

Memorandum

Jurisdiction

Article V, Section 3(b)(2) states “The Supreme Court shall, upon written petition of any member of the Student Body and for good cause shown, order any Student Government official or any officer of a student organization that receives Student Body funds to perform any lawful act or refrain or desist from an unlawful act.”

The Court’s current case law requires any individual requesting an order under Article V, Section 3(b)(2) to have (1) a concrete injury, (2) traceable to the petitioner, and (3) redressable by the Court. In re: “Ortiz Standing”, 3 S.C. 52, 52 (September 11, 2020).

Concrete Injury

The Judiciary Committee has incorrectly applied the Five Criteria in order to prevent legislation from being heard by the full Senate.

Traceable to the Petitioner

The incorrect application of the Five Criteria and bad-faith review has prevented this petitioner’s legislation from being considered by the full Senate.

Redressable by the Court

Pursuant to In re: Chilling Effect 3 S.C. 60, 60 (No Date Available), the term “Student Government official” has been interpreted to include Student Government bodies. This petition seeks to order the Judiciary Committee of the Senate to refrain from improperly applying its Five Criteria

Table of Authorities

1. Rule XI, 3(b)(c)(ii) of the Rules and Procedures of the Student Senate (hereinafter “Rules and Procedures”)
 - a. The Judiciary Committee will review legislation as to its constitutionality, implication, legality, format, and clarity, and may submit to the Senate amendments to legislation reviewed by the committee.
2. Article III, Section 8(i)(4):

- a. Authorization - a directive requiring a two-thirds vote for enactment that advises, orders, or prescribes the method for an officer to fulfill a duty provided for in the constitution and is not subject to veto
- 3. Code 216.1 of the Student Body Statutes:
 - a. “The Student Body President may create a new agency or program under Title II, S.B.S.. Any position created under Section 216.1, S.B.S. may only exist for the Student Body President’s term of office. If the position, or a position with a similar purpose, is to be extended past the Student Body President’s term of office, it must be codified under Title II, S.B.S..”
- 4. Article IV, Section 4(g):
 - a. “Appoint aides or other officials not provided for by Student Body law, if deemed necessary”

Statement of Facts

On July 3, 2022, the Judiciary Committee postponed an authorization. The proposed authorization would have the Student Body President appoint an officer to handle the reimbursement of funds for a number of pregnancy-related healthcare services.

The Judiciary Committee stated that the authorization was unconstitutional and likely illegal. The Judiciary Committee cited a concurring opinion from the Supreme Court, which is not legally binding, and a case that dealt with the Student Government Executive Committee making appointments for the Student Body President. The Judiciary Committee also cited HIPAA to deem the authorization illegal.

Discussion

The Judiciary Committee must review legislation for its constitutionality, implication, legality, format, and clarity. No issues were raised regarding the format or clarity of the legislation. There were no issues raised in terms of implication. The legislation was postponed based on constitutionality and legality.

The Judiciary Committee cited *In Re: Padron-Rasines* 3 S.C. 9, 9 (No Date Available) to correctly assert that the Student Body President has the plenary power to appoint an official that is principally executive in nature. However, the authorization does not order the Student Body President to appoint a specific individual for the position outlined in the authorization. It states that it is necessary for such an official to be appointed and for the Student Body President to do so.

The Judiciary Committee cited In re: Murphy 3 S.C. 30, 30 (August 8, 2019) and In re: Murphy II 3 S.C. 47, 47-50 (June 23, 2020) to affirm the Court's adherence to the separation of powers doctrine and that the Senate cannot force the Student Body President to make an appointment. The cases dealt with the issue of executive timelines and this authorization does not force the Student Body President to make an appointment by a specific timeline.

Next, the Judiciary Committee states that S.B.S 216.1 allows for the appointment of officers not provided for by Student Body Law when the Student Body President deems it necessary. This petitioner argues that an authorization can still be used to advise, order or prescribe the appointment of an officer not provided for by Student Body Law when the Senate deems it necessary. The appointment of an officer under the orders of an authorization to fulfill an Article IV Section 4(g) duty is an equally valid way to appoint an officer compared to the appointment of an officer under S.B.S 216.1. In fact, it is a necessary power of the Senate so that the executive branch may be compelled to fulfill a constitutional duty in the event that it is negligent.

Finally, the Judiciary Committee cited that in the event that the authorization's intent had been enacted, materials submitted to be reviewed by the officer would violate HIPAA. HIPAA would not be applicable in this case because the officer is not a healthcare provider, and students would willingly be providing materials related to the charges they incurred if they deem the risk of exposure by a public records request necessary. The Judiciary Committee makes an assertion that is based on speculation of how the authorization would be implemented. If mere speculation is enough to cause a piece of legislation to fail in the Judiciary Committee, it would condemn multiple types of legislation from receiving proper debate in the Senate chamber, where the merits and possible ramifications of the legislation can be discussed and voted upon.

Request for Relief

This petitioner asks the Supreme Court to verify whether or not the Judiciary Committee properly applied the Five Criteria, and if not, order them to refer the proposed authorization to the full Senate.

Signature of petitioners

Signature: Oscar Santiago 7/5/2022
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Respectfully submitted,
Senator Oscar Santiago

