



The Associated Students of New Mexico State University

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Office of the Attorney General

Official Opinion

TO: Danielle Duran, *ASNMSU Supreme Chief Justice*

FROM: Rahaf Ben Ali, *ASNMSU Attorney General*

Ruben Morales, *ASNMSU Deputy Attorney General*

DATE: September 9th, 2025

TITLE: "Clarification on the Legality of Bylaw 5-2-4-E and the Judicial Review of Recall Elections"

Subject:

1. What is the meaning of a "Recall Election" within the ASNMSU governing framework?
2. Is Section 5-2-4-E of the ASNMSU Governing Bylaws, which grants the Senate the power to judge election results for a recall, legal given the vesting of judicial power in the Supreme Court under Sections 1-5-1 and 1-5-2?
3. If 5-2-4-E is not legal, what is the proper process for adjudicating a recall election?

Applicable Bylaw:

1-5-1. SUPREME AND INFERIOR COURTS

The judicial power of the ASNMSU shall be vested in the Supreme Court and inferior Courts of the ASNMSU ordained and established by the Senate of the ASNMSU. The Supreme Court of the ASNMSU shall comprise of one (1) Chief Justice of the ASNMSU and four (4) Associate Justices of the ASNMSU, nominated by the President of the ASNMSU and confirmed by the Senate of the ASNMSU. The four (4) Associate Justices of the ASNMSU shall be nominated with the consent of the Chief Justice of the ASNMSU. All Justices of the ASNMSU shall be members of the ASNMSU, and no person shall be nominated or appointed a justice of the Supreme Court of the ASNMSU who has not been a member of the ASNMSU for the spring or fall semester prior to their appointment. The Chief Justice and two (2) Associate Justices of the ASNMSU shall be



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nominated by the outgoing President of the ASNMSU and confirmed at the spring semester's last Senate of the ASNMSU meeting. The term of the remaining two (2) Associate Justices of the ASNMSU shall be confirmed at the last Senate of the ASNMSU meeting of the fall semester. All the Supreme Court Justices of the ASNMSU shall serve a one (1) year term. When a vacancy occurs within the Supreme Court of the ASNMSU, the President of the ASNMSU, with the consent of the Senate of the ASNMSU, shall appoint a qualified member of the ASNMSU to fill the remainder of the unexpired term. A majority of the Justices of the ASNMSU shall constitute a quorum to render a decision.

1-5-2. JUDICIAL POWER

The judicial power shall extend to all cases, in bylaw and equity, arising under this Constitution, statutory enactments, legislative resolutions, or executive orders of the ASNMSU. Both the Supreme Court and inferior Courts of the ASNMSU shall have the power to render decisions in matters of binding arbitration when both parties to such a dispute so request and submit to the jurisdiction over any case originally adjudicated by any inferior Court of the ASNMSU. The Supreme Court of the ASNMSU shall have the sole power to try impeachments of Legislative and Executive Officers. This power shall extend no further than the judgment of removal from office.

5-2-1. DEFINITIONS:

A. "Colleges" means the existing Undergraduate Colleges and the Graduate School of NMSU; and

B. "College Council" means a student organization whose purpose is to promote the interest of the students of their respective College, and which is recognized by NMSU and by the NMSU Dean of the College with whom the College Council is affiliated. A "College Council" shall consist of no less than ten (10) members of the College elected or appointed to such College Council in accordance with the respective College Council's Constitution. The ASNMSU shall recognize no College as having more than one (1) College Council, nor shall the ASNMSU recognize any College Council which represents two (2) or more Colleges; and

C. "Recall" means the removal from the official Office of an ASNMSU Senator by the College Council of the College that the ASNMSU Senator represents.

