



Unanimous Opinion By Council Chair Sonpatki and Vice Chair Hampton

**JUDICIAL COUNCIL OF THE ASSOCIATED
STUDENTS OF OREGON STATE UNIVERSITY**

Dylan Perfect, Member of the ASOSU

INQUIRY TO THE ASOSU JUDICIAL COUNCIL
(No. 23.027.i)

[February 3rd, 2023]

Dylan Perfect, on behalf of the ASOSU Constitutional Transitional Committee, requested that the Judicial Council review the ASOSU governing documents with regards to the establishment of constituency-based seats for the 2023-2024 student government. The primary questions presented to the JC were as follows:

1. Is the current Congress able to establish constituencies without being subject to the judicial proportionality tests otherwise required by Article I(C)b of the amended Constitution?
2. If legislation passed by the current Congress is not exempt from the above-cited judicial proportionality tests, is the current JC empowered to complete these tests in satisfaction of these requirements?

After thorough and thoughtful deliberation, the Judicial Council has found the current Congress to be in violation of the policies and procedures required to establish constituencies for the 2023-2024 student government. Even if the current Congress had established these constituencies in accordance with the Constitution, it was determined that the current JC does not have the power to carry out the judicial proportionality requirements outlined in Article I(C)b of the amended Constitution regardless.

One of the questions that arose when determining which components of the current Constitution,

amended Constitution, current Statutes and transitional Statutes are applicable to this case was whether the amended Constitution had been ratified at the time of the meeting. In order to be ratified, the current Constitution requires a bill passed by two-thirds of both houses of Congress and the subsequent approval by at least 15% of the ASOSU student body with two-thirds of the student body voting. On the other hand, SB-81.09 (the “Unicameral Constitution Bill”, which presented the amendment) includes language stating “Upon passage, the Constitution of the ASOSU Student Government be amended to read as indented below, pending approval of the student body as a ballot measure in the 2022 ASOSU Election and pending approval of the OSU president, in accordance with all applicable constitutional requirements.” Included is the added stipulation requiring the approval of the OSU president in order for the Constitution to be ratified.

However, the JC found the SB-81.09 clause cited above to be in reference to the clause that directly follows it, which adds the language “in accordance with all applicable constitutional requirements”. The applicable constitutional requirements were thus interpreted as taking precedence, and the JC came to an agreement that the approval of the OSU president is not required for the ratification of the amended constitution. The ratification of the amended constitution occurred when the 2022 ASOSU election was certified by the 2022 ASOSU Elections Chair and Committee. Of note, the JC did not review the requirements for ASOSU to remain the recognized student government on campus, which falls outside the scope of this writ.

Article VII(B)a-b of the amended Constitution includes the following clause: “The next regular election of the ASOSU following ratification shall be held in a manner consistent with the positions to be filled under the provisions of this Constitution and as provided herein. In all other respects, this Constitution shall take effect on the June 1 following that same election, at 12:00 p.m. Pacific Time.” The JC found that because the amended Constitution had already been ratified by the time of the meeting, the Elections Committee (hereby referred to as “the EC”) must follow the provisions of the amended constitution when determining the positions available for the 2023 election.

Article VI(A) of the current constitution states that the EC must be established no later than Friday of the fifth week of fall term which is the 28th of October for the 2022-2023 school year. Senate minutes from the October 18th, 2022 meeting of the senate make reference to assigning senators to the EC. However, according to meeting minutes, SB-82.06 passed the Senate on November 22nd, 2022 and the House on November 30th, 2022. Article I(C)a of the amended Constitution states “At any time prior to establishment of the Elections Committee under Article VI, the Senate may establish by statute constituency-based seats for the applicable election cycle.” Given that the EC was established (and met several times) before the Transitional Statutes were enacted in SB-82.06, there was a clear violation of the requirements for establishment of constituencies in accordance with the amended Constitution.

With respect to the Judicial Council's role in the establishment of constituency-based positions in elections, Article I(C)b of the amended Constitution states "Prior to the establishment of constituency-based seats for the Senate, the Judicial Council shall review the constituencies to determine conformity with the requirements of Article 1(C)(a) as well as whether significantly disproportionate representation of one population of students over another is likely to exist. If so, the JC shall notify the Senate and President, after which the constituencies must be appropriately adjusted and reviewed by the JC in order to pass". In contrast, the current Constitution specifies in Article V(B) that "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."

The JC therefore found that while the amended constitution does include language for the positions of the next regular election to be filled in a manner consistent with the amended resolution, it does not expand the power of the current JC to review these constituencies. Furthermore, although the current Senate has the power to establish constituencies (following the guidelines in the amended Constitution) as part of their duties under Article VI(C)3 of the current Constitution, the current JC is unable to provide a satisfactory review as a part of the constituency establishment process specified in the amended Constitution.