



Official Opinion of the ASUW Judicial Council



Majority Opinion handed down on April 4, 2016 by the following Justices:

Acting Chief Justice Terrell, Associate Justices Hull, Rams, Ryan, and Westover.

Acting Chief Justice Terrell, Associate Justices Hull, Westover, and Ryan Concurring.

Associate Justice Yang Dissenting.

The matters recently before the Associated Students of the University of Wyoming (ASUW) Judicial Council are unlike any that the Council has adjudicated in recent memory. The complicated issues of ethics and interpretation have created a quandary of great importance to the students of the University of Wyoming. Thus after multiple weeks of evaluating evidence and submissions, we rule as follows.

We perceive the matters before us as three distinct issues. The issues are divided by the Council as such; first, the general conduct of the parties involved in the complaint. Second, the status of the Interfraternity Council (IFC) and Panhellenic Council (PHC) as programs of the ASUW. Third, the status of Addendum C of Senate Bill #2489.

In the interest of using this opinion as precedent in future adjudication, the complaints on which it is based as well as any responses or supporting documents will be attached.

General Conduct of Involved Parties:

The Judicial Council is generally disappointed with the lack of professionalism by all parties involved. It seems that before us was an escalating game of political one-upmanship that led to a complaint finally being filed, rather than a civil dialogue from the beginning.

The Council finds itself in a difficult position because, while we find that the conduct of all involved parties as unbecoming of their offices, we do not have any enumerated guidelines to function as a proverbial yardstick by which to measure the ethics of the conduct. In Federal Governance, for example, the code of ethics is 35 pages long. In Law, there are specific enumerated elements for every claim, laid out for every violation and clause of the Code of Ethics, making it very simple to determine what is a violation and what is not. Without the necessary framework in place, we face setting the troubling precedent of punishing actions based on subjective interpretation rather than objective analysis. This is improper as it would be based on nothing more than what the Council thought, effectively placing the Council in the very same position as the parties. As a result of a lack of essential supporting infrastructure in

our organization's working documents, we hold that there are no justiciable actions it may take in regards to the question of ethical conduct. Nevertheless, nothing in this opinion should be construed as to deny the ASUW Senate its related powers of oversight. Furthermore, the Council declines to use the present case as an opportunity to create from whole cloth standards of ethical conduct more properly debated and enacted by our students' elected representatives. While the need is dire, it is not the purview of the judiciary to legislate.

The purpose of having a Judicial Council is to ensure fairness and justice in actions of this organization, and that is a goal that can never be met without proper record of past decisions. The memory of the ASUW is short. By virtue of being a student organization there is a very quick turn over in our organization, and that means that decisions made even just two or three years prior are a distant memory with only a few students remaining to recount the events. Therefore, we encountered difficulty when we looked into the possibility of observing past decisions in an effort to extract a form of common law standards. The Council would have been able to research the potential precedent set in previous decisions, and those involved may have been able to avoid the situation at hand if they were aware of actions taken by our body in the past, but this was not possible as opinions of the Council have not been published or archived prior to this date. It is enumerated in our working documents that the ASUW archive our decisions, and we hold that from this point forward, our decisions need to be publically available at all times, and this means online.

Confidentiality is unquestionably a key to informed and proper adjudication of any matter. The truth is often only brought forward once it is established that those that carry it can do so without fear of retribution. In the case at hand a third party attempted to submit evidence of their own accord for our review. We speculate that due to the rarity of a complaint being filed, there was confusion regarding the submission procedures for such a situation, and the evidence was sent to the ASUW Office Associate on her personal University of Wyoming email account. Included in this evidence was confidential information that the third party asked redact prior to releasing outside of the Judicial Council. Because the Office Associate was out of town, the office aide (a recently hired work study student still learning standard procedures for the office and not a full time employee) was asked to check the associates email for submitted legislation. At this time, Vice President Kath was looking over the shoulder of the office aide and saw the third party evidence. She then asked that it be forwarded to her. This created an issue because the President and Vice President had access to evidence for multiple hours before the Judicial Council, and they had time to craft a response. Additionally, this created a breach of confidentiality, which is an issue beyond the scope of this Council. We are concerned and wish to note however, that this may have been a breach of the Student Code of Conduct due to the request for confidentiality and preceding breach. The Judicial Council lacks the

authority to determine if actions are a violation of the Student Code of Conduct, and hereby refer this issue to the Dean of Students.

