

**DEAN OF STUDENTS**  
**DIVISION OF STUDENT AFFAIRS**  
**TEXAS STATE UNIVERSITY**

Appeal of the Majority Opinion of the Student Government Supreme Court Sitting as  
Impeachment Review Committee, Case No. 04-02

**Senator Claudia Gasponi, et al.**

Petitioners

v.

**President Connor Clegg**

Respondent

MARCH 28, 2018

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## **IDENTITY OF THE PARTIES**

### **PETITIONERS**

Mael Le Noc, Graduate House Representative, Petitioner of appeal  
Claudia Gasponi, Senator, University College, Petitioner of appeal  
Alissa Guerrero, Student, Petitioner of appeal

### **RESPONDENT**

Connor Clegg, Student Body President

## **TIMELINE OF EVENTS**

February 16, 2018: Student Senator Claudia Gasponi authored and emailed Articles of Impeachment to Student Senate Chairperson Jacqueline Merritt and Student Government Supreme Court Chief Justice John Garcia.

February 17, 2018: Student Senate Chairperson Jacqueline Merritt emailed all Student Senators with the February 19, 2018 Student Senate meeting agenda where the Articles of Impeachment were placed as a New Business item.

February 19, 2018: Student Senate Chairperson Jacqueline Merritt called to order the Student Senate meeting, determined no business could be conducted due to not having quorum based on the roll that was taken during the meeting, and immediately adjourned the Student Senate meeting.

February 26, 2018: Student Senator read the Articles of Impeachment during the Student Senate meeting under the New Business section of the Student Senate meeting agenda.

February 27, 2018: Student Government Supreme Court reviewed the Articles of Impeachment during a public meeting, deliberated in private, and announced their decision to reject the Articles during the public meeting.

March 5, 2018: Impeachment Review Commission sent a written response regarding Case No. 04-02 - Articles of Impeachment Review.

March 19, 2018: A petition to appeal the Impeachment Review Commission was filed with the Dean of Students.

## STATEMENT OF THE CASE

On November 28, 2017, the University Star published an opinion article titled, “Your DNA is an Abomination.” The article dealt with issues of race, race identity and social construction of “whiteness.” The article became controversial and received widespread public and even national attention by the news media.

On November 29, 2017, the Student Government President, Connor Clegg, responded by publishing a statement condemning the opinion article via the Student Government website and titled “From the President’s Desk.” He also responded via the Student Government Twitter. In his communication, he called for the Resignation of Rudy Martinez, author of the article, Opinions Editor May Olvera, and Editor-in-Chief Denise Cervantes. He also added “Should these individuals choose not to resign, I will be calling for an emergency meeting of the Student Service Fee Committee to reevaluate the paper’s funding and call for a full divestment of student fees from the Star.”

On or about November 30, 2017, KTSW, the University affiliated radio station, released a tweet and a phone recording from President Connor Clegg stating that his statement was not representative of Student Government or the University.

Articles of Impeachment against President Clegg were submitted on February 16, 2018 to the Student Senate Chairperson, Jacqueline Merritt, and to the Supreme Court Chief Justice, John Garcia. The Articles of Impeachment were placed as a New Business item for the Senate meeting on February 19. No action was taken on February 19 because there was no quorum for a business meeting based on the roll taken. The Articles of Impeachment were read during the Student Government Senate meeting (under the new business section) on February 26.

The Court was granted, according to the governing documents, immediate jurisdiction over the case as follows.

### SGC Title VII Ch. 200 Art. 1§2(a)(d)

*“In addition to the powers and responsibilities granted to it by the Student Government Constitution the Supreme Court shall assist the President in the enforcement of Student Government rules and regulations, provide oversight whenever rules are violated, provide a judicial remedy when conflicts arise, ensure the Student Government Code is kept up to date and accurate, and address any issue of a disciplinary nature.*

*(a) When Articles of Impeachment are filed, the Supreme Court shall act as the impeachment review committee as indicated in the Student Government Constitution.*

*(d) Decide if actions of members of Student Government are impeachable.”*

The Supreme Court/Impeachment Review Committee held a public meeting, deliberated in private, and announced their decision immediately after the public hearing on February 27, 2018. The Supreme Court ruled that based on the evidence presented, the Justices of the Court unanimously found that there was insufficient evidence to indict President Clegg under articles 1-6 of the Articles of Impeachment.

