

ASUCM JUDICIAL BRANCH
UNIVERSITY OF CALIFORNIA, MERCED

Hearing Brief

"No. 01-S17"

Hulbert v. Guadarrama

Petitioned February 23rd, 2017 at 3:52pm

Heard March 9th, 2017 at 7:30pm

Decided March 9th, 2017 at 10:30pm

Authored by: Chief Justice, Brandon Jones

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Introduction

Citing alleged bylaw violations, Internal Vice President Gabriel Hulbert Filed a petition against External Vice President Carlos Guadarrama. The Purpose of this hearing is to determine whether or not EVP Guadarrama is culpable for the accusations at hand, whether or not UCSA repay costs, and any other possible sanctions.

Cause of Action: Allegations of violations of financial bylaws.

Table of Contents

Introduction	1
Table of Contents.....	2
Argument.....	3
Evidence.....	13
Witness List.....	21
Majority Opinion.....	22
Concurrent Opinion.....	23
Conclusion	24

Judicial Branch



Argument

Hearing: On March 9th, 2016; 7:30pm the ASUCM Court held a hearing of the case titled No.01-S17 in the Chancellor's Conference Room (KL 232). This hearing was open to the public and audio recorded. Both Petitioner and Respondent were in attendance.

Opening statement P1 (Gabriel Hulbert):

“Good evening, we are gathered here today to determine what is the appropriate form of justice for what is a violation of the ASUCM Constitution and Bylaws as well as the misuse of student fees by the External Vice President. It is clearly stated in our Constitution and Bylaws that all allocations and funding must be used by ASUCM officials who must also be registered UC Merced students, for ASUCM related business purposes, in any of these occurrences. In the most simple and clear form, Article 2 of the Constitution reads ‘Any registered undergraduate student of the University of California, Merced may be a full voting member of the ASUCM. Subject to any other applicable qualifications, all members should be eligible to hold office in the ASUCM or any of its subordinate organizations.’ The sentiment is also reiterated in many other points of our bylaws and Constitution that I will touch on during the argument’s portion. From the evidence that I will be presenting, I can draw the conclusion that the External Vice President, Carlos Guadarrama, violated a number of these bylaws by having an individual that was not a registered UC Merced student serve as the campus organizing director. Whether he knew of this individual’s registration status with the University is irrelevant, in his executive contract, an oath that all ASUCM executives and officials take when they take office, he agreed that his actions in his position would be in compliance with the ASUCM Constitution and Bylaws. In order to maintain accountability and transparency of ASUCM, as well as addressing the clear abuses made to student fees, I recommend EVP Guadarrama be held accountable by the court. I recommend that the court consider the evidence and choose to hold ASUCM officials accountable for their actions.”

Opening statement R1 (Carlos Guadarrama):

“On my part, I don’t believe that this court case should have ever been heard by the ASUCM Court. At least, it should not have had me as a respondent to this court case. Whether or not, I violated bylaws, is certainly up to question. However, as the petitioner noted, the staff member for whom I responsible for, for whom I violated bylaws for, had not informed me of their status as to whether or not they were a student. The petitioner goes on to say that this particular staff member had been contacted by our ASUCM advisor, both through email and through Facebook messenger. This correspondence was ignored until our advisor notified our ASUCM President and failed to inform me of the status of the student. Our ASUCM President failed to inform me that I was on the precipice of violating bylaws and I did not know that this was going to be the case. I believe that the Internal Vice President, Gabe Hulbert, did not do his due diligence of informing the court of what preceded this court case, specifically that I was allowed to break bylaws by our ASUCM Advisor and by our ASUCM President. I do not believe that I should be held responsible for these bylaw violations when they could have been previously prevented. As Gabe Hulbert notes in his petition, he would like the ASUCM Advisor

to set a date for which all ASUCM officials and staff are checked regarding their status as students, this is a failure on the part of the entirety of the ASUCM, not on the External Vice President. I believe that this is a bias—that the Internal Vice President has against the External Office and I believe that this court hearing should not be taking place.”

Argument P1 (Gabriel Hulbert):

“Okay, so looking here at the brief, we have this member of his staff, whether you are aware or not of it, you still took an oath, you still signed a contract that you were going to abide by these bylaws, and you had a member of your staff, whether you know it or not, it’s still your responsibility for all the people under you. With that, we have Article 2, which I already mentioned, and Article 3, section 4, Universal duties and powers, section b. says ‘All executive officers should have the authority to appoint and assist in carrying out duties and responsibilities of the staff of their offices held.’”

Objection—by Carlos Guadarrama
Chief Justice Jones: Grounds?

Guadarrama: I want to note that the ASUCM particular section does not dictate that staff has to be a student. I want that to be noted by the court.

Sustained.

Back to Argument P1

“However, this—still when we are talking about student fees, that is just the constitution. We can go down to the financial bylaws, purchase of any item and or service by federal law, California state law, and or University policy. Article 4, section 1, letter c of the financial bylaws states that too. By that, you already have that is against University policy, you have someone travelling with you—”

As noted, address the chair.

