



# JUDICIAL COUNCIL *of* ASUCR

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**S17-JR-01**

Majority Opinion Regarding President Karim's Executive Order

Decided April 3, 2017

CHIEF JUSTICE GBUJAMA delivered the opinion of the court:

In a unanimous decision, the ASUCR Judicial Council has decided to rule President's Karim's Executive Order unconstitutional. Any orders that came from the Executive Order will be considered illegitimate and will not be recognized.

On April 3, 2017, President Karim issued an Executive Order that would postpone the 2017 ASUCR Elections by two weeks:

*Given the competing interpretations and confusion in regards to the ASUCR Constitution, Bylaws, Judicial Rules of Procedure and Elections Code, and questions over the legitimacy of the actions affecting the 2017 Elections Cycle. \*\*After consulting with the Executive Cabinet, Pro-Temp Jonathan Li, and Chief Justice Jo Gbujama, I am issuing an Executive Order to postpone 2017 ASUCR Elections by 2 weeks (starting Week 3 of Spring Quarter and instead of Week 1). This Executive Order is not meant to suspend, nullify, or disqualify any candidates regardless of when they have registered, but to only postpone elections to give us sufficient time so that we can ensure we have abided all procedures, standards, and laws.*

According to the ASUCR Bylaws Chapter IX, Section 2:

- b. The President shall direct by Executive Order the taking of actions, which are urgent and necessary to maintain the functioning of the ASUCR until the Senate can again meet. Any such Executive Order automatically expires at the third regular Senate meeting following issuance of the order, or upon termination by the Senate by a majority of those voting, a quorum being present to do business.*

While the powers of an Executive Order are undefined, the President's Bylaws are clear on when the President has the authority to issue an Executive Order. According to the aforementioned bylaw, "the President shall direct by Executive Order the taking of actions, which are urgent and necessary to maintain the functioning of the ASUCR until the Senate can again meet." Given the language of the law, it seems clear that the President can only issue Executive Orders in situations where they have reasonable grounds to believe that the Association requires such actions. This being the case, it is only logical to require the President must also have sufficient reasonable grounds to issue an Executive Order in order to protect the Association. It would be unreasonable to disagree with the notion a President must have a sufficient reason for issuing an Executive Order. This would be reckless as the powers of an Executive Order and its limits are undefined and to allow even the President to wield such immense influence over the Association without subjecting them to the confines of logic and reason would be absurd.

Moreover, the ASUCR Constitution Article IV, Section C, makes is the duty of the President to:

*c. Assure the smooth and efficient operations of the ASUCR*

To allow a President to issue Executive Orders without a valid reason would certainly go against the spirit of the Constitution. Therefore, for situations where an Executive Order is issued, we must determine if a President issued the Executive Order on "sufficient reasonable grounds." The following questions may be asked to determine whether the President has "sufficient reasonable grounds" for issuing an Executive Order:

1. Does the President give at least one reason for issuing the Executive Order?
2. Are the grounds on which the President for issuing the Executive Order reasonable and sufficient?

Should the Judicial Council find that a President's Executive Order answer in the negative for either of these questions, the Executive Order ought to be struck down and ruled unconstitutional in order to ensure the "smooth and efficient operations of the ASUCR."

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In this case President Karim's Executive Order argues that the executive action is necessary "Given the competing interpretations and confusion in regards to the ASUCR Constitution, Bylaws, Judicial Rules of Procedure and Elections Code, and questions over the legitimacy of the actions affecting the 2017 Elections Cycle." This "confusion" refers to the Judicial Council's ruling in Majority Opinion W17-JR-05, where the Council pushed back the elections filing deadline, disbanded the YOURSIDE party and discontinued the use of the party system for the 2017 ASUCR Election.

Karim claims that there was confusion about the ruling of the Council's effect on the 2017 Election, however, there is not enough evidence to support that position. After the Council's ruling, the Elections Director made the necessary adjustments to the ruling and conducted new mandatory workshops for all the candidates who filed post-Judicial ruling. The status of the candidates who filed before the deadline did not change. After the ruling and adjustments, all parties involved were informed that the 2017 Election would take place during Weeks 1-3 just as initially planned. The Election Director answered any questions about the Elections Process before and after the Judicial Decision and made the new provisions known to all parties, so there should be no confusion about the Elections Process.