Status of Interfraternity and Panhellenic Councils:

Many parties raise issues related to the process by which IFC and PHC ascertained RSO status. We remand those issues to the IFC/PHC Joint Standards Board, for determination of appropriateness of process followed. The Standards Board needs to determine if their voting procedures were precisely adhered to when the votes to become RSO's were cast by both organizations. If the Standards Board agrees that procedures were faithfully executed, then the movement to an RSO should stand. If there is found to be any deviation in the procedure of the vote however, then a revote should be undertaken to determine with surety the statuses of IFC and PHC. It is well established that an organization may vote to become an RSO and with these two organizations that autonomy shall stay.

While we have declined to rule regarding the role of IFC and PHC in ASUW, we must condemn the act of interpreting the By-Laws of the ASUW by the Executive Branch. Interpretation of our working documents is a right that is only granted to the Council. Doing so ensures an objective resolution to conflict and the continued separation of powers which is essential to any democratic model of governance. The Executive Branch had an opportunity to ask for an official interpretation of the situation at hand from the full Judicial Council, and instead requested that the former Chief Justice give their their private opinion. The circulation of that advisory opinion as a ruling of the JC was misleading and inappropriate. Politics masquerading as justice undermines confidence in government and must not be tolerated.

Addendum C of SB #2489

This Council recognizes that the President and Vice President of ASUW have a right to express themselves and their opinions as duly elected leaders of the student body. There is a proper time, place, and method for all such expressions. For example, the Vice President is precluded from speaking on legislation on the floor, as it is the Senate's forum within which to reach its own conclusions. The Council recognizes the issues raised by President Schueler and Vice President Kath in addendum C and we are not dismissing them, nevertheless an Addendum to legislation is simply not the place for such statements.

Our authority on this matter is derived from the ASUW By-Laws, Article II, Section 3, Subsection C which states "...the Council may render final decisions regarding the actions of the ASUW Executive Branch for actions found to be *procedurally inappropriate or incorrect pursuant to the provisions of all ASUW working documents*, including, but not limited to, the ASUW Constitution, the ASUW By-Laws, the ASUW Rules and Procedures, and the ASUW Finance

Policy". Although the statements already made cannot be taken back and little can be done to reduce the impact that Addendum C has already had on the organization and legislation, we must adhere to and enforce our working documents and remove Addendum C to preserve the standard of legislation by precedent in the future.

The Council notes that Article II, Section 4, Sub-Section A of our By-Laws states, "The Council will not render a final decision until the appropriate body, unit or committee of original jurisdiction has fulfilled all of its responsibilities in the matter." In light of our remand to the Joint Standards Board of IFC and PHC it would be ideal if we could wait to render final judgment pending their decision. We hold however, that current budgetary concerns with the situation at hand is a superseding cause that warrants action on our part.

Order

We remand the matter of the vote by IFC and PHC to become RSO 's to the individual and respective Board's of the Interfraternity and Panhellenic Councils, and subsequently enforced internally with the guidance of their advisor and the Dean of Students. It is our hope that they can reach a swift decision and thus resolution in the matter.

We ask that the ASUW Professional Staff work with UWIT to remedy the website issues, in order to create a functional online database of Judicial Council decisions. We also ask that they work with the Council to create a confidential online submission form, which only sends complaints to a Judicial Council email address, and the Judicial Council Advisor. In the interim, internal training is required for the proper handling of future complaints.

We hold that Addendum C was procedurally inappropriate, and officially remove it from SB# 2489. The remainder of the legislation is unchanged.

We hereby lift the injunction placed upon Senate Bills 2487, 2489, and 2492. They may now be discussed and advanced in all applicable circumstances, bearing the removal of Addendum C from SB# 2489.

RE: Judicial Council Opinion

Sara L Axelson

Fri 4/8/2016 9:56 AM

To: Casey R. Terrell <cterrel1@uwyo.edu>;

Cc: Jason B. McConnell <jasonmac@uwyo.edu>; Noah Clayton Hull <nhull@uwyo.edu>; Chris Ryan <cryan11@uwyo.edu>; Caitlin E Rams <crams1@uwyo.edu>; sabrinawestover@yahoo.com <sabrinawestover@yahoo.com>; Richard Ruiqi Yang <ryang3@uwyo.edu>; ASUW President <ASUWPres@uwyo.edu>; ASUW Vice President <ASUWVP@uwyo.edu>; Christopher Martin Ellbogen <cellbog2@uwyo.edu>; Sean S. Blackburn <sean.blackburn@uwyo.edu>; Macki Snyder <msnyde11@uwyo.edu>; Daniel Scott Kerbs <dkerbs@uwyo.edu>;

