

Majority Opinion By Council Chair Kaufman

JUDICIAL COUNCIL OF THE ASSOCIATED
STUDENTS OF OREGON STATE UNIVERSITY

Drew Desilet, ASOSU Faculty Advisor

APPEAL TO THE ASOSU JUDICIAL COUNCIL
(No. 17-008.a)

[January 18, 2018]

Drew Desilet, ASOSU Faculty Advisor, brought an appeal before the Judicial Council pertaining to the Majority Opinion on Inquiry 17-008.i. Mr. Desilet alleges that both legal and technical errors were made in the Judicial Council's decision on Inquiry 17-008.i. The Judicial Council identifies two alleged errors in its prior decision that are central to Mr. Desilet's appeal. Firstly, Mr. Desilet asserts that democratic representation within the ASOSU is a right, both inherent and enumerated within the ASOSU Constitution, and that the Judicial Council's decision to limit the scope of that right is in direct contradiction of Article II, Section A of the ASOSU Constitution. Secondly, Mr. Desilet further asserts that the specifications for ASOSU membership established in the decision on 17-008.i would place an undue burden on the Office of the Registrar, by necessitating an unfeasibly large number of parameters be referenced to determine the eligible student population for ASOSU elections.

In consideration of the first error alleged in Mr. Desilet's appeal, the Judicial Council rejects any implied legal argument that redefining membership within the ASOSU is beyond its powers, as enumerated in Article V of the ASOSU Constitution. In redefining ASOSU membership, the Judicial Council established its interpretation of what the words "students of Oregon State University" mean, within Article II, Section A of the ASOSU Constitution, which states: *"All enrolled students of Oregon State University are members of the ASOSU"*. The Judicial Council's interpretation pertains only to what the words "students of Oregon State University" mean within the context of the ASOSU Constitution, and its decision establishes direction only for the ASOSU's internal processes; therefore, redefining the membership of the ASOSU falls well within its powers, as defined in Article V, Sections C and D, which state: *"The power of the Judicial Council shall arise exclusively from any case or controversy brought before it, pertaining to any questions of interpretation of ASOSU Constitution and Statutes."* and *"The Judicial Council shall be the final authority on questions of interpretation of ASOSU Constitution and Statutes."*, respectively. The Judicial Council holds that its discretion in interpreting the ASOSU Constitution and Statutes is absolute, insofar as any interpretation established in its decisions answers a question that is presented in, or can be logically derived from, the case or controversy being decided. Nevertheless, the Judicial Council finds merit in the philosophical arguments

presented in Mr. Desilet's appeal. While philosophical persuasion is, by itself, insufficient basis to overturn a previous Judicial Council decision, some elements of Mr. Desilet's philosophy are borrowed in the remedy prescribed herein.

In consideration of the second error alleged in Mr. Desilet's appeal, the Judicial Council acknowledges the claims of technical infeasibility in its prior decision, and is not inclined to challenge or seek evidence of their veracity. In this specific instance, the Judicial Council accepts Mr. Desilet's professional opinion *prima facie*. Consequently, the Judicial Council partially overturns its prior decision on the basis that its stipulations would have imposed impracticable requirements on entities external to ASOSU, thereby rendering it unenforceable.

To remedy the error present in its prior ruling, the Judicial Council nullifies the definition of ASOSU membership established therein. Pursuant to the questions initially put forth in Inquiry 17-008.i, the Judicial Council establishes that all students enrolled on any OSU campus shall be eligible to vote on a constitutional rewrite. The threshold for that vote shall remain two thirds of a number of students equivalent to 15% of the Corvallis campus population. Secondly, the Judicial Council specifies that the ASOSU ballot have an initial section, prompting students to enter their campus of primary enrollment, and directing them to the appropriate sections of the ballot thereafter. The Judicial Council further specifies that only students who select Corvallis as their campus of primary enrollment shall be eligible to vote on and run for the offices established in the ASOSU Constitution. However, the Judicial Council adds the requirement that any constitutional rewrite the Congress puts on the ASOSU ballot must establish elected bodies for each outside campus, comprised of its own students, to represent their interests to the ASOSU.