



The UCLA Undergraduate Students Association Judicial Board:

**USAC Request for Comment on USA
Constitution Article 2.D.2**

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Background:

The conclusion of the spring 2019 USAC general election resulted in vacancies in the offices of General Representative 2, General Representative 3, and the Financial Supports Commissioner for the 2019-2020 USA Council. Soon after the Council's installation, concerns were raised about the ambiguity in USA Constitution Article II, Section D, Clause II (USA Const. Art. 2.D.2) and its implications for Council's ability to meet quorum under the provision. On May 28th, 2019, by a vote of 10-0-0 on action item "Supporting Judicial Board Clarifying Petition as Council," the USA Council supported petitioning the USA Judicial Board to comment on the ambiguity in the aforementioned provision. On June 6th, 2019, the Judicial Board granted a Petition for Consideration submitted by USAC President Robert Blake Watson, on behalf of the USA Council, regarding Council's request.

USA Const. Art. 2.D.2 reads, "Two-thirds of the Officers of the Association shall constitute a quorum throughout the academic year." In this request for comment, the Judicial Board must provide comment on whether USA Const. Art. 2.D.2 is in reference to currently-elected members of the Association or existing elected offices, either vacant or filled.

A. Jurisdiction and Rationale in Accepting the Petition

First, this Board would like to establish its authority, and provide its rationale, in accepting this petition. USA Constitution Article VI, Section B, Clause II reads, "The Judicial Board may also question, comment, or rule upon other matters at the request of the Council or any member of the Association." Given that the USA Council, by a vote of 10-0-0, supported petitioning the Board to comment on the vagueness of USA Const. Art. 2.D.2, the Board was well within its authority to accept the petition. In addition to the established jurisdiction of the Board to accept this petition, there existed practical reasons which influenced the Board's decision as well.

Namely, there was overwhelming Council support requesting the Board to utilize this enumerated power under Article VI, Section B, Clause II (USA Const. Art. 6.B.2) of the USA Constitution. Unlike in the Birdie Investigation of 2011—where only one councilmember requested the Board exercise its power under the previously mentioned provision—in this request, every councilmember present at the May 28th meeting expressed support for requesting the Board to exercise this power.

Furthermore, currently, the Judicial Board has no document concerning requests for the exclusive exercise of its commenting power under USA Const. Art. 6.B.2. The only document the Judicial Board maintains concerning requests for the exercise of its enumerated powers is the Petition for Consideration document which

is formatted for adversarial cases where an injury has occurred, and a remedy is sought. In this request for comment, it is a non-adversarial request where no injury has occurred, and no remedy is sought. Moreover, no guidelines are present in the Official Rules of the Judicial Board concerning requests to exercise its commenting power, or the boundaries of the power itself. As a result, the Board had to recognize the aforementioned and grant leniency in accepting the petition to address the absence of guidelines governing this power, or else future terms of the Judicial Board would face the same logistical issues that beset the Board in this situation.

B. The Discretionary Authority of the Chief Justice in this Matter

As previously mentioned, the absence of provisions in the Official Rules of the Judicial Board, or guidelines in previous cases, concerning the Board's powers under USA Const. Art. 6.B.2 posed significant challenges in both requesting the Board to use its commenting power as well as the Board's execution of this power. Given these extraordinary circumstances, special measures were taken—in accordance with the Official Rules of the Judicial Board—in this Board's exercise of its constitutionally-delegated duty to comment on matters at the request of Council. Specifically, the powers vested in the Chief Justice under Article X, Section I, Clause A of the Official Rules of the Judicial Board enabled me, Chief Justice Jamail Gibbs, to assume complete discretion in the administration of the Judicial Board's exercise of its power to comment on matters at the request of Council under USA Const. Art. 6.B.2.

Article X, Section I, Clause A of the Official Rules of the Judicial Board reads, "All other processes, actions, and decisions, which are not instructed by these official Judicial Board Rules but pertain to the duties delegated to the Judicial Board by the Undergraduate Students Association Constitution and Bylaws, may be determined at the discretion of the Chief Justice..." The power to comment on matters at the request of the USA Council is delegated to the Judicial Board under USA Const. Art. 6.B.2 but not instructed by the Official Rules of the Judicial Board; thus I, Chief Justice Jamail Gibbs, assume the authority to determine the Board's process for executing this constitutionally-delegated duty until guidelines concerning its use are outlined in the Official Rules of the Judicial Board.

