall be held to the following manner in counting of the preferential ballots (Standing Rules, Elections Commission):

The first step in the counting of preferential votes is to separate all first choices into the separate piles for the respective candidates. After this separation of first ballots has been done, each pile should be counted. If one candidate receives a majority of all ballots (50%+1), that candidate is automatically elected. If a majority is not obtained by anyone, the person with the least number of votes (A) is eliminated from the election. A's ballots are then counted on the basis of the second choices indicated on those ballots and the totals distributed among the other candidates. After this distribution of the eliminated candidates (A's) ballots, the total are reviewed to determine whether anyone has a majority of the votes. If a candidate does have a majority as a result of the distribution of A's second choices, then he is elected. If there is still no majority, the next lowest candidates (B's) ballots will be redistributed according to the second choices indicated on these ballots. If there are some second choices on B's ballots cast for the first eliminated candidate (A), then the third choices on B's ballots will be counted. At the conclusion of the redistribution of B's ballots it is again ascertained whether anyone has a majority vote. If not, the process continues in the pattern just outlined. If there was a case where you had three candidates running and the second and third candidates were tied, the only alternative would be a new election.

Fourth, in all future Associated Students elections, including regular, special, initiative, recall, and/or referendum, the Chief Justice of the Associated Students Judiciary, or his designee selected from the membership of the Associated Students Judiciary, shall be present at the counting and recounting of any and all ballots. He shall act in an advisory and supervisory capacity. However, the final authority and all decisions shall still remain with the Elections Commissioner and the Elections Commission.

Fifth, any ballot marked as "invalid" or "blank" shall be initialed by both the Elections Commissioner and the representative of the Judiciary.

This appellate court feels that in order to uphold the best interests of the individuals appearing before this court and the entire student population at California State College, Long Beach, further orders the following rules to be followed in all future Associated Student elections:

- 1) Before the opening of the polls, it shall be the duty of the Elections Commissioner to check each polling place to see that the following conditions are met.
- 2) All voting procedures shall be clearly posted.
- 3) All materials needed to complete the voting process by the voters shall be present in each voting booth, i.e. stamps, stamp pads, instructions, etc.
- 4) An explanation of the preferential balloting system shall be prepared by the A.S. Attorney General, if applicable to the election, and shall be posted in each voting booth.

It is felt by Presiding Justice Robert C. Bland, Jr. and Associate Justices Jennette Bruck and Skip Marchel, that these implementations will end a majority of the complaints and charges levied against various persons and the Elections Commission after each and every election on this campus.

DECISION

It is time that this Judiciary publically states a feeling long held by some of its members and more recently realized by others, that we are not by training, education, or experience, a real court of law. We are, rather, a group of seven students acting as a hearing board to aid in settling disputes which arise from and out of instances occurring within the framework of the Associated Students, Inc. The first paragraph of the Judiciary's Rules of Procedure states:

The Associated Students Judiciary shall be mindful at all times that its basic function is to act in the best interests of the Associated Students and of the persons who come before it; that the Associated Students Judiciary is not a strict court of law but rather a means by which students can serve in accepting responsibility for self-government, and that its primary function is not to punish offenders but to recommend and implement the action it considers to be best for the students involved and for the welfare of the college.

We do, however, possess certain powers and hold certain privileges over the other branches and divisions of the Associated Students government. Our major power and responsibility being the final and absolute authority in all election disputes. This single area has proven over the years to monopolize the time of this court. Now, once again, we are asked - this time through an appeal - to define and decide an elections case.

The Articles of Incorporation, the legal document having the highest priority over Associated Students government states in Article II, Section 2:

The specific and primary purposes for which this corporation is formed are. . . To promote and maintain a student self-government organization under the supervision of the college officials for the purpose of providing essential activities closely related to, but not normally included as part of the regular instructional program of the college. The activities conducted by such an organization shall be designed to contribute to the development of leadership ability, and the recreational and social needs of students. The activities may include but shall not be limited to. . . student government activities. . .

Bylaws, Chapter I, Preamble states ". . . we, the Associated Students of California State College, Long Beach, in order to 3) insure the full and equal representation in the affairs and government of this Association and all its members. . . do establish and adopt these By-laws."

The Judiciary feels that in this case, the interests of the Associated Students would best be served utilizing the philosophy stated above by upholding the original decision which orders a run-off election to be held as soon as possible but under no conditions to be held later than Friday, May 22, 1970. This election shall incorporate the definitions, stipulations, and conditions of this official decision.

(over)

ADJUDICATED this 5 day of May, 1970.

Unanimous decision Vote 3-0

Robert C. Bland Jr.

Justice Robert C. Bland, Jr. Presiding,
Associate Justice, A.S. Judiciary
Concurring

Jennette Bruck

Justice Jennette Bruck,
Associate Justice, A.S. Judiciary
Concurring

Skip Marchel

Justice Skip Marchel,
Associate Justice, A.S. Judiciary
Concurring

This decision prepared by Justice Bland