Back to Argument P1

“Sorry, you have somebody travelling with you, who is not a student, who would otherwise be covered by University insurance, when you have somebody who is not a student, you are taking a huge risk on the liability of the University and putting them at huge risk if anything were to happen because they are not covered under university insurance so that is one part here. It says—okay, so looking now here, Article 5, Article 6, section 9—”

Objection—by Carlos Guadarrama
Jones: Grounds?

Guadarrama: I want the ASUCM Court to note that the financial bylaws are highly contradictory, I want them to note that in section 7 of the financial bylaws, subsection c, it states that these funds—

Objection—by Gabriel Hulbert

Guadarrama: It states that these funds will be for the External Vice President to carry out his or her duties as established by the ASUCM Constitution and any association membership agreement that the ASUCM shall enter into. I also want to direct the Court to the UCSA bylaws that dictate that member association—or it is

the—the organizing director must attend UCSA Board Meetings, um, and I also want to further attest, that whether or not the Organizing Director has to be a student, and is a part of ASUCM, is up to question.

Objection—by Gabriel Hulbert

Hulbert: He has his own 10 minutes for his argument as well.

Jones: Carry on. He was allowed 30 seconds.

Back to Argument P1

“To address the point, about the financial bylaws, whether they are contradictory or not, you still broke them. Looking now, at financial bylaw, article 6, section 9, letter d, number 6, only registered University of California Merced undergraduate students shall have access to funds contributed by the ASUCM. So these are fees, every student at the beginning of each semester pays \$65 to ASUCM that ultimately does fund the travel to UCSA meetings, by the bylaw alone, whether they are contradictory or not, you had somebody who was a student use student fees contributed by all the students here to pay for something for them. That is like—from what I can conclude that is a clear violation of the financial bylaws. Whether they are contradictory or not, isn’t concerning here at all. You violated them by just that alone. Also, looking here, further parts of it, there is nothing actually that regulates staff but by that bylaw it would indicate anyone who is going to use student fees has to be a student. So regarded of the UCSA bylaws, which cannot be considered here at all—”

Objection—by Carlos Guadarrama

Guadarrama: That is misinformation. The UCSA Bylaws are connected to my duties as External Vice President in our Constitution. This is a blatant lie.

Hulbert: The Constitution supersedes anything else.

Guadarrama: Exactly, including the financial bylaws.

Hulbert: The constitution supersedes everything else so by article 2, saying that nay registered undergraduate student must be—that you have to have that requirement that you—

Objection—by Carlos Guadarrama

Guadarrama: He is—

Chief Justice Jones: One at a time. You each have 30 seconds to respond per objection after the chair has recognized it. The chair has recognized the first, if you may finalize your final thoughts and then we can continue to move on.

Hulbert: So looking at that objection, whether or not the UCSA bylaws come into play here, sure they do, by that standard but it is also not the job of this court to be interpreting them.

Court is interpreting the financial bylaws and the constitution here. So, by that alone, there is also this—the constitution was broken and the bylaws were broken so as far as I am concerned, those two, within this organization, supersede any other outside bylaws.

Back to Argument P1

“We can also go back and look at our ethics bylaws here, from what I have, Code of the Ethics, Article 1, section 3, letters a & b: He did not act despite having a member of his staff being in violation of the other bylaws as well. As I said, we can go one by one but there are

multiple bylaws here that are in violation by this simple action. And with that, I want to end my arguments because I think I have made an enough case that the constitution and the bylaws of ASUCM already do clearly state out that you cannot be a student and use student fees. By that, as well I also want to stress that by that oath and by the contract you signed and took at the beginning of one's term, that alone says you have to strive to be all the time in awareness of any violations here. Whether you are aware or not, they are still happening under your watch. With that, I conclude."

Argument R1 (Carlos Guadarrama)

"I believe that the ASUCM Internal Vice President is ignoring very key points of my argument. In regards especially that the President of ASUCM and the advisor of ASUCM had not disclosed to me that my staff member was no longer a student. Upon discovering that, I did take action, that individual is no longer a part of my staff."

Objection—by Gabriel Hulbert

Hulbert: The member of the staff was recognized just last weekend in a Facebook post as being a member of his staff.

Guadarrama: I do not have that document.

Back to Argument R1

"I would like to pose a question to the petitioner."

Jones: No. You are not allowed to direct—my apologies, you can ask the chair and we will decide if it is relevant.

"So, I would like to direct the question to the chair. To Chief Justice Jones, have you certified that every member of the Associated Justices are students this year?"

Jones: We will keep it germane to the parties involved.

Guadarrama: Can I direct it to the Internal Vice President? Whether or not he has checked if all his staff is a student this year at the beginning of the semester.

Jones: I am afraid not.

"Very well, I would then like to bring forward to the court whether or not the Organizing Director exists within any of the bylaws in ASUCM."

Jones: Are you asking that specifically?

Guadarrama: I am presenting that to the court. And my answer would be—

Associate Justice Luna: So you are asking if the Organizing Director is mentioned in the bylaws or the constitution?

Guadarrama: Yes.

Associate Justice Luna: Isn't the organizing director one of your staff?

Guadarrama: The organizing director is mentioned in the UCSA bylaws, and the External Vice President is responsible for appointing an Organizing Director.

