

Judicial Branch Article Amendment

Explanation of this Amendment

The judicial branch of the ASSU consists of the Constitutional Council, an independent body of President-appointed councillors keeping the elected branches of the Association in check. Although any member of the Association may file a case to challenge alleged constitutional violations, the Council has historically been an underused resource due to a lack of widespread institutional knowledge. **This amendment aims to make the Council more accessible and accountable to members of the Association** by making the Constitution's language more clear and explicit, clarifying the Council's jurisdiction, and removing contradictory and confusing provisions from the text. The amendment does not make major substantive changes to the structure of the judicial branch; rather, it updates the language to more closely reflect current practice.

A brief summary of the proposed changes is as follows:

- **Clarification of the Council's jurisdiction.** The amendment underscores the Council's limited role in a democratic association and its practice of not issuing advisory opinions. It also codifies existing precedent that the Council's duty of judicial review includes the ASSU Constitution and extends to all governing documents of the Association. Finally, the amendment defers to the elected legislative bodies to specify additional categories of cases that the Council will adjudicate.
- **Open hearings; protection of privacy and confidentiality.** The amendment preserves the open hearing policy of the Council, while ensuring that provisions such as the Rights of the Accused as provided by Article I, §4 of the Constitution are enforced. The amendment requires that the Council defer to the elected legislative bodies to specify the standard under which the Council will balance the interest of the public with the privacy of the parties involved to determine whether a proceeding is entitled to confidentiality. In addition, the amendment distinguishes between hearings and meetings so that (1) the Council can function practically and independently and that (2) the Council's official actions are issued publicly.
- **Removal of contradictory and confusing provisions.** The amendment removes contradictory and confusing language such as a vague and undefined "good faith" provision and an odd "exist[ence]" clause. It also replaces the ambiguous "shall" to the clearer "will" and mandatory "must." Furthermore, the amendment unifies all the text relating to the Council's jurisdiction by moving the "special cases" clause from the Meetings of the Council subsection to the general Constitutional Council subsection.
- **Streamlining of timelines.** The amendment simplifies the timeline under which the Council resolves a case. It removes extraneous timelines to allow the Council to provide more flexibility to the parties involved; however, overall timelines in resolving a case are preserved.

Text of the Proposed Amendment (struck words indicate removed words and underlined words indicate added words).

Article IV: Judicial Branch

Section 1. Judicial Authority

The Association shall recognize the authority of University judicial bodies over members of the Association only if those judicial bodies shall have been approved by two-thirds of those members of the Association voting in a general election.

Section 2. Judicial Review

A. Constitutional Council

1. The Constitutional Council ~~shall~~ will adjudicate all cases where the constitutionality {under the ASSU Constitution}¹ or validity under the Joint Bylaws or other governing documents of the ASSU of an act by an Association legislative body, the President of the Association, other employee of the Association, or any member(s) of the Association is called into question. Any member of the Association may initiate a case by filing a complaint with the Council.
2. The Council has the duty of judicial review, meaning that the Council will invalidate any bylaw, legislative measure, or other action or decision involved in or relevant to a case if such an action contradicts a decision higher up in the decision hierarchy. The decision hierarchy consists of, but is not limited to, the following:
 - a. The ASSU Constitution;
 - b. The Joint Bylaws of the ASSU;
 - c. The Undergraduate Senate and Graduate Student Council Bylaws; and
 - d. Legislative measures duly adopted, and the decisions of officers and designees acting within the scope of authority delegated to them.
3. The legislative bodies may jointly specify, by appropriate legislation, additional categories of cases (and their procedures and standards of review) that the Council will adjudicate.
4. The Council will also meet to adjudicate special cases as detailed throughout this Constitution.

¹ Interpreted here, and throughout the remainder of the document, as part of the May 10, 1996 Letter of Acceptance, and subsequently ratified by the Association legislative bodies.

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B. Membership of the Council

The Constitutional Council of the Association ~~shall be~~ is comprised of 5 members and will ~~shall~~ choose by majority vote a chair each year within three weeks of the beginning of fall quarter.

1. All members must be current members of the Association. Members ~~shall~~ serve until they resign, cease to be members of the Association during the academic year, or are removed by a 4/5 vote of both Association legislative bodies.
2. Should a seat within the Constitutional Council be vacant, the President of the Association ~~shall~~ will select a member of the Association to fill that vacancy. This selection must be confirmed by a 2/3 vote of both Association legislative bodies.²
3. No person may concurrently be a member of the Council and an elected or appointed officer of the Association. No employee of the Association may simultaneously be a member of the Council.

