

Syllabus

JUDICIAL BOARD OF THE U.S.A., UCLA

Syllabus

STUDENTS FOR JUSTICE IN PALESTINE *v.* SUNNY SINGH & LAUREN ROGERS

**ON A PETITION FOR CONSIDERATION TO
THE JUDICIAL BOARD OF THE UNDERGRADUATE STUDENTS
ASSOCIATION AT UCLA**

[No. 14-3] Argued May 15, 2014—Decided May 21, 2014

On April 28, 2014, student organization Students for Justice (SJP) in Palestine filed a Petition for Consideration against two Undergraduate Students Association Council (USAC) Councilmembers claiming that their particular actions constituted a conflict of interest as defined by Undergraduate Students Association (USA) Bylaws, Article I, §D (hereafter, Article I, §D), which would effectively disqualify their votes on a February 2014 USAC resolution. General Representative 2 Sunny Singh participated in a sponsored trip to Israel by the Anti-Defamation League (ADL) in the summer of 2013, while Financial Supports Commissioner Lauren Rogers participated in a sponsored trip to Israel by Project Interchange (PI), the education arm of the American Jewish Committee (AJC), at the end of 2013. According to the Petitioner, the two sponsor organizations, the ADL and the AJC, have publicly announced their political stance on a national controversial issue. This issue was brought forth to USAC in the abovementioned resolution, “A Resolution to Divest from Companies that Violate Palestinian Human Rights.” SJP contends that these sponsored trips created a conflict of interest because they created an obligation of Singh and Rogers to vote a certain way, and that they invoked the appearance of divided loyalty.

Held:

1. This Board has jurisdiction to consider the merits of this case based on the two claims of jurisdiction listed in the Petitioner for Consideration, both of which were satisfied.

(a) USA Const., Article VI, §B(1) states, “The Judicial Board shall rule upon the Constitutionality of legislation and official actions of elected or appointed officials at the request of Council or any other

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members of the Association.” The Petition asks the Judicial Board to determine the legality of actions taken by two members of Council, who are elected officials, according to a section of the USA Bylaws. SJP is also legally allowed to make such a request of the Judicial Board because SJP is a registered student organization composed of members in the Association.

(b) USA Const., Article VI, §B(2) states, “The Judicial Board may also question, comment, or rule upon other matters at the request of the Council or any member of the Association.” For the same reason above, as members of the Association, SJP may request the Judicial Board to “question, comment, or rule” upon the conflict of interest clause.

2. The trips that Sunny Singh and Lauren Rogers took with the ADL and PI, respectively, are not considered “improper benefits” of their position in USAC. The use of their position titles in USAC is not considered office resources, but rather personal resources that in their capacities as private citizens can be used for personal reasons. There was no evidence shown that the trip was given solely, and only, because of their positions.

3. The “divided loyalty” clause of the Article I, §D refers to loyalty to the organization, not an ideological viewpoint. Sunny Singh and Lauren Rogers did not show divided loyalty to the Association. The trips in which they participated cannot be considered lobbying efforts on the part of the sponsor organization because the organizations did not approach Singh or Rogers for the purposes of swaying their vote on the resolution, which did not yet exist during trip.

4. There existed no financial interest or obligation for Sunny Singh or Lauren Rogers to the sponsor organizations. The trips in which Singh and Rogers participated are not considered gifts because Singh and Rogers applied for the trips; the trips were not unsolicited gifts. Neither respondent stood to benefit financially from their vote on their resolution.

5. The appearance of a conflict of interest is not sufficient to prove a conflict of interest, and sets a danger to the integrity of the student government.

SATYADI, M., delivered the opinion of the Board, in which BUSTINZA, E., SWANSON, A., and ZELMAN, J., joined. CORONA, O., and MORALES, K., abstained.

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[May 21, 2014]

CHIEF JUSTICE SATYADI delivered the opinion, joined by JUSTICE BUSTINZA, JUSTICE SWANSON, and JUSTICE ZELMAN.

This case asks the Judicial Board to determine whether the alleged actions of Sunny Singh and Lauren Rogers constitute a conflict of interest as defined by USA Bylaws, Article I, §D. In order to do so, the Judicial Board approached the question of conflict of interest by referring to both the written and contextual definition of Article I, §D. Thus, the Judicial Board decision serves as both a refinement and a clarification of the statute in question. However, as with all judicial bodies, the Judicial Board also recognizes that this decision has lasting consequences for future members of the student government, and that the precedent will not only affect the interpretation of Councilmembers' actions, but of their rights and responsibilities as well.