An argument could be made there was confusion in regards to the Judicial Council's decision about how the constitutional statutes were applied, but any confusion on that level could have been addressed had people spoken to the Judicial Council about the decision. Several people including Kevin Tseng, Carisha

Moore and President Karim himself spoke with me personally and asked me in my capacity as Chief Justice about the ruling, the logic behind it and what the implications were for the election. Thus any confusion should have been dispelled, especially since the Judicial Council is the ultimate authority on interpretations of the Constitution, Bylaws and Rules of Procedure.

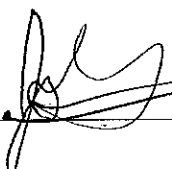
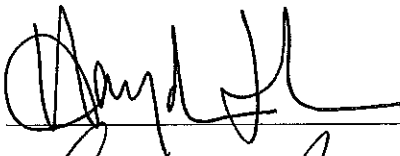

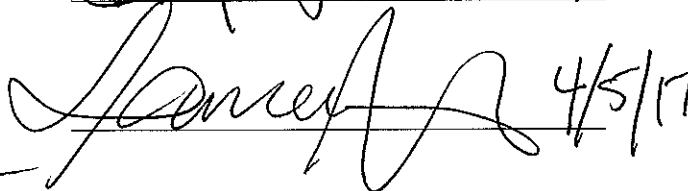

Additionally, according to the Finality Clause in the ASUCR Constitution Article VI, Section F:

*All decisions from the Judicial Council shall be final unless reversed by subsequent Judicial Council action.*

In each instance where a Justice was questioned about the decision made by the Council, the Judicial Council answered all questions. When the individuals argued that the Council was incorrect in their reasoning or didn't take certain evidence into consideration, the individuals were informed to file an appeal make their case to the Judicial Council. As outlined by the Finality Clause, the only way to change a Judicial Decision would be to make your argument to the Council via an appeal and change their minds with superior logic and reasoning. The Judicial Council has not received an appeal in the time that the decision was released. Therefore, the argument cannot be made that there was confusion in regards to differences in interpretation of constitutional statues because an appeal was never filed, even though people were informed to file an appeal if they felt that the Judicial Council erred in their reasoning. If there truly was confusion about the Council's ruling, it stands to reason that an appeal would have been filed.

With all of this being said, in applying President Karim's Executive Order to the aforementioned test to determine whether or not a President has sufficient reasonable grounds to issue an Executive Order, the Judicial Council finds that President Karim's Executive Order answers in the affirmative to the first question. However, the Judicial Council believes that President Karim had insufficient reasonable grounds for issuing his Executive Order, given the critical analysis of his reasoning. President Karim's Executive Order, therefore, answers in the negative to the second necessary question and as such must be struck down. The ASUCR Judicial Council hereby rules President's Karim's Executive Order unconstitutional; any orders that came from the Executive Order will not be recognized and any provisions will not be followed in order to assure the smooth and efficient operations of ASUCR.

\*\*Let it also be stated for the record the President's Executive Order is misleading when it implied the President consulted with me before making his decision. The definition of consult is to seek information or advice from someone with expertise in a particular area. While the President did speak to me about his concerns regarding the MO W17-JR-05, my response in my capacity as Chief Justice was to file an appeal with the Judicial Council and to make any argument he had in court. Any implications suggesting I gave approval, advocated or supported the issuing of the Executive Order would be factually inaccurate.

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Notification of Strikes Assigned to President Shafi Karim

Decided April 4, 2017

JUSTICE MATTHEW WHILES delivered a concurring opinion:

In a 3-0-2 decision motioned by Justice Matthew Whiles, the ASUCR Judicial Council has issued ONE strike to President Shafi Karim for issuing an executive order that sought to disrupt the annual elections of ASUCR by ordering that elections be held two weeks later than scheduled.

