

ASUO Constitution Court

*On Motion for Clarification:
Constitutionality of the ASUO Student Senate BDS Resolution*

[February 6, 2019]

PER CURIAM.

I

On October 22, 2018, ASUO Senate President Montserrat Mendez Higuera filed a Motion for Clarification regarding whether the non-binding ASUO Senate Resolution on Boycotting Israeli Settler Colonialism [hereinafter “BDS Resolution”] complies with the ASUO Constitution.¹

II

Pursuant to § 11.2 of the ASUO Constitution, this Court possesses the “supreme and final authority on all questions of interpretation of this Constitution and any rules promulgated under it.” Additionally, “all . . . resolutions . . . established by the . . . Student Senate shall be reviewed and approved by the Constitution Court for compliance with the ASUO Constitution before going into effect.” § 11.15.

III

Petitioner urges this Court to hold the ASUO Constitution Court is the only entity vested with the power to uphold the constitutionality of the BDS Resolution. Indeed, the ASUO Constitution grants this Court the power to review and approve all resolutions established by the Student Senate, prior to going into effect, to ensure they comply with the ASUO Constitution. § 11.15.² Such power is an inherent function of the ASUO’s system of checks and balances.

¹ The Motion for Clarification also asks this Court to interpret whether the “administrative action’ taken to strike down the financial piece of the [BDS Resolution] is constitutional and/or legal.” This Court’s authority is limited to interpreting the “ASUO Constitution and any rules promulgated under it.” § 11.2. Accordingly, this Court will not opine on whether such an action is legal under Oregon law. Additionally, given that the BDS resolution is unconstitutional on its face, this Court will not reach the question of whether such a specific action was constitutional.

² Although the Senate Rules § 3(f) provide that “[i]f the ASUO Senate passes [a] resolution, the resolution is immediately in effect,” this language directly conflicts with the ASUO Constitution § 11.15. However, the issue before this Court does not concern the constitutionality of the Senate Rule. Accordingly, a resolution is presumed to be in effect until the Court renders the resolution unconstitutional either through a filing to the Court or submission for review from the Student Senate Rules Committee. Here, the constitutionality of the BDS Resolution was first raised through a Motion for Clarification. Thus, the Court does not need to address conflicting language of the Senate Rules §3(f) at this time.

Section 2.3 of the ASUO Constitution states “No agency or program of the ASUO shall make any rule or take any action abridging the privileges and immunities of any person or program under the Constitution and laws of the United States or the State of Oregon, or the rules of the University of Oregon, or the ASUO Constitution.” Additionally, section 2.4 states “Access to activities supported in whole or in part through mandatory student incidental fees shall not be denied for reasons of sex, race, religion, age, sexual orientation, marital status, disabled, political view, national origin or any other extraneous considerations. Activities limited to living units legally segregated by sex may be limited by sex.” Taken together, §§ 2.3 and 2.4 bind all branches of the ASUO—including the Senate—to comply with the United States Constitution when they act. And, as mentioned above, §11.15 gives the Court the power to determine whether resolutions comply with the ASUO Constitution—including §§ 2.3 and 2.4. Accordingly, this Court holds that, on its face, the BDS Resolution violates the student-fee viewpoint neutrality mandate, and is thus unconstitutional.

The United States Supreme Court held in *Southworth v. The Board of Regents of the University of Wisconsin System*, 529 U.S. 217, 224 (2000) that public universities must administer the student fee program in a “viewpoint-neutral fashion” that does not “advocate[e] a particular point of view.”³

In relevant part, the third passage of the BDS Resolution states “the ASUO will prohibit the purchase of products from Sabra, Tribe, Hewlett-Packard Company, Sodastream, Motorola, Caterpillar, G4S, and Elbit Systems.”⁴ The purpose behind this declaration is to “set a precedent to call on the rest of the UO community to divest from companies and funds that are complicit in Israeli settler colonialism and the Israeli occupation of Palestine.”

On its face, this particular passage of the BDS Resolution seeks to assert control over the ASUO student fee on the basis of political ideology, religion, and national origin. The Court would like to clarify, however, that the remaining two passages of the BDS Resolution do not offend the viewpoint neutrality mandate. The ASUO is well within its authority to encourage and endorse political movements, to the extent that such actions and procedures comply with the ASUO Constitution. However, these actions are distinguishable from the third passage of the BDS Resolution because it implicates the student fee. Therefore, this passage renders the entire BDS Resolution incompatible with the viewpoint neutral mandate that the ASUO Constitution is subjected to under the authority of the United States Supreme Court. Accordingly, the BDS Resolution is unconstitutional.

It is so ordered.

³ Indeed, we echo the Supreme Court’s holding that “[t]he whole theory of viewpoint neutrality is that minority views are treated with the same respect as are majority views.” *Id.* at 235.

⁴ The BDS Resolution also provides that the ASUO “encourages the reconsideration of University of Oregon’s economic contributions to human rights violations worldwide” and “endorses the Boycott, Divestment, and Sanctions movement, by divesting from the Strauss Group, the Osem Group, Hewlett-Packard Company, Ahava, General Electric, Eden Springs, Motorola, Caterpillar, G4S, and Elbit Systems.”