📎 4 attachments (154 KB)

Dissenting Opinion Issued by Justice Yang on April 2nd.docx; ASUW Complaint FINAL.DOCX; Concurrence of ACJ Terrell and Associate Justices Hull, Ryan, and Westover v4.0_Final.docx; Concurrence of ACJ Terrell and Associate Justices Hull, Ryan, and Westov....docx;

Dear Acting Chief Justice Terrell:

I have reviewed the attached Official Opinion, Dissenting Opinion and the Concurrence of Judicial Council Opinions. Generally I support the Order issued, with the following caveat:

In regard to remanding the vote by IFC and CPH to become RSO's, I believe that the best course of action is to demand the votes to the respective leadership of the Interfraternity Council and College Panhellenic Council. The individual council's should review whether or not they should be RSO's.

In accordance with Article III, Section 3, A. of the ASUW Bylaws I approve the Official Opinion and Order with the above caveat.

Sincerely,
Sara Axelson

Sara Axelson
Vice President for Student Affairs
University of Wyoming
Laramie, WY 82071
saxelson@uwyo.edu
307-766-5561

From: Sara L Axelson

Sent: Tuesday, April 5, 2016 6:22 PM

To: Casey R. Terrell <cterrel1@uwyo.edu>; Daniel Scott Kerbs <dkerbs@uwyo.edu>; ASUW President <ASUWPres@uwyo.edu>; ASUW Vice President <ASUWVP@uwyo.edu>; Christopher Martin Ellbogen <cellbog2@uwyo.edu>; Sean S. Blackburn <sean.blackburn@uwyo.edu>; Macki Snyder <msnyde11@uwyo.edu>

Cc: Jason B. McConnell <jasonmac@uwyo.edu>; Noah Clayton Hull <nhull@uwyo.edu>; Chris Ryan <cryan11@uwyo.edu>; Caitlin E Rams <crams1@uwyo.edu>; sabrinawestover@yahoo.com; Richard Ruiqi Yang <ryang3@uwyo.edu>

Subject: RE: Judicial Council Opinion

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Order

We remand the matter of the vote by IFC and PHC to become RSO 's to the Joint Standards Board of the Interfraternity and Panhellenic Councils, care of Chairman John Fritz, and subsequently enforced internally with the guidance of their advisor and the Dean of Students. It is our hope that they can reach a swift decision and thus resolution in the matter.

We ask that the ASUW Professional Staff work with UWIT to remedy the website issues, in order to create a functional online database of Judicial Council decisions. We also ask that they work with the Council to create a confidential online submission form, which only sends complaints to a Judicial Council email address, and the Judicial Council Advisor. In the interim, internal training is required for the proper handling of future complaints.

We hold that Addendum C was procedurally inappropriate, and officially remove it from SB# 2489. The remainder of the legislation is unchanged.

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Concurrence of Judicial Council Opinion Issued April XX, 2016

Issued by Acting Chief Justice Terrell and Associate Justices Hull, Ryan, and Westover:

This consent is taken into the view of the opinion aforementioned in this decision. However, we felt *strongly* in voicing our views on the issues at hand and what has transpired since the original complaint by Mr. Kerbs on February 25, 2016. We fully acknowledge that underlying this complaint, there are tangible issues that fundamentally needed to be addressed. To our knowledge and in consultation with Associated Students of the University of Wyoming (ASUW) staff members and University of Wyoming administration, this is one of the most complex complaints to have been considered by the Judicial Council (JC). It also appears to be the first time an injunction has been executed to prevent further harm to ASUW while a complaint was being considered by the JC. In an attempt to be concise, we will try to address the issues as they arose during these complaints being brought to the attention of the JC.

First, upon the addressment of this issue, President Schueler of the Executive Branch of ASUW contacted former Chief Justice of the JC. He asked for the Chief Justice's personal view on the interpretation of ASUW working documents and noted that the entire JC did not need to be convened for said interpretation. He then went on asking for guidance regarding whether an amendment on a piece of legislation would be proper. Her response to him was then circulated and portrayed as the opinion of the entire JC. This raises numerous concerns. The Chief Justice of the JC should not be presenting personal opinion, especially in light of not involving the entire JC. This undermines the purpose of the JC. This issue led to the Chief Justice recusing herself from the complaint and ultimately ended with her resignation. This Justice was one that was dedicated to ASUW and was serving a second term on the JC. ASUW lost a well-versed and highly competent member of ASUW due to the actions by President Schueler. We acknowledge that there is blame to be had on both sides, as the Chief Justice should have known better than to have walked through this poisonous door opened by President Schueler.