I. Background

On February 25-26, 2014, a resolution regarding the issue of divestment was brought to the USAC Council Table and failed to pass. The vote was taken by secret ballot. On April 28, 2014, Students for Justice in Palestine filed a Petition for Consideration to the Judicial Board, alleging that the actions of two USAC Councilmembers constituted a conflict of interest, and that their votes on the resolution be rendered null and void. The petitioner believes that the trips General Representative 2 Sunny Singh and Financial Supports Commissioner Lauren Rogers took with the

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ADl and PI, respectively, were improper benefits of their position in USAC, and that the trips not only created a perception of a conflict of interest and an appearance of divided loyalty, but also produced a sense of obligation in Singh and Rogers to vote a certain way on the resolution.

II. Conflict of Interest Clause

What is the purpose of a conflict of interest clause? The purpose of any conflict of interest clause is to ensure and protect the integrity of a governing body, and to ensure that all official actions are performed in good faith. In the event that this is compromised, an elected official must refrain from participating in activities that present a danger to the integrity of such a process. Essentially, officials cannot allow relationships of a particular personal interest interfere with official responsibilities. This is best illustrated in the origin of Article I, §D.

The conflict of interest clause in the USA Bylaws was drafted in 2011 in response to the controversy surrounding a previous Councilmember's conflict of interest, a concept which, at the time, did not exist in any USAC guiding document. Financial Supports Commissioner Rustom Z. Birdie had a contract with Jobbook.com, an Internet start-up that guaranteed Birdie 1,000 shares if he promoted the company. Testimony and evidence revealed that Birdie did in fact use his USAC office email to promote the company, but terminated his contract with Jobbook.com shortly after and approached the Judicial Board for its "opinion". The Judicial Board ruled that Birdie violated USAC Const., Article III, §E(2) by using a USAC office resource (email address) for personal benefit (1000 shares). However, the Judicial Board also ruled that "conflicts of interest in their own right are not necessarily violations of a trustee's fiduciary duty," and that the existence of a conflict of interest "is not necessarily a troubling action." See *Investigation into Financial Supports Commissioner Rustom Birdie's Relationship with Jobbook*, 2011. The only troubling action that arises from a conflict of interest, then, is when it is acted upon with the use office resources, which is the improper benefit of the office.

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Article I, §D must be understood in the context in which it was drafted in order for it to have its originally intended effect. It defines a conflict of interest as “improper benefit,” which is further “defined below” as “an unauthorized financial interest or obligation which might cause divided loyalty or even the appearance of divided loyalty.”

In this opinion, the Board will analyze each part of the clause, by its text and the context in which it was drafted. By this definition, a conflict of interest thus has three components: (a) improper benefits as a result of an individual’s office or position, (b) divided loyalty to the Association, and (c) a financial interest or obligation. The Judicial board will also address (i) “perception/appearance,” (ii) “obligation,” (iii) transparency.

III. Improper Benefits

It is briefly mentioned in Part II of this opinion that Article I, §D states that improper benefits as a result of an individual’s position would constitute a conflict of interest. In the context of the Birdie Investigation, the improper benefit is the benefit of the office. In his case, this was the Financial Supports Commission email address, which granted Birdie, as a private citizen acting in his capacity as a Jobbook partner, access to a resource he otherwise would not have in order to receive a personal benefit: his 1000 shares. A conflict of interest, then, is intended to be defined as the use of an office resource for personal gain. In the case of Singh and Rogers, there were no office resources used. The petitioner argues that by listing their USAC position titles on their application for these trips, Singh and Rogers were improperly using, or taking advantage of, their office resources. However, by listing their position titles, Singh and Rogers are not using an office resource—one that belongs specifically to the office and is only accessible through their active role in the office—but rather a personal resource. It is important for this distinction be made: an office resource is a resource available to, and only to, those currently in office. An office email address, for example, is an office resource because it is only accessible to an individual acting in their capacity as an official and in their position as an

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official. A position title being used as a qualification is not an office resource because it is something that belongs to the individual, not the official. Rustom Birdie *cannot* use the FSC email address outside of his capacity as the FSC Commissioner, but he *can* use his position title in his capacity as a private individual for his personal use. For instance, Birdie could put “Financial Supports Commissioner” under the work experience section of a job application because that position title, or qualification, is one that belongs to him as a private individual, but he could not list the FSC email address as his own because that does not belong to him; it belongs to the FSC Commissioner. To say that one’s position title in USAC is an office resource is to say that it no longer belongs to the individual once they leave office. That is to say, an individual wouldn’t be able to use their current job position as “work experience” in future job applications once they terminate employment. Therefore, if Singh and Rogers did list their positions in USAC in the application for these trips, it would not be considered an improper benefit of the office because their positions in USAC are qualifications that would fall under the category of personal resources.

