

**SUPREME COURT OF STUDENT GOVERNMENT AT  
TEXAS STATE UNIVERSITY**

No. 01-04

**Syllabus**

DOMONIQUE GRAY-BERROA

v.

TIFFANY YOUNG, Student Body President

Received March 5, 2015 – Decided March 9, 2015

A Notice of Complaint was filed with the Supreme Court by Mr. Domonique Gray-Berroa concerning an accused violation of the Scholarships Act found under Student Government Code (S.G.C.) IX §103.4 which provides members of Student Government the right to apply for and be granted the scholarship, with specific restrictions. Mr. Gray-Berra claims an oversight by Tiffany Young, Student Body President by not enforcing the Scholarships Act, and therefore has unnecessarily and unlawfully denied rights to members of Student Government.

The Notice of Complaint provided a clear citation of the violation and presented a number of critical questions for the Court. As a result, Chief Justice DeSalvo and Associate Justices Wan, McKinney, Tennent, and Greenlee agreed to grant a hearing on the case. A hearing date was set for March 9<sup>th</sup> and testimony was recorded by both the Complainant and Respondent.

The Court embraced a number of subjects to deal with the conflicts and poor structure of the scholarship statute. The Court's Main Opinion is issued below (*see page 7 for the final court order*).

Chief Justice DESALVO delivered the Majority Opinion of the Court in which Justices WAN, MCKINNEY, MORRISON, and TENNENT joined. Justice GREENLEE, filed an opinion concurring in part and dissenting in part. Justice SCHULTZ wasn't present for the hearing and therefore cannot register an opinion.

### **I. Judicial Criteria**

This case posed several questions to the Court about the relationship between the Student Government Constitution and the various regulations found in the Student Government Code. In fact, the extent of that relationship necessitated the establishment of criteria by which this Court shall measure other complaints and cases that come before it, as a means to provide coherent and consistent results from the judiciary. The required judicial criteria for every case are (1) A Test of Constitutionality (2) A Test of Ethics. These criteria are directly related to an Order of Precedence (*more on this in section II*) found in the Student Government Code. The Court shall establish other criteria as needed, which shall only be applied when there is true applicability on a case by case basis as they come before the Court. Therefore, tests (1) and (2) must always be performed because of their rank. Other tests may or may not be performed depending on the case. In this instance, only one other criteria is applied: A Test of Functionality.

### **II. Order of Precedent**

The Student Government Code establishes varying governing documents organized into Titles of the S.G.C. which decrease in precedence.<sup>1</sup> The Court interprets this to mean that each of the Titles of the Student Government have rank by importance, the lower the number, the higher the rank and importance of the rules found within that Title. Each successive Title must not conflict with the any proceeding one, if a conflict does exist then the resulting incompatibility with the constitution would necessitate that the Court strike down the provision in the lower ranking Title as unconstitutional.

Not every Title will be incorporated or have an effect, on the succeeding Titles. For instance Title VI – The Legislature, outranks Title VII – The Court; however, these two Titles outline the operational procedures for the differing Student Government components. Until such time as the Supreme Court agrees that these two Titles affect each other in a real and substantial way, the Order of Precedence may not be incorporated and therefore no test applied between the two. For now, the Court acknowledges the inherent difference

---

<sup>1</sup> S.G.C. I. §100.3(2) “The titles for the S.G.C. shall divide differing governing documents in order of decreasing precedence...”

between the operational procedures of some Titles which are written to account for the differing needs of each component.

This doctrine of interpretation (*Order of Precedence*) establishes a set of Rights and Responsibilities, limiting what actions the Student Government and its members can take in many ways similar to a Bill of Rights.

It is this Order or Precedence which mandates all the tests other than the constitutional test and directly connects each title and every rule to the Constitution.

### III. A Test of Constitutionality

The Supreme Court first conducted a constitutional test on the Scholarships Act, primarily consisting of identifying direct authorization connecting a rule, regulation, or statute with a power granted in the Constitution.

The S.G.C. requires that all titles and chapters cite the sections of the Student Government Constitution which authorizes it.<sup>2</sup> As a result, every statute has a direct correlation to the Constitution. The Supreme Court must first test any case that comes before it against this requirement so as to ensure that the regulation isn't in itself a violation of the Student Government Constitution. This is done with or without direct promoting as a part of the Supreme Court's power of Judicial Review.

This Court tested S.G.C. IX. §103.4 – Scholarships Act against the constitution and agree that the Senate has the power to establish and regulate the Student Government Scholarship under Article III(10)(j):

*“To legislate all statutes which shall be necessary and proper for execution of all powers granted to all components of Student Government as prescribed in this constitution...”*

### IV. A Test of Ethics

In accordance with the Order of Precedence doctrine, Title II – Code of Ethics is the highest ranking set of statutory requirements and stands just below the constitution in its importance. As a result, every piece of legislation, bill or resolution, and every action of Student Government and its

---

<sup>2</sup> S.G.C. I. §100.3(6)(a) “All new titles or chapters shall cite the section(s) of the Student Government Constitution which authorize(s) new regulation pursuant to the powers granted under it.”

members must be in compliance with the ethical standards found in Title II.

This brings us to the primary issue in this case: Is it ethical to allow members of Student Government to have access to the resources and services Student Government has commissioned for the student body?

In this instance, the Court referenced S.G.C. II. §100.2(3)(a),(e),(g) and incorporated Title II into the Order of Precedence, requiring every successive Title to be acceptable under the terms of the Code of Ethics.