Secondly, the core of the Kerbs complaint dealt with Addendum C for ASUW Senate Bill 2489. This Addendum was penned and signed by President Schueler and Vice President Kath. In our combined ten-years working with ASUW, we have never seen an Addendum of this sort attached to a piece of legislation. It is our belief that this Addendum was an attempt to unduly sway the vote to their favor in passing this piece of legislation. Included in the Addendum are strong insinuations regarding the lack of character of members of the Interfraternity and Panhellenic Councils and its leadership. Additionally, there are insinuations towards upper administration of University of Wyoming suggesting an attempt to silence the truth pertaining to a case of fraud that occurred in the fall of 2015. In President Schueler and Vice President Kath's rebuttal to the Kerbs complaint, they state "...Addendum C, submitted to the ASUW Senate for consideration, was chosen with diligence...". As upperclassman of University of Wyoming, I would suspect that further consideration would have been paid in penning this Addendum, I strongly disagree that diligence was exercised in this document. Overall, we align strongly with the sentiments of the Kerbs complaint. We believe that the statements made by the Executive Branch were indeed accusatory in nature and completely unwarranted. Additionally, via written testimony, it appears that President Schueler repeatedly misrepresented the stance of the JC on the interpretations of the working documents as well as gave personal opinion that included innuendos of wrongdoings by Interfraternity Council (IFC) and Panhellenic Council (PHC) leadership.

On March 1, 2016, Dean Blackburn wrote to ASUW, IFC, and PHC members to address the statuses of these programs. He supplies multiple documentation that underscores the murkiness of the

classification of these programs. We agree with his concerns. This brings up a larger concern of ASUW not honoring or abiding by their previously passed pieces of legislation. Much of this issue arises in the transition of the Executive office from year to year, however, ASUW should make a more concerted effort to honor past legislation and correct any inconsistencies.

Finally, our last core contention has to do with the submittal of third-party evidence by a member of ASUW. This evidence was submitted to Danae Davis's personal University of Wyoming email account, not the general ASUWgov account. The email was timestamped at March 3, 2016 at 2:12PM. It was requested that it be forwarded directly to the Acting Chief Justice. Contained in this email was evidence that appeared to show a discrepancy of accounts provided by President Schueler, more specifically inaccuracies of timestamps on emails. Additionally, there was confidential student information that we were requested to redact prior to distribution outside of the JC. On March 3 at 3:58PM, President Schueler contacted the Acting Chief Justice to inquire if there was a concern into his timestamps on the emails. This email perplexed the JC, as we were not aware that this issue was at the forefront of the investigation. Ms. Davis followed with an email on March 4, 2016 regarding this email mishap. In her written statement, she gave permission to the undergraduate ASUW work-study aide to search the ASUWgov account, which is on her Outlook with her personal University of Wyoming account. Ms. Davis goes on to state that while the aide was checking the ASUWgov account, Vice President Kath was standing over the aides shoulder reviewing the emails. Vice President Kath saw this submitted evidence for the JC and instructed the aide to forward it to the Vice President's email address. The JC was not aware of this evidence, by means of the original email, until March 3 at 8:00PM (five hours and 48 minutes from the time it was sent to Ms. Davis's email, and four hours and two minutes since President Schueler inquired to the Acting Chief Justice). We hold no responsibility on the part of Ms. Davis nor the aide. The aide was doing what they thought was right and what was asked of them was by senior leadership in the ASUW Executive Branch. However, this issue is most troublesome. This email contained confidential student information and the email was requested to be sent only to the Acting Chief Justice. By subverting this email to the Executive Branch (at the behest of Vice President Kath), this allowed the Executive Branch to get a jump-start on the defensive had there been tampering with timestamps on emails submitted by President Schueler. This again underscores the lack of professionalism, and is conduct unbecoming of Vice President Kath and President Schueler.