On March 19, 2018, the Dean of Students received a petition to appeal the Opinion of the Supreme Court from the Graduate House Representative, Mael Le Noc, Student Government Senator, Claudia Gasponi and student, Alissa Guerrero.

## **DEAN OF STUDENTS REVIEW: ISSUES OF TECHNICALITY AND DUE PROCESS**

The Petitioners argued for Issues of Technicality and Due Process in the areas of Quality of Investigation, Quality of Justices, Time Spent Investigating and Deliberating Evidence, Nepotism of the Court, Unfair Time Distribution, and Unprecedented Trial Construction. The Dean's opinion is as follows regarding these matters:

**Quality of Investigation and Quality of Justices:** The Petitioners allege that the Chief Justice planned to resign after the Impeachment procedures were complete. They also alleged that other Justices were also fatigued and that this created an unfair trial. The Dean saw no evidence presented to her about the allegations that Chief Justice Garcia intended to resign after the impeachment trial and that some of the other judges were fatigued during the process.

Dean of Students Review: After review of the record on appeal, the Dean did not find credible evidence regarding the claims of the Petitioners.

**Time Spent Investigating and Deliberating Evidence.** The Petitioners allege that the Justices did not meet prior to the hearing and that they only deliberated for 40+ minutes after which they rendered a verbal opinion. The Code does not state that the court must deliberate for any set amount of time, rather it gives the Supreme Court flexibility as stated in Chapter 200-Supreme Court Art. VI Impeachment Review §1(e). This section states "*all questions of procedure or order shall be decided by the Chief Justice.*"

Dean of Students Review: The Student Government Code does not require the Supreme Court, sitting as the Impeachment Review Commission, to meet before the Impeachment Review Hearing. It is actually customary that in order to keep an unbiased court and ensure an impartial deliberation and decision, the court does not discuss, except in cases of procedure, facts of cases before the parties are allowed to present their case at the hearing.

Based on the record, the Dean found no violation in their proceedings. However, the Dean does believe that when the Supreme Court is sitting as the Impeachment Review Commission, additional time should be allocated for presentations by the parties and deliberation.

The Dean requests that the Student Government, including the elected representatives and senators of the Student Body, conduct a review of the impeachment process to ensure that adequate procedural and substantive due process guidelines are written down and can be relied upon by parties involved. Although flexibility is important, the Court wants to avoid a perception of unfettered discretion.

**Nepotism of the Court.** The Petitioners allege that six of the seven justices are students in the same academic department (political science). They also allege that several of them are members of the same student programs (Model United Nations and the Mock Organization of American States). In addition, they allege that Justice Samantha Martinez was the Vice President of Student Government when Connor Clegg served as the Chief of Staff during that administration, creating issues of nepotism.

Dean of Students Review: The fact that six of the seven justices are political science major is not a surprise, since these students tend to demonstrate an early interest in politics. The fact that they tend to join certain organizations, such as debate teams is also not a factor that should be considered nepotism of the court. Lastly, Justice Martinez' appointment to the court should not be attributed to unfair favoritism, just because she had the same opportunities as others to apply, be selected and confirmed by the entire Senate. Justice Martinez followed the same process as all other candidates who have been selected as Associate Justices in the past.

The Dean found no evidence from the record that Justice Martinez engaged in ex parte communication with the respondent or other incidents that would unduly prejudice or bias her ability to deliberate impartially while sitting on the Court as it exercised its function as the Impeachment Review Commission.

Nevertheless, the diversity of students participating in Student Government should be an ongoing concern that falls upon Student Government and all students at Texas State. Whether it is a member of the Executive Branch, the Supreme Court, Student Senate or Graduate House. Representation is important in governance and in a democracy, so I recommend this to become a deliberate and strategic effort for Student Government in the future.

Although the Dean finds there is no evidence of nepotism, there are issues of diversity of students in Student Government participation that should be addressed. In addition, if the Student Government, including the elected representatives and senators of the Student Body, is concerned about potential nepotism within the organization, the Dean recommends they work to adopt policies and procedures to provide safeguards against such incidents.

**Unfair Time Distribution** The Petitioners allege that the time distribution was unfair because they were given twenty minutes each to argue their case, but they were asked twelve questions while the respondent was asked only two questions. The Petitioners were given five extra minutes at the end and the respondent was given two minutes, but the Petitioners argue that they should have been given more time at the end.