Discussion:

A. Regarding the Ambiguity in USA Constitution Article II, Section D, Clause II

This request for comment asks the Judicial Board to opine on the ambiguity present in USA Constitution Article II, Section D, Clause II governing quorum for the USA Council throughout the academic year. The ambiguity in question centers around whether USA Const. Art. 2.D.2 is in reference to currently-elected members

of the Association or existing elected offices, either vacant or filled. The first step in addressing this ambiguity is to consult other provisions of the Association's guiding documents concerning quorum for insight into the intended interpretation of USA Const. Art. 2.D.2. However, the Association's guiding documents, specifically the Constitution, does not assist in ascertaining the meaning of the provision in question. Namely, the only section concerning vacancies—USA Constitution Article III, Section F—outlines the process for filling vacancies but makes no mention of its impact on quorum.

Given the lack of insight from the Association's guiding documents on this matter, this Board supports the interpretation of USA Const. Art. 2.D.2 as referring to two-thirds of the currently-elected officers of the Association constituting quorum throughout the academic year for its practicality.

Outside of the current scenario where there exist three vacancies on the USA Council following an election, one can imagine a situation where there are four, six, or even nine vacancies on the USA Council. In such a scenario, whether the vacancies occur immediately after an election or in the middle of a Council's term, an interpretation of USA Const. Art. 2.D.2 that includes existing elected offices, regardless of their occupation, would render the USA Council inoperative in a time where it would need to be most active to lead the Association out of an emergency. This Board believes the aforementioned interpretation of USA Const. Art. 2.D.2 would prove impractical in emergencies by rendering the USA Council unable to act in a time of crisis. Furthermore, to support such an interpretation would be in support of frustrating the Council's governing capabilities in an emergency and, by extension, represents a betrayal of the values outlined in the governing documents.

Recommendations:

A. Concerning the Judicial Board's Commenting Power

In addition to the above discussion concerning USA Const. Art. 2.D.2, the processes surrounding this request for comment also brings into question the procedures for requesting, and exercising, an enumerated power of this Board that has gone undefined in its entire modern history—the power to comment on matters at the request of Council or a member of the Association. The necessity for provisions governing future processes concerning the Board's commenting power was exemplified throughout this process and, although uniquely challenging, this Board must address the issue in the interest of future terms of the USA Judicial Board and the Undergraduate Students Association. Plainly, this power is enumerated in the USA Constitution, and there must be an effort to establish guidelines governing its exercise and scope for future generations.

In the modern history of the Judicial Board, the Board's powers under USA Const. Art. 6.B.2 was only invoked once in 2011 to establish the Board's authority in conducting the Birdie Investigation. However, in the resulting report, the Board made no effort to define what this power meant, how to request the Board to use this power, nor how expansive or restrictive it should be. As a result, this Board was tasked with navigating the aforementioned with no guidelines. Given the likelihood of another request for the Board to utilize its commenting power again in the future, it is imperative that this Board make an effort to address this glaring issue.

Similar to how aspects concerning the Judicial Board's powers under USA Constitution Article VI, Section B, Clauses I and III are governed by the Official Rules of the Judicial Board, future terms of the USA Judicial Board should consider developing, and refining, a framework governing the Board's commenting power under USA Const. Art. 6.B.2 in the Official Rules of the Judicial Board. Not only would such a framework provide essential guidance to future justices of the Judicial Board regarding the exercise of this power, but it would also grant future terms of the Judicial Board the flexibility—via amendments to the official rules—to tailor the commenting power in response to political and structural changes in the Association. For example, similar to how the Board handles requests to adjudicate disputes under USA Constitution Article VI, Section B, Clauses I and III through the Petition for Consideration—governed by the Official Rules of the Judicial Board—future requests for the Board to utilize its commenting power could be governed by provisions outlined in the rules as well. Furthermore, additional provisions can determine the extent and exceptions concerning the exercise of this power.

Conclusion:

The Judicial Board supports the interpretation of USA Constitution Article II, Section D, Clause II as referring to two-thirds of the currently-elected officers of the Association constituting quorum throughout the academic year. The Board also acknowledges problems posed by the absence of provisions governing the Board's commenting power under USA Constitution Article VI, Section B, Clause II, and recommends future terms of the Judicial Board develop and refine a framework for its use in the Official Rules of the Judicial Board.