

ASUO Constitution Court

ON A REQUEST TO STAY THE RESULTS OF THE 2008 PRIMARY ELECTIONS

Concurrence, Chief Justice Bogar, joined by Associate Justice Ly.

The absence of evidence is not evidence. As fishy or incredible or fantastic as some event might appear, evidence of impropriety must still exist for any competent authority to take action. For the absence of evidence is not evidence. Here, under all the circumstances in a hotly contested election, the absence of evidence that the Dotters-Katz campaign shifted money and funded illicit advertisements is fishy. It fails the smell test.

However, this Court is extremely limited in its scope, powers and jurisdiction. We do not have the power to subpoena, and I am grateful that Ms. Hamilton allowed our fact-finder to analyze her accounts and help us reach our decision. She did not have to do this.

I do not doubt Ms. Hamilton's earnest support of the Dotters-Katz campaign. Nevertheless, \$4000 is a lot of money for a student government election. It seems fishy, incredible and fantastic that a former student, however earnest in her zeal for student government, would spend \$4000 to advertise under these circumstances. But there is presently no evidence of impropriety. We are constrained by the law and what the evidence actually shows. Suspicions or instincts or instincts are not evidence. In the end, the absence of evidence is simply not evidence. No evidence of impropriety has been presented.