The Court chose first to deal with the requirement that members of Student Government serve the student body beyond serving themselves.<sup>3</sup> In order for the specific section of the Scholarship Act to pass this ethical test, the Court had to identify if those with authority over the awarding of scholarships could themselves benefit from the scholarship. A reading of S.G.C. IX. §103.4 outlines that every member of Student Government is eligible to apply for the scholarship, but that specific restrictions do exist on those specific applications.<sup>4</sup>

The Court does recognize an attempt by the statute to reduce ethical liability, but does not reduce the possible benefit that could be gained by those with direct authority over the scholarship. In this case the group with the greatest authority in relation to the Scholarship is the Finance Commission. This section of the Act does not do enough to reduce the ethical liability. It would be too difficult for any member of the Finance Commission, the body responsible for giving out the scholarship, to act within the confines of the Code of Ethics which also require members to be, "...benevolent and fair..."<sup>5</sup> A set of clearer restrictions removing any benefit from those who have authority over the scholarship and those who can apply are necessary for the Court to accept the practice as ethical.

The Court therefore declares a segment of S.G.C. IX. §103(4) unconstitutional as it is not an ethical practice and cannot pass

---

<sup>3</sup> S.G.C. II. §100.2(3) "SERVING THE STUDENT BODY. To serve the student body, beyond serving oneself, members of Student Government..."

<sup>4</sup> S.G.C. IX. §103.4 "RESTRICTIONS FOR STUDENT GOVERNMENT. Members of Student Government, who meet the established criteria, shall be eligible for either scholarship but any members of the Finance Commission who apply will not be allowed to review the applicants' information or make any decisions on the applicants' award status."

<sup>5</sup> S.G.C. II. §100.3(e) "Be compassionate, benevolent and fair."

the ethical test in the Order of Precedence. The unconstitutional segment includes:

*“...but any members of the Finance Commission who apply will not be allowed to review the applicants’ information or make any decisions on the applicants’ award status.”*

This keeps intact the segment prior to its which reads:

*“Members of Student Government, who meet the established criteria, shall be eligible for either scholarship...”*

This part of the of the Scholarships Act grants members of Student Government access to the scholarship, which the Court finds passes the ethics test as acceptable because the majority of the organization has no agency in the process. That is, they have no direct say in the scholarship awarding process. The organization as a whole should not be barred from being granted access to a service the rest of the student body has access too. If the Court followed the logic of barring members from access to services, then other services the Student Government provides would need to be off limits as well. Such a limitation isn’t founded in any other rule or regulation in the S.G.C. and isn’t supported by the Code of Ethics and it may not be altogether fair.

However, members who have agency, those with direct authority or decision making power in the award process, cannot be eligible for the services provided by Student Government.

## **V. Test of Functionality**

Even with constitutional invalidity of the specific segment of the Scholarships Act, the Student Government Constitution and the Student Government Code requires that the commission preform the functions they are assigned by the Senate.<sup>6 7</sup> The Court doesn’t believe the Scholarships Act is completely unconstitutional, and as a result the Finance Commission must perform its constitutional and statutory responsibilities. Failing to do so would result in a violation of

---

<sup>6</sup>Constitution Article 5, Section 6, Subsection (a) “Provide a service, program, or coordinate a project used by students”

<sup>7</sup> S.G.C. V. §100.3(4)(d) “...ensure the Commission meets its statutory and written expectations including deadlines and projects”

the constitutional responsibilities conferred to members of that commission.

By striking down the segment of text in the Act as unconstitutional without any further judicial examination, the commission could be ethically impeded from performing its responsibilities. As a result, the Court applies the Test of Functionality and incorporates it into the Order of Precedence. Student Government, by its very nature, must function as a practical matter. The Court therefore will use both the Code of Ethics and the Functionality Test to ensure that scholarships can still be awarded, granting some members of Student Government access to the scholarship while reducing the ethical ambiguity as much as possible by restricting those with direct authority over the scholarship as ineligible to receive an award.

Since the Court struck down some provisions of the Scholarship Act as unconstitutional President Young did not violate the S.G.C. per se. Though, through her own admission, not enforcing this section of the S.G.C. was an oversight and she would have executed the Scholarships Act differently had she been aware of the provision.

It is the opinion of this Court that all members of Student Government are eligible to apply and, if selected by the commission, may be granted the scholarship award, with the exception of the Finance Commission members and President (which are ineligible as required by the ethical stipulations of the Student Government Code of Ethics).

Both the Commission and the President have too much authority in the context of the scholarship awarding process. If they were to be granted access to the scholarship, they would be unable to act in a way consistent with the Code of Ethics requirement to serve the student body beyond serving themselves.

We grant the request for relief and order that the scholarship application be modified to remove any mention of Student Government member ineligibility. Furthermore, the scholarship application must be reopened to all students by Wednesday, March 12<sup>th</sup> at 9:00 AM for a 7 day period to end on Wednesday, March 19<sup>th</sup> at 9:00 AM.

To completely remedy the issues presented in this case and to be fair to all students in the Texas State community the Court also orders President Young to email the student body and inform them of the extension with information about the new deadline (*using proper university channels*). In addition, President Young is hereby ordered to send a separate email informing all members of Student Government (*except those expressly excluded as stated above*) of their right to apply to the scholarship including the extension period and deadline.

***It is so ordered...***