Associate Justice Luna: But she is one of your staff? Right? Because you appoint her, which means she responds to you?

Guadarrama: She is a member of the UCSA organization.

Associate Justice Luna: But she reports to you?

Guadarrama: Yes.

Associate Justice Luna: Okay which means she is a part of your staff.

“But the question is whether or not they are a part of ASUCM. I maintain that in terms of constitutionality, the Organizing Director does not exist within any of the bylaw. I further pose, that because they do not exist within any of the bylaws, in terms of constitutionality, because they only exist within the bylaws of UCSA, I, um, I cannot—in my duties as the External Vice President, in accordance to the financial bylaws, it says I am responsible for doing my duties and I can utilize my budget to fulfill my duties to further any associated memberships or associated governments in which the ASUCM choose to be a part of. The Organizing Director only exists within the bylaws of UCSA. And in allowing the Organizing Director, whether or not I have been aware of whether or not they were students, I fulfilled my duty to the UCSA and to the ASUCM by taking the Organizing Director to the UCSA Board Meeting.”

Objection—by Gabriel Hulbert

Hulbert: Student fees still aren’t allowed for that if it is a non-student and student fees were used to transport the person to UCSA meetings.

Guadarrama: Student fees were used for a multitude of things. In previous years, and only the past previous months, ASUCM has funded buses for school children in the central valley, those funds aren’t being used for Bobcats; they are being used for elementary school students.

Associate Justice Luna: Except we knew what we were funding. Here, we didn’t know that she wasn’t a student.

Guadarrama: That is not relevant, what I am saying or pointing out is—

Objection—by Gabriel Hulbert

Hulbert: That is very relevant. This is about how those fees were used.

Guadarrama: It is relevant that the financial bylaws contradict each other because I am placed in a position where I can become uncertain as to whether or not to proceed in an action in my duty to fulfill my responsibilities to ASUCM. This is highly relevant that the financial bylaws contradict themselves.

Back to Argument R1

“That is the essence of my argument. First of all, that I did not know the Organizing Director was no longer a student in ASUCM. I maintain that the ASUCM President and the ASUCM Advisor should have informed me of whether or not the status of my staff was compromised.”

Associate Justice Luna: So the Organizing Director is your staff?

Guadarrama: The Organizing Director falls under me in the UCSA Bylaws.

Associate Justice Luna: So she is your staff?

Guadarrama: I maintain that she is—

Associate Justice Luna: I am not trying to question. I just want to know what you are arguing. If she is a part of your staff or if she is—

Guadarrama: She is part of my staff as it relates to the UCSA.

Associate Justice Talania: I have a question for you Mr. Guadarrama, specifically with your power of appointment, I would want to know—to clarify since the officer is part of your staff, how do you make appointments on that? How do you check it? How do you know if he or she is a student or not?

Guadarrama: That is—

Associate Justice Talania: The other accusation was that you were not aware that she is not a current student, right?

Guadarrama: Yes.

Associate Justice Talania: I just wanted to know what is the scope of your power?

Guadarrama: So, whereas the President has their own appointment bylaws, the External Vice President lacks those, so a lot is left to ambiguity. That is my response. I believe that this is a larger failure on the part of ASUCM. And not the External Office, that is my response to your question.

Chief Justice Jones: Let's please leave questions until the end.

“So simply to reiterate, my argument is as is: I was not informed of the status to the student in question or the previous student in question, that compelled me to violate these bylaws. And so for that reason, I think that it should be, not the External Office that should be in place under the spotlight but the Advisor and President for failing to inform me of the fact that I was going to violate bylaws.”

Objection—by Gabriel Hulbert

Hulbert: He was informed the same way that we were.

Guadarrama: I was informed after the fact. I have submitted evidence that demonstrates I was told after the fact that I was violating bylaws. I also submitted evidence demonstrating that this mistake was caught by the—by Cathy Oliver, who is in charge of particular aspects of my finances and soon after remedied.

Objection—by Gabriel Hulbert

Hulbert: Cathy Oliver caught it after we told her that—about this issue.

Guadarrama: That is because the advisor knew and the President knew but the External Vice President, not until—or soon before the ASUCM Senate meeting.

“So continuing forward, the Organizing Director does not exist within the ASUCM bylaws and thus, whether or not they have to be students falls into question. I have submitted several pieces of evidence that demonstrates the ambiguity of the status of several members of staff. As I mentioned in Article 2 of the constitution where it dictates membership of the ASUCM, there is a clause that references applicable qualifications—”

Objection—by Gabriel Hulbert

Hulbert: You need to have—you need to also be a student to have those applicable qualifications, it is not an either or.

Guadarrama: That is not true—

Chief Justice Jones: Before you respond, I will take silence as the yielding of the rest of your 30 seconds.

Hulbert: I said what I needed to.

Guadarrama: That is not true, um, it says that any registered undergraduate of the University of California Merced may be a full voting member which can imply a distinction between someone who is not a full voting member of the ASUCM, subject to other applicable qualification such as the fact, that per the financial bylaws I am held to the bylaws of other associations we are members of, such as UCSA, wherein I am required to appoint an individual, whether or not they are a student, that does not—that is not dictated through any appointment bylaws within the ASUCM to fulfill my responsibilities, if that makes sense.