The petitioner also argues that the trips themselves can be considered “improper benefits,” notwithstanding the definition of “improper benefits” just put forth above, and that listing their positions in USAC were improper uses of resources. This implies that there was a direct relationship between the position in the office and the trip offer, but no evidence was shown that the trip was given solely because of their positions in USAC. In the case of Sunny Singh, his trip was offered before he was elected General Representative 2 in the 2013 General Spring Election, which indicates that he would have had the option to participate in the trip regardless of the outcome of the election. For Sunny Singh, there is no evidence that he definitively received the trip because of his position as General Representative 2.

IV. Divided Loyalty

A. *Loyalty to the Association*

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The petitioner contends that the Singh's and Roger's actions constituted a conflict of interest because they were actions that caused divided loyalty. This is argued on the premise that Singh and Rogers voted a certain way on the resolution—that is, they voted according to the ideology of the sponsor organizations, which are known and have been publicly expressed as noted in the evidence. But, there exists two troubling points about this. First, the vote was taken by secret ballot; how Singh and Rogers voted is unknown. Despite where these two officials publicly stand on the issue, the matter of contention is the action of voting. How they actually voted can only be speculated.

The petitioner recognizes this point multiple times: it is not *how* they voted, but *that* they voted. However, this “divided loyalty” clause of Article I, §D does not refer to divided loyalty with respect to viewpoint or ideology. In the Birdie Investigation, Birdie's loyalty lied with Jobbook instead of the Undergraduate Students Association (hereafter, “the Association.”) The motive behind his actions was to specifically and intentionally support a third party outside of the Association, and to ensure a financial benefit that would be granted after the result of such actions. Thus, the “divided loyalty” clause refers to divided loyalty to the Association. A Councilmember's responsibility is to the Association, and all actions must be done in good faith and with the intention of fulfilling those responsibilities to Association. As an elected official, one of those responsibilities is the exercise of voting power on matters pertinent to the Association. A resolution is an official stance reflective of the student body that the student government takes on any given issue. Therefore, regardless of its content, any given resolution is an item on which a Councilmember may exercise a vote, unless it can be proven that the intention behind the vote is not for fulfilling one's responsibilities and obligations to the Association, or is for personal gain outside the individual's capacity as a Councilmember. No evidence was shown that Singh or Rogers were acting in the interest of a body outside of the Association.

Loyalty cannot be defined as viewpoint-based for that would require Councilmembers to have no leaning towards any side of

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an issue; they would have to be neutral, which defeats the point of voting on any issue. A conflict of interest would be present in almost any situation that involves voting on a resolution. Elected officials and private citizens alike are entitled to their own opinions, and how those opinions are formed are of a private matter.

B. Relationship with sponsor organizations

On the matter of ongoing contact between the respondents and the sponsor organizations, no evidence was shown that these organizations asked specifically the respondents to vote a certain way. The letter sent by the American Jewish Committee was addressed to the entire Council.

Concerns over the relationship between the respondents and the sponsor organizations were raised because they were believed to be of a suspicious nature. These trips have always been labeled as “educational trips” that seek to educate students about particular issues, but this Judicial Board is not concerned with how these trips are categorized. Rather, this Board is concerned with the nature of the *establishment* of the relationship. Lobbying attempts are usually considered interactions between interest groups and an individual with political power, where the interest group approaches the individual with the intention of swaying him/her for a preferable outcome. The relationship between the respondents and the sponsor organizations is not a lobbying relationship, first, because the organizations never approached the respondents—the respondents *applied* for the trips sponsored by these organizations—and, second, because the action in question—the vote on the resolution—did not even exist at the time of the trip. These trips cannot be misconstrued as attempts made by the organizations to lobby for specific votes because the resolution (a) did not yet exist and was unknown to all parties at the time of the trips, and (b) the sponsor organizations did not actively seek out the respondents for the purpose of lobbying for a specific outcome of the vote.