Dean of Students Review: As stated previously, the Chief Justice is given discretion as to the distribution of time as indicated in Chapter 200-Supreme Court Art. VI Impeachment Review §1(e). This section states “*all questions of procedure or order shall be decided by the Chief Justice.*” The Dean finds that the court followed the procedure which they thought best for the case, and the Dean found no evidence that the Court was intentionally unfair regarding the distribution of time.

However, the Dean does believe that when the Supreme Court is sitting as the Impeachment Review Commission, additional time should be allocated for presentations by the parties and for deliberation.

The Dean requests that the Student Government, including the elected representatives and senators of the Student Body, conduct a review of the impeachment process to ensure that adequate procedural and substantive due process guidelines are written down and can be relied upon by parties involved. Although flexibility is important, the Court wants to avoid a perception of unfettered discretion.

**Unprecedented Trial Construction.** The Petitioners allege that Chief Justice John Garcia did not follow the trial structure set forth in the Student Government Code Appendices and developed his own trial construction.

Dean of Students Review: The Chief Justice is given discretion as it pertains to the proceedings of the Review Committee as indicated in Chapter 200-Supreme Court Art. VI Impeachment Review §1(e). This section states “*all questions of procedure or order shall be decided by the Chief Justice.*” The Dean found no evidence that indicates the Chief Justice of any wrongdoing. However, as mentioned previously, the Dean requests that guidelines for impeachment procedures be developed so the Petitioners and Respondents can better understand what the proceedings will entail.

### **Case Review of the six Articles of Impeachment Submitted to the Supreme Court/Impeachment for Review**

The Articles of Impeachment brought forward to the Supreme Court were authored by Senator Claudia Gasponi, and sponsored by seven Senators and eight Representatives (see Appendix A). The articles allege the violation of the Student Government Governing documents by Respondent, Student Government President Connor Clegg, as specified in the case statement at the beginning of this document.

**The Articles of Impeachment allegations are:**

#### **Article I**

Petitioners allege that Respondent failed to represent students according to the Code of Ethics of Student Government. SGC Title II Ch.100 Art 2 §3(a) “*represent our peers’ interests to University officials above that of our own opinion or that of University administrators or others.*” The Petitioners allege that Respondent used university affiliated media to ask for the

resignation of the Editorial Board or defunding of the University Star for publishing “Your DNA is an abomination” on November 29, 2017 (see Appendix A). The Petitioners allege that he “failed to represent his fellow peers’ interest above that of his own opinion.” They also claim he failed students by “using privilege granted to him through Student Body Government.” He did this by using Student Government media platforms (website and Twitter accounts) that gave the impression that his opinion was the opinion of Student Government.

The Respondent alleges that he was clear via his follow up tweet and phone recording on or about November 30 that his initial statement on November 29 was his own opinion and did not represent Student Government or the University. This tweet and a phone recording were released by KTSW after the initial tweet and update on the Student Government website were posted.

Dean of Students Review:

While the Respondent may assert that there was no ill-intent on his part to create the perception that he was speaking on behalf of Student Government, using the Student Government media platforms could give the impression to the public that the Respondent was attempting to represent his opinions over the interests of other elected students within the Student Government and/or his peers within the Student Body. In addition, intent and impact can be difficult to understand or align, but the actions taken or not taken, even if outcomes are unintended, may still result in the actor not adhering to required standards of law, policy or convention.

## **Article II**

Petitioners allege that President Connor Clegg failed the Code of Ethics according to SGC Title II Ch. 100 Art 2 §3(f) “Be clear and concise, thoughtful and prepared.” He also failed to follow the Student Government Constitution Art. I §6. “*No member may take undue liberties in the representation of Student Government without authorization from either the House or Senate.*” If he knew he was using his own personal opinion, he should not have used University affiliated media. In their words, “he made his own personal opinion appear as a collective opinion by the Student Government.” In addition, he demonstrated his unpreparedness according to the Petitioners when he “failed to check the template and left Andrew Homann’s email address on the “From the President’s Desk” while publishing his own personal statement using university resources.” Petitioners also allege that KTSW’s misinterpretation of the statement on Twitter as being representative of the Student Government is proof that the Respondent failed to be clear.

According to the Petitioners, President Clegg also violated a Student Affairs University Policy SA/PPS 03.10 “*Officers of Student Government will so identify themselves when they express their personal views, and they shall make it clear that they are not speaking for the University, the student body or for Student Government unless the Senate has authorized the statement in advance.*”

The Respondent alleges that he consulted with members of his cabinet and some members of Student Government before making his public statement and that he publicly acknowledged that the response was his own opinion (the day after the initial public statement). The Respondent

also alleges that leaving the email address of past president Andrew Homann was not an error but it was intentional in order to encourage multiple points of communication with the President.