“In that regard, that is my argument.”

P1 Questioning of Petitioner’s Witness

Hulbert: President Fitzgerald, walk me through the events leading up to the case including when and where we were notified of these events.

Fitzgerald: I was notified in my one on one meeting with Steve about three weeks ago, hold on I am trying to find my notes, um, about three weeks, about maybe a week before the court case was filed. Um, and—Steve, our ASUCM Advisor had then sent an email to the person, informing them that he had informed me that she could respond and resign from the position or she could just let it play it out and there was no response to that. Moving forward from that, Steve had contacted the defendant about meeting with him to discuss what he had informed and the reason he hadn’t informed me prior was because he wanted to ensure that he was not going to be in violation of FERPA or any University policies by informing any members of the AS. And so we moved forward from trying or attempting to contact Carlos and however Carlos was in many meetings but we did end up talking to him later that night before the senate meeting that day.

Chief Justice Jones: Do you have a specific date?

Fitzgerald: I am trying to find it in my notes. February 15th. So we had talked to him before senate and then went forward with that. And so we waited until we were on the phone with him, Steve and I, it was a very short conversation and the defendant seemed really nonchalant about all the information so it left us questioning—

Objection—by Carlos Guadarrama

Guadarrama: Nonchalant is subjective. It implies my lack of adherence to the bylaws of which I try my best to be extremely aware, I object to the use of the word nonchalant.

Fitzgerald: I apologize and I redact that.

Hulbert: Has any private communication with Guadarrama indicate that he may have known about the student’s non-enrollment status?

Fitzgerald: Um—

Hulbert: I would like the justices to direct the witness to answer the question.

Chief Justice Jones: We are not at liberty to make someone to speak. However, it would be best for the proceedings if you would be able to answer that question.

Fitzgerald: Um could you repeat the question?

Hulbert: Have you had any private communication with Guadarrama that indicates he may have known about the student's non-enrollment status?

Fitzgerald: Yes.

Hulbert: Can you speak to me a little more about that communication?

Objection—by Carlos Guadarrama

Guadarrama: Can the witness provide that information?

Chief Justice Jones: Generally speaking there is a timeline for what we consider evidence in the physical nature. I suppose as a court we are at liberty to decide that.

Associate Justice Luna: I think this is evidence we cannot cite in our opinion but it is evidence we can use to guide us to make our decision.

Associate Justice Bey: I would like to hear the evidence presented as well.

Associated Justice Luna: It would just be used as dicta. So it can be used to inform our decision not hard evidence.

Chief Justice Jones: Note from the chair, each individual justice is allowed to weigh whatever we are going to hear. Take it as you will. Continue.

Hulbert: Can you describe to me this communication you had?

Fitzgerald: Prior to coming to the court case, I had informed Carlos that if he was unsure or if he was not aware of her status that the case would—in my understanding would be much grounds for a case because you can't hold someone accountable that wasn't aware. But upon sharing that information, he had informed me that he was aware.

Objection—by Carlos Guadarrama

Guadarrama: Aware of what?

Fitzgerald: Of her status.

Hulbert: Of the student's non-enrollment status.

Fitzgerald: When I informed you when we were coming to this meeting about 40 minutes ago—

Guadarrama: Wait, this meeting?

Objection—by Carlos Guadarrama

Guadarrama: If I was told on February 15th, which was weeks ago that she was not a student then yes, I am aware. Is that what the witness is saying?

Fitzgerald: When I shared the information with you, I said if you were not aware of the status then there wouldn't—to my understanding, there wouldn't be many—or much grounds to the case if you weren't aware. But then

you went forward and said that you were aware and you weren't worried for the case.

Objection—by Carlos Guadarrama

Guadarrama: I believe that this—so first of all, was this in writing or?

Was this verbal? Can I direct?

Hulbert: Is it his time to start asking questions?

Chief Justice Jones: Not yet, there is still time.

Hulbert: What are the actions that you and other executive members of ASUCM took to ensure accountability of the situation?

Fitzgerald: Well, after Carlos was informed, um, members of the executive board were informed because there were purchase orders submitted and there were other conversations that took place in the office that kind of showed that other members of AS knew and it was mentioned in our executive meeting that—or we discussed it as an executive board before moving forward with a case and to see what steps should be taken and what we could do. A lot of it fell back on our organization and members of the organization proclaim and preach transparency and accountability however it seems that when the tables—it seems that when things are going against the people mentioning it, it no longer applies so it was about holding people accountable and then we were in fear that if the student body were to discover that this had taken place then what would look of our organization if they thought and they knew we were hiding or if they found out from us trying to hold people accountable.

R1 Questioning of Petitioner's Witness

Guadarrama: Can you reiterate what it is I said that implied that I had known prior to you and the Advisor of ASUCM informing me of the status of the student that implied that I knew? Allow me to reiterate, did I have correspondent with you, prior to you telling me that—or informing me of the status of the student that I had already known.

Fitzgerald: Not before we had informed you on February 15th.

Guadarrama: So it would make sense that once you had informed me of this—the fact that the student was no longer a student, that I would know and—

Fitzgerald: What is your question?