In conclusion, we find that these complaints and rebuttals are extensive and complex. The actions taken by Vice President Kath and President Schueler are far outside any normal working protocol in any professional environment. They are also outside of the normal standard operating procedures of ASUW based on our years of experience with this body. Had the JC had a better-outlined metric to evaluate ethical behavior in our working documents, we would not hesitate to levy sanctions against President Schueler and Vice President Kath, up to and including impeachment. We are remorseful that no such metric exist to levy such sanctions. We also recognize that both President Schueler and Vice President Kath are members of the Greek Community and this issue at hand is close to their vested interest. We ponder what the outcome may have been had they not been so close to this community. We also ponder had they included the full JC in the interpretation and overall issue, that much of this could have been mitigated before it self-destructed. The actions portrayed by these members of ASUW illustrate ASUW in a negative light to the campus community. ASUW goes to great lengths to be professional, and to truly keep the interests of all students in the forefront of its concerns. It seems, to the Justices of this concurrence, that there were actions taken by President Schueler and Vice President Kath that were

taken in order to 'win'. These Trump-like style of politics has no place in ASUW. Such actions are beneath ASUW. Although we lack a metric to put actions behind these strong words, we hope that it will serve as precedent in dealing with future ethical issues. It is our hope that ASUW can be brought back into a positive light moving forward.

Dissenting Opinion Issued by Justice Yang on April 2nd, 2016

In the evaluation of a couple of complaints submitted to the Associated Students of the University of Wyoming (ASUW) Judicial Council (JC), I have a different opinion than the JC's majority opinion and concurrence opinion. I felt strongly in voicing on the matters and would like to sincerely express my dissent.

First, I agree that this is a very complex case. The JC did not have enough time to investigate the whole case and could not have a complete opinion about these complaints, due to the ASUW budgeting process and deadlines for next year's Interfraternity Council (IFC) and Panhellenic Council's (PHC) budgets. There are issues of ethical conduct involved for *both* parties. Without the necessary framework, the JC is facing the difficult situation to determine what is a violation and what is not. Violations of the student code of conduct are very serious allegations for every student, especially for the student leaders. We shouldn't make a conclusion in a short time frame and without a full investigation. For any condemning opinion expressed in the official document, the JC should give that party a chance to respond and hear their account of what happened. Otherwise, the case cannot be resolved and may result in the party filing a dispute against the JC. This is why I insisted on setting up a hearing. I absolutely agree that these issues about ethical conduct be referred to the Dean of Students office. The JC should transfer all the evidence it has to the office, and request the office to investigate the case completely, objectively and fairly, rather than attaching the JC's tendentiousness on the matter. At the same time, I think the JC treated both parties involved in this case differently. For example, regarding the complaint and evidence against Senator Kerbs, the JC did not specifically describe them in the official opinion and express any sort of tendentiousness or condemnation. I fully support this way of issuing the opinion. On the other hand, regarding the complaint and evidence against President Schueler and Vice President Kath, the JC described them specifically in the official opinion and expressed a kind of tendentiousness and condemnation. Since the JC refers these issues to the Dean of Students office and did not investigate the case completely, I think that writing these views is unnecessary. The JC should not hold any point of view and express tendentiousness on the matter of ethical conduct.

Secondly, the JC ruled that Addendum C of ASUW Senate Bill #2489 was procedurally inappropriate, and officially removed it from the legislation. However, the content of Addendum C is the core point of these complaints. The JC recognizes that the President and Vice President of ASUW have a right to express their opinions. I think Addendum C is the channel that they chose to express their opinions, and that it is not procedurally inappropriate. Members of the ASUW Executive Branch used this channel to express their concern about the voting procedure done by the IFC and PHC to become RSO's. I think how the vote was conducted is the key component here. The JC didn't know how the vote took place, and whether or not students' rights have suffered enormously as a result of improper procedures. In this situation where the JC did not fully investigate the matter, the JC should remain neutral and not have an opinion that supports either parties involved in the case. However, by removing Addendum C from the legislation, this is effectively expressing the JC's favor of one party over the other. Removing

Addendum C is infringing on the legislative process of Senate Bill #2489 in the ASUW Senate, and may alter the decisions and choices of the student body's elected representatives. Therefore, I disagree with the removal of Addendum C from Senate Bill #2489.

Lastly, I would like to suggest that the ASUW Senate and Executive Branch discuss Senate Bill #2489 objectively, actively, and professionally. The two parties involved should eliminate any misunderstanding with each other in order to make the correct judgment for Senate Bill #2489, so as to maximally benefit the students' interests. It is essential to discuss whether the IFC and PHC will have financial support in the next year. I agree with the JC's official opinion regarding the status of the IFC and PHC. Communication between the Dean of Students office, ASUW, Fraternity and Sorority Life office, IFC and PHC may also be needed.

All members of ASUW should remember that our aim is to better serve the students. It is understandable that we may have different opinions during the legislative process. It is also understandable if anyone makes mistakes while serving the students. However, we should be working together and finding a common ground rather than attacking or complaining about each other. Encouragements and suggestions are better suited.

Respectfully,

Justice: Richard Yang

On April 2nd, 2016