C. Hearings Meetings of the Council

1. Unless a majority of the Council deems it frivolous, the chair of the Council ~~shall~~ will call a meeting hearing of the Council within seven days of receipt of a case filing. Meetings Hearings shall must be held within ten days of the issuance of a call for the meeting hearing.
2. Once a complaint is filed, the petitioner may request a preliminary injunction in writing at any time. The injunction may issue at any time only if (a) the petitioner is likely to suffer irreparable harm in the absence of preliminary relief, (b) the petitioner is likely to succeed on the merits, (c) the balance of equities tips in favor of the petitioner, and (d) an injunction would be in the public interest. If a preliminary injunction is granted, a memorandum opinion must accompany, or follow within 48 hours of the granting of, the injunction and be made publicly available.
3. The Council ~~shall~~ will make its rulings by majority vote. In ruling on any action, it may only vote to uphold the constitutionality or validity of the action, or deem the action unconstitutional or invalid. A tie vote ~~shall~~ will be construed as upholding the action's constitutionality or validity without setting any precedent.
4. Before the Council rules on an issue, it ~~shall~~ must offer the individual or individuals accused of acting in an unconstitutional or invalid manner the right to present a case. The Council ~~shall~~ must also offer a representative of the individuals who believe the accused to have acted unconstitutionally or invalidly the right to present a case. The Council may, at its discretion, allow other members of the Association to speak to the issue.

² Interpreted as part of the May 10, 1996 Letter of Acceptance as also being the method of selection of the initial membership of the Constitutional Council, and subsequently ratified by the Association legislative bodies.

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5. Decisions regarding the constitutionality or validity of an action ~~shall~~ **must** be made at a second Council ~~meeting hearing~~ held within ~~seven~~ **ten** days of the first Council ~~meeting hearing~~ held on the issue.
6. ~~Four members of the Council in attendance at a Council meeting shall constitute a quorum for the purposes of voting on the constitutionality of an action.~~
7. ~~All meetings of the Council shall be open to all members of the Association.~~ All public records of the Council ~~shall must~~ be public **made available**. No meetings hearings of the Council may ever be closed unless necessary to comply with provisions of this Constitution or the Joint Bylaws for any reason. The legislative bodies may, consistent with this Constitution, specify in the Joint Bylaws the standard under which the Council will balance the interest of the public with the privacy of the parties involved to determine whether a proceeding is entitled to confidentiality. The Council ~~shall must~~ maintain minutes of meetings hearings and decisions taken. Furthermore, when the Council makes a decision by a majority vote, that majority shall will select a Council member **will be selected** to draft ~~within seven days of the decision~~ an official opinion of the Council. All minutes, ~~and~~ opinions, ~~and~~ decisions of the Council ~~shall must~~ be made available in electronic form within ~~ten~~ **fourteen** days of the meeting conclusion of all hearings. All opinions of the Council must be accessible to all members of the Association. A meeting or conference by members of the Council, in which no official actions are taken, will not be considered a "hearing" under the provisions of this section.
8. Information regarding the location, time and agenda for meetings hearings of the Council must be made publicly available in a public place. ~~This information must also be made available in electronic form. This information must be made available at least 72 hours before the meeting is to be held.~~
9. If the Council deems an act to be unconstitutional or invalid, that act becomes null and void. ~~Acts stemming from the unconstitutional act may by a majority vote of the Council be deemed valid if they were performed in good faith.~~ Acts stemming from the unconstitutional or invalid act, that were performed by parties that had no direct involvement in the unconstitutional antecedent act(s), may by a majority vote of the Council be deemed valid if they were performed in good faith.
10. [The Council shall not have the power to indict a member of the Association.]³
11. ~~The Council shall also meet to adjudicate special cases as detailed throughout this Constitution.~~
12. ~~The Council shall only exist during fall, winter and spring quarters.~~ The Council will be considered "in session" only during fall, winter, and spring quarters. When the Council is not in session, the timelines specified in this section will be considered frozen; but the Council may take action on a case on an emergency basis or under time-sensitive circumstances, provided that notices of hearings are properly given as required by this section.

3 Interpreted as part of the May 10, 1996 Letter of Acceptance as meaning "that the Constitutional Council shall play no role in the process of student discipline in any fashion", and subsequently ratified by the Association legislative bodies.