Guadarrama: Perhaps I am misunderstanding. I wanted it to be noted that prior to February 15th and prior to the call between myself, the Advisor of ASUCM, and the President of ASUCM, that I was not aware of the status of the Organizing Director as being not a student of UC Merced. That is all I have.

Closing Statement P1 (Gabriel Hulbert):

“So, once again, this case is about nothing other than maintaining the integrity to student fees. Contrary to what other people have said, this is not retaliation for anything. This is simply us holding our student government officials accountable, us holding our representatives accountable. As I mentioned, we clearly can see that somebody whether aware or not did in fact

use student fees to send a nonstudent to meetings, regardless of any other bylaws, these are the fees that can only be used for these students. Sure the UCSA Bylaws may allow you to have a nonstudent as the Organizing Director and we have not control over that. However, we cannot be using our student fees to be sending that non-student in that position to other places as convenient as it may be. You have people that you are putting the University insurance policy at risk, that could foreseeably if anything were to happen put our organization and have it be held liable for millions of dollars that we do not have. This is about protecting our organization. This is about protecting student fees. We clearly find through the membership clause, which contrary to what the External Vice President said, it says ‘Any registered undergraduate of the University of California Merced may be a full voting member of the ASUCM subject to other qualifications, all members shall be eligible to hold office, in ASUCM or in any of its subordinate organizations.’ So to shut down the subject for other applicable qualifications clause, you need to be a registered student to also have those qualifications. There is nothing in here that would say that you can have either or. Additionally, I could go bylaw by bylaw here in my closing statement, as I could have in my opening statement, but as I said, it’s reiterated and specifically in the financial bylaws, article 6, section 9, letter d, number 5 says ‘Need to be a registered student to use these fees’ and if you aren’t a student, sorry you can’t use them. So, that person can give that Organizing Director position, that person can have the UCSA Board position but it needs to be paid for outside of student ASUCM fees. And in this case, ASUCM fees were used in fact to pay for that.”

Closing Statement R1 (Carlos Guadarrama)

“I don’t think I have ever been more ashamed to be associated with any of the mutual um, or organization. I just want to say and reiterate for the court that it does matter whether I knew the status of the student at the beginning of the semester. We all took an oath but I have absolutely and I am absolutely confident that if we went up to every single director and asked them whether or not they checked the status of their staff that they would not be able to say in full honesty that they had done so. There is a reason why Gabe Hulbert asked the court to establish a time for the ASUCM advisor to establish the requirement to be in ASUCM for all officials and representative or what not. And that is because ASUCM as a whole has failed, not the External Office. The ASUCM Advisor was aware of the status of this individual for weeks and failed to inform me. I should have been the first individual to know the status of my staff, not the ASUCM President. I am the one who is fully responsible for this individual and I took immediate action therefore. Within the ASUCM bylaws, there is nothing that mentions the Organizing Director. The Organizing Director exists only within UCSA and it is relevant that the financial bylaws conflict because within the financial bylaws, it dictates that these funds shall be for the External Vice President to carry out his or her duties as established by the ASUCM Constitution, Bylaws, and any association membership agreement the ASUCM shall enter in which includes the UCSA. The Internal Vice President quoted some bylaws that only students can use these funds but not benefit from these funds. I maintain that other individuals can benefit

from these funds of ASUCM such as countless individuals within our community such as elementary school students who get bus rides from ASUCM to come to our beautiful campus. I maintain that Internal Vice President Hulbert's lack of empathy or consideration of the fact that I was not aware of having broken bylaws because I was not informed, of any possibility of me breaking bylaws, it's a shame and I don't believe that this court case should have ever ensued. And I don't believe that any consequence should come to the External Office."

Evidence

Petitioners evidence:

P1 form

Petitioner's Name (Your name): Gabriel Hulbert

Petitioner's Email (Your email): ghulbert@ucmerced.edu

Respondent's Name (Name of accused party): Carlos Guadarrama

Respondent's Email: cguadarrama@ucmerced.edu

--Break--

Brief:

During the first 5 weeks of the semester, Carlos Guadarrama, the External Vice President, had a previously enrolled student, *Name Redacted*, on his staff as Campus Organizing Director while she was unable to hold her position due to her non-student status, as stated in the ASUCM Constitution. However, during the first month and a half of the semester *Name Redacted* had been reporting and going to meetings presenting herself as the campus OD and Guadarrama had utilized university fees to pay for *Name Redacted* travel and accommodations for University of California Student Association (UCSA) Board Meetings, ultimately providing the use of student fees to a non-student, violating the ASUCM constitution, financial bylaws, and university policy.

Name Redacted had been contacted by the ASUCM Advisor on 4 separate occasions through email and once through facebook messenger, however she had ignored all outreach attempts and continued to hold her position until the Advisor notified the ASUCM President, Katelyn Fitzgerald, and vacated the position and informed university officials and UCSA.

Name Redacted had Guadarrama under the impression that she remained in her student status, violating the ASUCM Ethics Code-2013 and allowed him to let her falsely represent ASUCM and UC Merced at events and meetings, report as an ASUCM Elected and Appointed Officials to the ASUCM Senate on 2/8/2017- minutes attached; and utilize student fees to pay for her trips when she is not allowed to have access to this money as *Name Redacted* is not enrolled in the university, violating ASUCM Constitution and Financial Bylaws.