Pursuant to the Judicial Rules of Procedure Title IV, Section 4:

- a. *Strikes are a way of assigning differing levels of corrective action based on the severity of a breach of the rules. Therefore, the Judicial Council does not have strike allocation guidelines, as the allocation will be based on the facts of the matter.*
- b. *Strikes will most often be assigned as a result of a guilty verdict in a case against a member of ASUCR. However, the Judicial Council has the authority to assign strikes in other situations when it feels it is necessary and proper. In situations where strikes are assigned as a result of something other than a guilty verdict, the notification of strikes assigned will be accompanied by a written explanation.*

On April 3, 2017, President Karim issued an executive order to suspend the beginning of the elections cycle for two weeks. The Judicial council found that this executive order needlessly disrupts the elections cycle which states that campaigning would begin on April 3, 2017. President Karim stated that he had spoken with Chief Justice Gbujama and Chief Justice Gbujama told President Karim that any judicial ruling would take precedent over an executive order as stated by the ASUCR constitution Article VI, Section F. The Judicial ruling which the executive order is concerned with was given on the 10<sup>th</sup> of March and the three weeks since have given sufficient time for an appeal to be filed. I believe that an appeal to the Judicial decision should have been made well in advance to the start of elections so that appropriate actions could have been taken and that the candidates could be made aware to any changes in the elections timeline had the appeal been successful. As it stands that there has been no proper appeal filed, President Karim's actions indicate a willful desire to prevent elections from taking place in the manner prescribed by the Senate's approved timeline and subsequent Judicial rulings regarding the 2017 elections.

Furthermore, President Karim's executive order also has ramifications that affect not only ASUCR and the undergraduate student elections, but also the Graduate Student Association and their own elections. In an email sent on April 3, 2017 from GSA President Shawn Ragan to ASUCR Executive Director Laurie Sinclair, GSA President Ragan expressed a concern that the executive order would have significant impact on GSA. President Ragan's concerns are as follows:

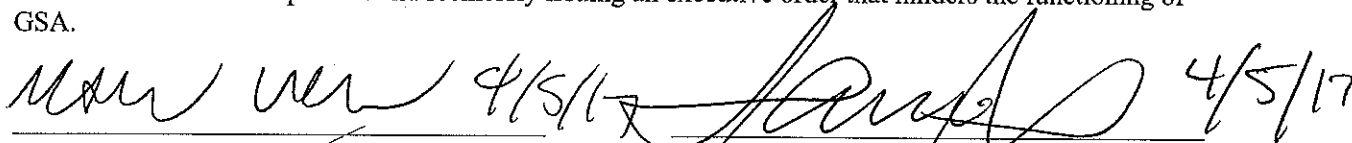

“First: The election dates have been scheduled for some time and we have already advertised these dates and planned around and spent money based on the April 17-20 election cycle. We face challenges with graduate student participation in elections, at least in reaching the 20% required for certain referenda (like the one we have on the ballot this year). A change in the date now would undermine all of the advertising and work that we have done and the activities that we already have scheduled to promote the election.

Second: We are working on several projects and administrative functions whose timelines are based on the election cycle. A two-week delay would substantively hinder what we can accomplish in the remainder of this academic year, which will also adversely affect the start of next year. We need the entire time from the end of the already-scheduled election cycle through the end of the academic year to complete these projects and activities.

Third: We have a referendum on the ballot. Among other things, the referendum will impact our budget, which is to be presented at our April 26th Executive Board meeting and our May 3rd General Council meeting. There is no way that we can have a budget prepared before we receive the election results and, based on ASUCR's proposed timeline, the elections would not even conclude until May 4th. This is too late in the year. Additionally, depending upon the referendum results, we will either have to hire someone for the position or start working on alternatives. Again, a delay would significantly impede this work.”

As shown in GSA President Ragan's concerns, the delay of the election timeline causes major issues for the administrative functions of GSA. Considering that GSA has been unable to meet the 20% required turnout in the 2011, 2012, 2013, and 2014 elections, I believe that President Ragan's concerns are well founded and that president Karim's executive order would almost certainly undermine actions taken by the GSA to reach their required turnout.

Ensuring that elections are fair and that ASUCR runs smoothly is the duty of Judicial Council to uphold. Attempts made to disrupt the elections cycle not only cause confusion, but also impede the ability for the student body to elect their representatives. Accordingly, I believe that it is not sufficient to merely nullify the executive order, but also that punitive action should be taken against President Karim for his attempt to obstruct the elections process and recklessly issuing an executive order that hinders the functioning of GSA.

  
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