V. Financial Interest/Obligation

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Article I, §D states that a conflict of interest requires the existence of “an unauthorized financial interest or obligation.” “Unauthorized” is to be understood as unauthorized by the Association in the context of a student government official’s responsibility to the Association. There must exist a financial interest or obligation to an entity external of the Association. In The Birdie Investigation, this external entity was Jobbook. The financial interest/obligation in Article I, §D refers to a financial benefit that is received by the student government official, who we will call the “benefactor” in a conflict of interest where the student government official stands to benefit from an unauthorized interest/obligation.

There are two criteria to be met by this specific clause in Article I, §D—the benefit the benefactor stands to gain must be (i) financial, and (ii) contingent on an action of the benefactor, which we will term the “marker.”

In this case, the Judicial Board was presented with no evidence that the respondents stood to gain any financial benefit (or any benefit at all) after the vote had taken place (marker). Examples of financial benefits are, but are not limited to, shares, employment guarantees, future trips, and cash gifts. The petitioner pointed out that dinner galas and networking opportunities could be considered benefits the respondents stood to gain. However, not only are these benefits speculative, but there is no evidence that these benefits weren’t available to any other alumnus of the trips sponsored by the organizations, and that these benefits were a result of their votes and not their alumni status of the trip.

During oral arguments, the petitioner raised two concerns regarding Article I, §D that the Judicial Board feels is pertinent to address. First, the petitioner contends that the order of actions does not matter in the development of a conflict of interest, and second, that the obligation of any gift is enough to warrant a conflict of interest charge.

A. Order of actions

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The concept of a conflict of interest arises from the situation in which an individual stands to receive an unauthorized, personal benefit from a benefit of his/her position in office. This is explained in Parts III-V, above. It is, in fact, a causal relationship, where the benefit is contingent on an action, and if this contingency is crucial in the relationship that constitutes a conflict of interest, then the benefactor must, and can, only receive the benefit after the marker. In the case before this Board, this would require that the respondents, Singh and Rogers, would receive a financial benefit *after*, and *because of*, the vote on the resolution. The financial benefit cannot come before the vote, for that would negate any causal mechanism that would imply the benefit was a result of the vote. The trips in which the respondents participated occurred before the marker in this case, and cannot be seen as a benefit that was a result of the vote on divestment because the vote took place after the trips.

The petitioner argued that the sponsored trips can be considered as a benefit that influenced the vote (a lobbying attempt), but this has been addressed in Part III, explaining Article I, §D's definition of a "benefit," and in Part IV(B), illustrating the absence of a lobbying attempt.

B. The problem with "obligation"

An obligation to an entity outside of the Association in some cases may be a motivating factor in a conflict of interest, but this is extremely difficult to prove. Thus, such an obligation must be compelling enough to be considered. It must also be tied to the benefit in question. In the Birdie Investigation, Birdie's employment with Jobbook can be termed as a financial obligation, in the sense that he is obligated as an employee of Jobbook to favor its financial success. The benefit he stood to gain in his obligation to Jobbook was the 1000 shares guaranteed by his contract. In cases without a financial benefit, obligation is not sufficient to warrant a conflict of interest, and the Judicial Board finds the concept of "obligation" to be extremely troubling and dangerous.

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First, obligation is speculative, and can be misconstrued. For example, the petitioner believes that the respondents felt obligated to vote in favor of the ideology expressed by the organization that sponsored his trip. Hypothetically, the respondents may have a part-time job where a majority of his/her co-workers express the opposite view on the issue. It is possible that the respondents may have felt obligated to vote along with the ideology of his/her co-workers because they are obligation to keep a peaceful workplace environment, void of potential awkwardness and animosity. Or, that the respondent once asked a favor of a close friend who expressed the same view opposite of the sponsor organization, and he/she feels obligated to repay that favor by voting a certain way. An obligation draws on possible relationships that have the potential to sway an individual's opinion. If obligation is sufficient to warrant a conflict of interest, then the danger presented by the volatility of an obligation creates an infinite number of relationships that could constitute a conflict of interest. A Councilmember would have to be devoid of any relationship or action within a relationship that has the slightest potential to be considered as a source of obligation sufficient to incriminate them.

Second, it forces us to define the degree of the obligation, which brings up many questions without answers. For example, would the obligation the petitioner believes the respondents have towards the sponsor organizations change if the trip took place two years ago instead of several months ago? Or what if the monetary value of the trip was not \$7000, but \$100? Or \$100,000? We can also take the example of an obligation to an individual. How close does the relationship have to be for the obligation to be considered strong enough to warrant a conflict of interest? Does it make a difference if the individual is a friend or relative? Would the degree of consanguinity matter? These are determinations of the size, timing, magnitude, and nature of the obligation and the Judicial Board cannot make these determinations, not only because are these questions not asked by this case, but because the concept of obligation is incredibly unclear, and once again, dangerously volatile.