Guadarrama had been notified of *Name Redacted* student status on 2/15/2017 through phone call with the ASUCM President and ASUCM Advisor, however earlier in the day Guadarrama had submitted a purchase order for hotel accommodations listing *Name Redacted* as one of the attendees- attached while still under the impression *Name Redacted* was a student; which is in violation of

the ASUCM Constitution, Financial Bylaws, and ASUCM Ethics Code.

In regards to *Name Redacted* privacy, no individual has asked for her reasoning to not being enrolled this semester or for access to her academic transcript, but have asked her to resign and step down from the positions she held. By her holding this position while not a student, it withheld the position from another student and the opportunity to get involved in our organization. However she ignored all communication from the ASUCM Advisor, continued to utilize student fees, and continued to misrepresent our organization for 5 weeks of the semester which ultimately lead to this petition to be filed.

At this moment, I feel as if the previous Organizing Director and current External Vice President have betrayed the trust of the Organization. Moving forward from this, *Name Redacted* will remain as Chair for UCSA, however even if she does not hold the Campus Organizer Position we will never know if she is utilizing Guadarrama's transportation or hotel accommodations, which are paid for by ASUCM External Vice President's budget containing student fees contributed by UC Merced students. Guadarrama has removed her from his staff, but there are future UCSA Meetings and Conferences this semester that she will be unable to attend on the EVP's budget. Given that she was so comfortable with Guadarrama utilizing his budget for the first part of the semester, I believe even with her not on the staff she will still attempt to travel with the External Staff to meetings, ultimately violating our Financial Bylaws and University travel policy.

Senate Minutes from Feb 8th, 2017

Senate Minutes 2/8

Elected and Appointed Officers:

EVP Report:

xvii. *Name Redacted*: As the organizer director, we are working on establishing homeless student unions in every campus. With UC Berkeley as a model. This was started by homeless student at the UC and it is as an emergency provided for the students from the community.

xxv. *Name Redacted*: as organizing director. ABC has gotten the board of regents to divest from the prison culture. And they are hoping to divest the regions from the Wells Fargo investment an uplifting those demands.

xxxii. *Name Redacted*: As an organizer director, making sure the resources are there for students and that there is the space for students.

Here are a list of the Violations:

Constitution

ARTICLE II – Membership

Any registered undergraduate student of the University of California, Merced may be a full

voting member of the ASUCM. Subject to other applicable qualifications, all members shall be

eligible to hold office in the ASUCM or any of its subordinate organizations.

ARTICLE III – Executive Officers

SECTION 4: Universal Duties & Powers

B. All Executive Officers shall have the authority to appoint a staff to assist in the

carrying out of the duties and responsibilities of the office held

ARTICLE IV – Executive Powers

SECTION 3: External Vice-President

F. To carry out any other duties as set forth in this Constitution and/or the ASUCM Bylaws.

Financial Bylaws:

Article IV: Funding Regulations

Section 1: Spending Restrictions

C. The purchase of any items and/or services prohibited by Federal Law, California

State Law, and/or university policy;

Article VI: Permanent Budget Line-Items & Requirements

Section 9: Registered Campus (Student) Organizations Funds

D. Requirements:

5. All elected and appointed officers of the organization must be registered University of California, Merced Students;

6. Only registered University of California, Merced undergraduate students shall have access to funds contributed by the ASUCM;

7. The student organization's activities cannot jeopardize the ASUCM's nonprofit status;

Bill 71- ASUCM Ethics Code 2013

I - Behavioral Standards and Values

1. As an ASUCM Representative, I value Honesty.

c. I disclose to the Internal Vice President of ASUCM my affiliations with any

organization that is under the purview of ASUCM, or with any friends or groups that have substantial business with ASUCM.

2. As an ASUCM Representative, I value Fairness

d. I observe the established procedures detailed in the Constitution and respective Bylaws and demonstrate transparency in my decision-making process.

3. As an ASUCM Representative, I value Flexibility.

a. I am willing to re-evaluate a prior decision in light of new information in order to uphold the fundamental mission of ASUCM.

b. I adapt my communication style to the situation, and to accommodate the concerns of persons involved.

4. As an ASUCM Representative, I value Responsibility.

b. I can clearly articulate how my decision will advance ASUCM's core values.

c. I use ASUCM materials and resources solely for ASUCM-related activities.

d. I take ownership for the decisions I make or fail to make, the actions I take or fail to take, and the consequences that result.

5. As an ASUCM Representative, I value Communication

a. I clearly convey messages and relay necessary information to fellow representatives as soon as possible.

d. I only act on behalf of ASUCM as a whole when I am authorized specifically to do so by the Constitution

10. As an ASUCM Representative, I value Service.

c. I understand my role as an ASUCM representative as service to the values articulated in our Constitution

II-Values Procedures and Policies

1. All membership of ASUCM will hereby be individually held accountable to the code of ethics throughout her/his term.

2. Any violation of the Code can be remediated through ASUCM's current processes including Impeachment, Judicial Proceedings, and Internal Review Committees.