Dean of Students Review:

The Dean believes that a student has the right to her or his opinion regarding an article published by the University Star, consistent with protections and obligations under the First Amendment. However, officers of the Student Government as well as elected representatives of the Student Body have an obligation, as written in the Student Government Code and University Policies and Procedures. Officers have to specifically consult with the rest of the Student Government, especially all of the elected Senators and Representatives of the Student Body, prior to making a statement that may be construed as representing or actually does represent an official position of the Student Government. What is being challenged by the Petitioners is that when the Respondent addressed the issue by using Student Government media platforms and by failing to bring for deliberation this policy issue to other branches of Student Government prior to announcing this course of action, he violated the Student Government Code of Ethics and/or the Student Affairs University Policy SA/PPS 03.10. And as a result of Respondent's actions in violation of the code and university policy, the impact of the Respondent's statement caused an internal and external uproar that negatively impacted the image and credibility of Student Government. While the Respondent asserts that he did consult with his Cabinet and some members of the Student Government before making the statement, he did not present the matter for deliberation to the Student Senate and Graduate House of Representatives before making them. This could be construed by members of the Student Government and peers within the Student Body as violating the Student Government's governing documents and university policy.

**Article III**

Petitioners allege that President Clegg failed the Code of Ethics, Title II, Chapter 100, Article II § 4(h) by failing to encourage and facilitate legitimate dissenting opinions. According to the Petitioners, he failed by ignoring the opportunity to request dissenters to voice concerns unique to his decisions in matters of diversity. Asking some of his Cabinet members and a few senators was not, in their opinion, a true gesture for seeking dissenting opinions. They also claim that "the short period of time between the publications of Martinez's opinion (Tuesday, November 28, 2017) and the release of Clegg's statement (Wednesday, November 29, 2017) would hardly allow for anyone to have time to seek, and even less to encourage or facilitate dissenting opinions." In addition, they suggested that President Connor should have met with the author of the Opinion, Rudy Martinez, the Opinion Editor, May Olvera and/or Editor-in-Chief, Denise Cervantes at any point prior to releasing his statement.

The Respondent alleges that before taking executive action, he sought the advice and guidance of his Cabinet members who had dissenting opinions, and they were heard and considered. President Clegg also claims that he held multiple meetings with people who disagreed with his stance and spoke to many members of the student body, both those who agreed or disagreed with him.

Dean of Students Review:

The Dean shares the Petitioners' concern that the Respondent should have taken more time to seek advice and to understand dissenting opinions within the Student Government and university before taking a public stance on a policy issue. Again, officers of the Student Government as well as elected representatives of the Student Body have an obligation to specifically consult with the rest of the Student Government, especially all of the elected Senators and Representatives of the Student Body. A leader must be able to manage the expediency of an issue with the need to gather input and facts, including presenting at a regularly established meeting of the Student Senate and/or Graduate House of Representatives, to gather opinions before taking a stand. If this had been an emergency situation, the Respondent could have at the minimum acknowledged that he would look for the Senate, Graduate House and other students' support in doing this. Based on the actions of the Respondent, it could reasonably be interpreted that the Respondent failed to properly consult with the Student Senate, Graduate House and other stakeholders prior to making a statement.

**Article IV**

The Petitioners allege that the Student Body President failed the Code of Ethics SGC Title II, Ch. 100, Art 2 Ethical Standards §5(b) by abusing his power and position. "Clegg abused his power as Student Government President by accessing these university affiliated social media accounts and using his platform to publish and promote his own personal agenda and opinion." They agreed that he has the right to his opinion, but the issue is that he used his platform as a Student Government President to do so and forgot to inform the public in his first response that his statement did not represent Student Government, Texas State students or the University.

The Respondent claims that he did not abuse his power and position because he did check with his Cabinet, some senators and many university students who contacted him.

There is a clear disagreement on how both groups see the concepts of "trustee" versus "delegate."