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Third, the ambiguous, distortive, and volatile nature of obligation grants any one individual the power to revoke a Councilmember's *right* and *duty* to vote. If obligation is sufficient enough to constitute a conflict of interest that requires a Councilmember to restrain him or herself from participating in a vote, then any student who believes that a Councilmember may have an alleged obligation—which can be misconstrued or misunderstood—to an unauthorized entity, could essentially render an entire Council unable to vote on any issue. Even more troubling is that this allegation could be merely an *opinion*. Giving an individual the capacity to revoke a student government's right and duty to carry out its responsibilities is incredibly dangerous.

Furthermore, Councilmembers have a right both as elected officials and as individuals to have their own opinions on contentious issues. It is possible that such views can align with those of an organization, particularly those of the sponsor organizations, but to believe that the association between the two automatically results in a Councilmember's sway is to imply that that is the one and only line of reasoning that can occur. It is still possible for an individual to be associated with such an organization and hold opposing views. While the evidence does indicate that one of the sponsor organizations expected its participants to apply what they learned from the trips, this application can be in favor of either position on the issue.

VI. Appearance Clause

The petitioner argues that the perception of appearance is sufficient to constitute a conflict of interest, but the Judicial Board believes this poses the very same dangers as “obligation.” Appearance can also be misconstrued or misunderstood, and affirming that the mere appearance of divided loyalty is sufficient for charging a Councilmember with a conflict of interest grants an individual's opinion the ability to revoke the rights and duties of a Councilmember.

The danger of appearance compelled the Judicial Board to clarify the existence of the “appearance of divided loyalty” clause

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of Article I, §D. The Birdie Investigation was unable to determine if Birdie's termination of his employment with Jobbook, the degree of the use of office resources, or his unawareness of the impropriety of his actions changed the nature and existence of his conflict of interest. This ambiguity in the investigation is what likely urged the inclusion of the "appearance" of conflict of interest during the drafting of Article I, §D.

Nevertheless, the appearance clause of Article I, §D should not be the primary definition used when determining a conflict of interest. Rather, it should only be used as an auxiliary when an actual conflict of interest is likely but cannot be proved. This requires that the impossibility of a conflict of interest be ruled out. This is, only if it can be established that the potential of a conflict of interest still exists. Had the respondent's actions ambiguously fulfilled any of the three requirements set forth by Article I, §D (see Parts II), *then* the appearance of a COI may be considered, but appearance *by itself* is not sufficient to conclude a conflict of interest. It must first be proven that it is unlikely that a conflict of interest did not exist.

VII. Disclosure

Article I, §D requires a member's disclosure *if* a conflict of interest is present. Because Singh and Rogers did not engage in a conflict of interest, their disclosure was not required.

VIII. Recommendations to Council

Members of USAC have fiduciary duties and responsibilities to uphold and fulfill. One of these duties is to act in good faith, and in loyalty to the Association they serve. It is important for USAC members, especially Councilmembers, to be aware of the ethical obligations they have as representatives of the undergraduate student body, and to constantly maintain such high standards of accountability and integrity.

The conflict of interest clause was drafted in order to make clear one of these many ethical obligations, but it is shown through this case the its text and interpretation is ambiguous. The Judicial Board hopes that this case serves as a clarification of

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the purpose, background, and interpretation of Article I, §D for the future, but we recognize that no law or statute is perfect. The Judicial Board urges the USAC Council to critically examine Article I, §D for discrepancies, ambiguity, and potential dangers, and to consider revising the language of the clause for clarity.

Furthermore, it is the responsibility of Council to evaluate and determine the presence of a conflict of interest in its members for the purposes of ensuring its own accountability and integrity. The Judicial Board entrusts the Council to carry out such responsibilities, including the enforcement of the USA Constitution and Bylaws.

The actions of Sunny Singh and Lauren Rogers did not constitute a conflict of interest as defined by Article I, §D. The respondents did not receive or use improper benefits as a result of their office, nor did they have a financial interest of obligation that would cause divided loyalty to the organization. The votes Sunny Singh and Lauren Rogers took on “A Resolution to Divest from Companies that Violate Palestinian Human Rights” are valid and legitimate.

It is so ordered.