Be it Finally Enacted: The ASUCM Executive Branch, Campus Activities Board, Multicultural Student Council, Sustainability Council, Inner-Club Council, Neighborhood Relations Commission, Commissioner's Council, and Municipal Relations Commission shall adhere to the ASUCM Code of Ethics and Values. The Executive branch will include the Executives recognized in the ASUCM Constitution

as well as the appointed officials appointed by the ASUCM President and approved

by ASUCM Senate. Any violation of the Code of Ethics and Value can be brought to

the attention of the ASUCM Court as per ASUCM Court Bylaws Section 1.6.1.

Recommended sanctions:

UCSA repays the costs of *Name Redacted* transportation and accommodations that were covered by ASUCM Funds via invoice from Office of Student Life.

Court determine a date that the ASUCM Advisor check student and judicial statuses of all ASUCM elected and appointed officials, and notify the ASUCM Leadership when a member of the organization is ineligible.

Guadarrama be forbidden from transporting non-students to or from UCSA Board meetings, events, or other instances of travel that would violate the ASUCM Constitution, bylaws, or University policy. This includes vehicle transport (to and from), flights, accommodations, conference/registrations fees, or any other transactions involving student fees that would violate the ASUCM Constitution, bylaws, or University policy.

Guadarrama issue an apology to the student the student body for this misuse of student fees.

Any other sanctions that the ASUCM court determines to be appropriate.

University of California, Merced

2016/17 AGREEMENT

ASSOCIATED STUDENTS EXECUTIVE OFFICER

NAME _____ START DATE JULY 25, 2016 END DATE MAY 14, 2017

Approved Payroll Title Title Code Working Position Title Pay rate Supervisor/ Unit

Appointed Student

Official 4329 Associated Students Executive Officer BYA \$100.00/mo Steven Lerer/ Student Life

The purpose of this agreement is to provide a clear understanding of the terms and conditions of the Associated Students of the University of California, Merced Executive Officer role and responsibility before entering into this employment contract by agreement.

Each ASUCM Executive Officer shall receive a job description developed from the ASUCM Constitution Articles III & IV. Article III applies to all Executive Officers while each section of Article IV applies to the indicated officer. ASUCM may have other by-laws delegating further duties and responsibilities for specific ASUCM Executives i.e. Internal Vice-President & Legislative By-Laws, Treasurer & Financial By-Laws, Director of Academic Affairs & F.U.R.S., Director of Student Activities & C.A.B, etc.

TERM OF ELECTION

All ASUCM Executives are charged with upholding the ASUCM Constitution and By-Laws to the best of their ability; also, ASUCM Executives are sworn in by the University of California, Merced, Principles of Community. ASUCM Executives are elected to a one (1) year term starting in the month of May immediately preceding the Greater Spring Semester Elections and serve until the next election is held and those newly elected officers are sworn in.

ASUCM Executives may at any time for any reason resign their office and thus forfeit any responsibilities and benefits of the office. Per the ASUCM Constitution vacated Executive Offices can be filled for the remainder of the term by ASUCM Presidential Appointment with consent of two-thirds (2/3) of the ASUCM Senate; appointed ASUCM Executives are eligible for the same benefits as an elected Executive under the ASUCM Constitution and By-Laws from the point they are confirmed by the ASUCM Senate.

COMPENSATION

ASUCM Executive Officers shall receive \$100 per month in office for July 2016 to May 2017, paid bi-weekly. Compensation is set and increased by the ASUCM Executive in accordance with the ASUCM Financial By-Laws.

ACADEMIC & JUDICIAL STANDING

All ASUCM Executives must be in good academic and judicial standing as define by the Office of the Registrar and Judicial Affairs respectively. Further definition of these terms is found in the UC Merced Student Handbook. ASUCM Executives shall be removed from office if they are found to not be in good academic and judicial standing per the ASUCM Constitution, and as a result of this removal all responsibilities and benefits shall be forfeited; the Associate Vice Chancellor for Student Affairs shall officiate this removal.

IMPEACHMENT

ASUCM Executives can be removed from office under the ASUCM Constitution through a recall or impeachment process outlined in the ASUCM Impeachment By-Laws. Once the process outlined by the ASUCM Constitution and By-Laws as concluded and a conclusion of removal from office has been reached then all responsibilities and benefits of the office are dissolved by the process.

The signature below confirms that the ASUCM Executive Officer has received a copy of their job description and agrees to fulfill the by agreement terms.

Associated Students of the University of California, Merced, Executive Officer Signature Date

Respondent's Evidence:



CONSTITUTION OF THE ASSOCIATED STUDENTS OF THE UNIVERSITY OF CALIFORNIA, MERCED

PREAMBLE

We, the students of the University of California, Merced, as an independent body, do ordain and establish this Constitution in order to provide an efficient and equal representation for the expression of students' views, clarity of opinions, and interests in recognition of the rights of the students in this university community; to encourage effective student participation by providing services and coordinating activities; to support, promote and celebrate the diversity of culture, lifestyle, and beliefs for the breadth of ideas and perspectives they bring; to advance the development of leaders that will serve and make a difference in the present and future; and to promote the general educational welfare and enhancement of the academic benefits and opportunities offered for the continued success of the students of the University of California, Merced.