5-2-4. PRESCRIBING A RECALL ELECTION

An ASNMSU Senator shall be recalled when:

A. A recall petition containing signatures of students within that ASNMSU Senator's College, equivalent to at least twenty-five percent (25%) of the total number of votes cast by students in the ASNMSU Senator's College during the



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election in which that ASNMSU Senator was elected to their current term is presented to the College Council of the ASNMSU Senator's College; and

B. The College Council verifies the signatures and the petition and endorses the petition by a simple majority of a quorum of the College Council in accordance with the Constitution and Bylaws of the College Council; and

C. The ASNMSU members of the ASNMSU Senator's College express a "no-confidence" by a two-thirds (2/3) vote supervised by the College Council; and

D. The ASNMSU Senator must have held office at least during three (3) meetings of the ASNMSU Senate prior to the College's vote on the recall petition; and

E. The ASNMSU Senate judges the election results.

Opinion Rendered:

1. Meaning of "Recall Election":

As defined in Bylaw 5-2-1(C), a recall is a political process initiated by a College Council to remove a Senator from that college. The process, outlined in 5-2-4, involves a petition, verification by the College Council, and a final "no-confidence" vote by the student body of that college. The recall itself is an action taken by the constituents. However, the final step—"judging the election results" of the no-confidence vote—is an act of official certification and validation. This act determines the legality and validity of the process under the bylaws and has a direct, binding effect on the rights of the Senator in question.

2. Legality of Bylaw 5-2-4-E:

It is the official opinion of this office that Bylaw 5-2-4-E is unconstitutional and therefore null and void.

The hierarchy of authority within ASNMSU is clear: The Constitution is the supreme law of the student government. Any bylaw, resolution, or action that conflicts with the Constitution is invalid. This principle is fundamental to the rule of law.

- Article 1-5-1 of the Constitution establishes the foundational structure of government: "The judicial power of the ASNMSU shall be vested in the Supreme Court..." This is an unambiguous grant of exclusive authority.
- Article 1-5-2 defines the immense scope of this power, extending it to "all cases... arising under this Constitution, statutory enactments, legislative resolutions..." A



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challenge to, or a request to certify, the results of a recall election is precisely the type of "case" the Constitution contemplates—it arises directly under the statutory enactment of Bylaw 5-2-4.

- The act of "judging" in this context is the exercise of judicial power. It requires interpreting law, evaluating evidence, and issuing a binding decision. For the Senate—a legislative and political body—to perform this function is a blatant violation of the separation of powers mandated by the Constitution. It creates an intolerable conflict of interest, as Senators would be sitting in judgment of their own colleagues.

A bylaw cannot override the Constitution. Since Bylaw 5-2-4-E attempts to assign a core judicial function to the legislature, it directly conflicts with Articles 1-5-1 and 1-5-2 and must be struck down.

3. Proper Process for Adjudicating a Recall:

The unconstitutional nature of 5-2-4-E renders it unenforceable. The process must default to the constitutional framework.

- The Senate retains its proper legislative role: to write and amend the bylaws that govern the recall process (5-2-4 A-D).
- Once the political process (the no-confidence vote) is complete, the matter becomes a judicial case. The College Council, the Senator in question, or any aggrieved party must present the results to the ASNMSU Supreme Court.
- The Supreme Court, exercising the judicial power vested in it by the Constitution, will then hear the case, judge the election results for compliance with all applicable laws, and issue a final and binding ruling on the validity of the recall.

This process respects the constitutional separation of powers, ensures impartiality, and provides due process to the Senator facing removal.

Conclusion:

Bylaw 5-2-4-E is unconstitutional. The power to judge recall election results and certify their legality is a judicial function that resides solely with the ASNMSU Supreme Court, as mandated by Articles 1-5-1 and 1-5-2 of the Constitution. The Senate should take immediate action to amend Bylaw 5-2-4-E to reflect this constitutional reality, likely by replacing "The ASNMSU Senate" with "The ASNMSU Supreme Court."

Thank you for bringing this significant constitutional issue to my attention. Please tell me if you have any further questions or need more information.



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Best regards,

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