

# Majority Opinion of the Judicial Council

## Associated Students of the University of California at Riverside

### No. 2

In Regards to Constitutional Violations Occurred During the ASUCR Senate Meeting of April 29, 2015

Argued April 30, 2015 – Decided May 1, 2015

An executive order issued by Student Body President of the Associated Students of the University California at Riverside, Nafi Karim, has granted and restored the Judicial Council to resume carrying out the duties and responsibilities as vested by the ASUCR Constitution. Therefore, this now functioning Judicial Council has the duty to “*Judge the actions of the Executive and/or Legislative branches as to its constitutionality and ordering the cessation of such actions that are judged to be unconstitutional,*” as laid out by the Judicial Rules of Procedure. Additionally, the ASUCR Constitution stipulates and solidifies the Judicial Council’s lone authority and legitimacy over and of these Rules where “*neither the Executive Branch nor Legislative Branch shall be construed to have any jurisdictional powers over these Rules of Procedure*” whereas it is also the responsibility of the members of Judicial Council to “*Perform all other duties as designated in the Judicial Council Bylaw or in the Judicial Council Rules of Procedure.*”

With powers restored and the Council jurisdiction clearly established, the Council has determined that infractions against the governing documents of ASUCR were committed by the actions of the ASUCR Senate. The following summarizes said infractions:

1. Removal of Chief Justice Melina Reyes from office mainly on the basis of dereliction of duties.
2. Removal of Justice Daniel Ojo from office mainly on the basis of malfeasance, specifically a leaking of information.

The Council had decided that the removal of these Judicial Council members have been unconstitutional for the following reasons:

1. ASUCR Constitution does leave room for interpretation where the Senate indeed may have power to remove members of the Judicial Council however, in Judicial Rules of Procedure, “Charges must be brought by any of the six Justices.” The ASUCR Constitution provides the sufficient clause in stating that Justices ‘*may*’ bring a case for removal, the Judicial Rules and Procedures set the necessary clause in further defining the Constitution by stating that a Justice ‘*must*’ be the ones to bring forth the case for removal. The Constitution and Judicial Bylaws are in fact not contradictory but rather, the Bylaws augment and fine tune the Constitution’s scope via necessary and sufficient condition. Therefore, removal of Justices by the Senate is unconstitutional. Additionally, concerns of an impeachable Judicial Branch are unwarranted as Justices are expected to be impartial, unbiased, and willing to bring charges amongst Justices themselves; If these conditions are not met, then let it be reminded that Justices are appointed by the Senate.
2. The Senate has rendered the Judicial Council ineffective to carry out its vested responsibilities and without giving any reasonable indication of making the Council functioning; additionally, no concern of Judicial Council’s effectiveness beyond election related matters was brought up during the April 29, 2015 Senate meeting. This is a severe breach of separation of balance and powers, where separation is stipulated in the Constitution, where no Judiciary body can be expected to participate in a checks and balances system against neither the Executive nor Legislative Branch.

Therefore, removal of Justices that paralyzes an already less than full capacity Council to Branch ineffectiveness with no good faith means of filling vacancies is considered unconstitutional in the opinion of this Council.

3. It may be said that Judicial Council members, being undergraduate students who are neither paid nor employed by ASUCR but rather appointed, can be deemed as non-personnel but, rather as privileged volunteers. As a closed ballot vote was conducted during an open session of the April 29, 2015 Senate meeting, this action violates the Transparency Act of the ASUCR Bylaws. Therefore, this renders the closed ballot to remove members of the Judicial Council as null and void.
4. An argument for malfeasance and/or dereliction of duty by the relevant Justices is weakened given the less than full capacity state of the Judicial Council. An additional Council member may have expedited the Judicial process. Though this Council bears some fault, the burden of responsibility lays with the Executive Cabinet's to nominate a member of ASUCR and then the responsibility of Senate to ratify said member, as stipulated in the Constitution. This neglect to appoint a final Judicial member may be considered a dereliction of duty in of itself.

With that said, where this Council has now been restored its powers, therefore, it shall again resume its original responsibilities pertaining to election matters and carry out said responsibilities to the best of each Judicial Council member's abilities.

It is also of the opinion of this Council that the hearing held on April 29, 2015 in the ASUCR Senate had been conducted in bad faith with no time for reasonable adequate preparation for the accused to defend themselves in equal opportunity against a prepared opposing party. Though ASUCR does not operate on the legal standard of innocent until proven guilty, it is regrettable that the burden of proof rested on the accused. No Constitutional basis allows punitive response by the Judicial Council for such actions by the Senate, however the Council would heed the Senate to refrain from such conduct again.

Finally, from the ASUCR Constitution, let it be reminded that, "*All decisions from the Judicial Council shall be final unless reversed by subsequent council action.*" The removal of Chief Justice Melina Reyes and Justice Daniel Ojo is unfounded on the basis of unconstitutionality. The motion by Senate on April 29, 2015 to remove these Council members is to be struck down. These members were therefore never removed from office with their service history unmarred, and shall stay in office until end of term or new future conditions demand.

May 1, 2015

**Signed:**

Justice Michael Deo

Justice Simon Ho

Justice Gadiel Lopez

Justice Daniel Ojo