ARTICLE I – Name

The name of this organization shall be the Associated Students of University of California, Merced, hereafter referred to as ASUCM.

ARTICLE II – Membership

Any registered undergraduate student of the University of California, Merced may be a full voting member of the ASUCM. Subject to other applicable qualifications, all members shall be eligible to hold office in the ASUCM or any of its subordinate organizations.

ARTICLE III – Executive Officers

SECTION 1: Members

The Executive Officers of the ASUCM shall be: President, Internal Vice President, External Vice President, Treasurer, Secretary, Director of Academic Affairs, Director of Student Advocacy and Director of Student Activities.

SECTION 2: Terms


- A. The Executive Officers shall be elected individually in the spring semester and shall be installed before the end of the academic year. A single term shall not exceed one (1) academic year. Executive Officers shall be limited to three (3) consecutive terms of the same office held.
- B. Dates and procedures of elections shall be set forth in the ASUCM By-Laws.







Cathy Oliver

Wed 2/22/2017 4:52 PM

To:  Carlos Guadarrama

Cc:  Connie McBride 



 Reply all | 

Hi Carlos,

Our office was informed that _____ is no longer enrolled at UC Merced and therefore will not be allowed to attend the meeting. So, in that case, I will be needing an updated group lodging form to submit to Travel.

Thank you,
Cathy

Cathy Oliver

Purchasing Specialist

Office of Student Life, UC Merced

P: 209.228.4232

F: 209.228.7618

coliver4@ucmerced.edu



Witness List

Number	Name	Affiliation
1	ASUCM President Katelyn Fitzgerald	Petitioner
	N/A	
	N/A	
	N/A	

Judicial Branch



Cite as: ASUCM Court No. 01-S17

Opinion of the Court

**COURT OF THE ASSOCIATED STUDENTS OF THE
UNIVERSITY OF CALIFORNIA, MERCED**

No. 02-S16

Hulbert v. Guadarrama

March 9th, 2017

Chief Justice Jones delivered the majority opinion of the Court.

When evaluating the arguments and issues at hand the court and myself found ourselves running in circles over possibilities that would be impossible to ascertain as to whether or not were true. After a brief moment of reflection it dawned that the question of this case rested on one question: Did External Vice President Carlos Guadarrama knowingly waste student fees on an individual who was not a student of the university? The answer to which, was deemed to be impossible to answer. While the idea of the EVP being culpable regardless was considered it was deemed to be an unfair assessment as all officials of the Associated Students are not charged with investigating whether or not their staff or peers are in fact students. Though ignorance is never an excuse, this particular case differs. This was not an issue of an official maliciously disregarding governing documents but rather an issue of having no vehicle in place to ensure that all members of the Associated Students are students at the university. It was shown that after EVP Guadarrama was told that a member of his staff was not a student, the individual in question was then immediately removed from their former position. This shows due diligence on the end of the EVP. Though the court does not find EVP Guadarrama culpable,

the court does find that there needs to be a vehicle in which Associated Students members are audited for student status and good standing.

Concurring Opinion: Justice Bey

In regards to the case Hulbert v. Guadarrama, lack of communication lied at the root of the Petitioner's argument, though neither of these are adequate excuses for misuse of student funds by the Respondent. It is my opinion that there should not be a case in which the Respondent is not attempted to be notified directly of any alleged, first time wrongdoing prior to filing a case. This courtesy is not written in any UC Merced By-Law, however, it should be considered before any case is filed.

In the decision pertaining to Hulbert v. Guadarrama, a receipt should be presented to sum the totality of misused funds, presented preferably by the Petitioner, and should be repaid in full by the Respondent, to the organization that presented the funds or back into the Executive Budget.

Signed,

Associate Justice:

Isa Bey

ibey@ucmerced.edu

Judicial Branch



Conclusions and Decision of the Court

There shall be no doubt that the court is delivering this decision after deliberating all and every aspect of the case with reference to ASUCM's governing Constitution and Bylaws. The court finds that EVP Carlos Guadarrama is not at fault and shall face no punitive measures from his actions. As explained in the majority opinion, there is no way possible to determine whether or not the EVP knew the student status of his staff member and therefore cannot be held culpable.

Be it enacted that:

1. The ASUCM student advisor check student eligibility at the start and midpoint of each semester.
2. The Advisor then informs the ineligible individuals and any ASUCM official that the individual may be working under.
3. To ensure burden of responsibility, if individuals are informed and do nothing, the adviser is liable to inform the senate body and the chair of the senate.

Judicial Verdict Vote:

The court mandates the following judicial remedies with an official vote count of:

5-0.

Yea: Chief Brandon Jones, Associate Justices Jasmine Johal, Maria Talania, Isa Bey and Alison Luna

Signed,

Chief Justice:

Brandon R. Jones
bjones26@ucmerced.edu

Associate Justices:

Jasmine Johal
jjohal6@ucmerced.edu

Maria Talania
mtalania@ucmerced.edu

Isa Bey
ibey@ucmerced.edu

Alison Luna
aluna38@ucmerced.edu

Judicial Branch