Dean of Students Review:

As mentioned before, officers of the Student Government as well as elected representatives of the Student Body have an obligation to specifically consult with the rest of the Student Government, especially all of the elected Senators and Representatives of the Student Body. The Respondent should have taken more time to seek advice and to understand dissenting opinions within the university before taking a public stance on a policy issue. The Respondent could have, at the minimum, acknowledged that he would look into the Texas Education Code, under which Student Service Fee operates, and look for the 'possibility' of doing this. He should have also mentioned that he would look for the Senate, Graduate House and other students' support in doing this. It could be construed that the Respondent's actions, including rushing to a decision and making public statement without first consulting with the Senate, Graduate House and other stakeholders (on an emergency situation at least clarifying that he would bring this issue

to the Senate and/or Graduate House for deliberation) constitute abuse of power as President to the detriment of the Student Government and members of the Student Body.

## **Article V**

According to the Petitioners, the Respondent violated the Student Government Constitution: Article I, § 2. *“The Student Government shall be the primary recognized forum for student opinion, represent the student interests and concerns to the administration, and provide those activities and services it deems useful to students.”*

In the Petitioner’s arguments, they believe the Respondent’s rushed response did not allow student opinion to be represented. In the appeal filed with the Dean, the Petitioners also argue that “by using his title and position as president of Student Government to threaten to defund the University Star, President Clegg abused his power and position thereby violating SGC Title II Ch. 100 Art. 2 §5(b) *“not abuse power or position.”* They also argue that threat to defund the Star was issued over a dislike and disagreement of content, and this threat is constitutionally illegal.

According to the Respondent, he believes that this threat, although unpopular, is still protected speech. He also argues that his decision is protected by the Student Government Code as outlined in Title 2, Chapter 100, Article 2 §4(e) *“Respect the principle of representative government.”*

### Dean of Students Review:

The Dean agrees that the Respondent has the right to his own opinion, but the issue is the way he responded as the Leader who represents the Student Body at Texas State and someone who is seen as the “voice” of students.

As stated previously, the Respondent should have first consulted with the elected representatives, members of the Student Senate and Graduate House prior to coming to a decision and making a public statement. Again while a student acting in their individual capacity as a student is entitled to make a statement about an issue under the First Amendment, Respondent chose to run and be elected to the office of President of the Student Government. Therefore he agrees to abide by the governing documents, policies and procedures of the Student Government. No member of Student Government can choose to ignore these rules because they conflict with his opinions or beliefs or that the First Amendment entitles them to make a statement. It is well established that when someone joins an organization or employer, they agree to abide by the rules of conduct for that organization. An officer of Student Government, including the President, must consult with the Senators and Representatives who are elected representatives of the Student Body, prior to making statements that could be construed as representing or actually representing the position of the Student Government. Of additional concern is that the Respondent did not deny the contention by the Petitioners that he made the statement about planning to call an emergency meeting of the Student Service Fee Committee to defund the University Star because he disliked and disagreed with the content of the organization. This is potentially very concerning given the Student Government President’s automatic position as a voting member of the Student Service

Fee Committee. Since this is an entity authorized under laws of the State of Texas, it would be unconstitutional for any member of this committee to recommend a vote be taken (or actual vote) to deny funding to an organization or person based on the content of the organization's speech.

Again, the evidence presented of the Respondent's rushed decision that also identified the decision as coming from the Student Government President, failure to consult with stakeholders including Senators and Representatives, and intending to deny Student Service Fee Funding to the University Star based on the content of their opinion piece, could be construed as abuse of power and position in violation of the Student Government Constitution.

## **Article VI**

According to the Petitioners, the Respondent violated the Constitution, Art I- Name, Purpose and Structure §6. "*No member may take undue liberties in the representation of Student Government without authorization from either the House or Senate.*" The Petitioners' argument is that "This opinion, because of where it was expressed, could have been attributed to the entire Student Government. Clegg took undue liberties in the representation of the Student Government without authorization from either House or Senate."

The Respondent argues that he followed the model of representative democracy as stated in Title 2, Chapter 100, Art 2§4(e) "*Respect the principle of representative democracy.*" He also argues that it is difficult to make decisions that will always please the whole student body given the size of our student population at Texas State.

### Dean of Students Review:

As mentioned before, officers of the Student Government as well as elected representatives of the Student Body have an obligation to specifically consult with the rest of the Student Government, especially all of the elected Senators and Representatives of the Student Body. No evidence was offered by the Respondent that he received authorization from the House or Senate before making his statements, and Petitioners assert many members in the House and the Senate felt excluded from their right to have a voice in matters of policy related to the Student Government. If this was an emergency matter, which the evidence does not support, the Respondent should have also mentioned that he would look for the support of the elective representatives, members of the House/Senate and other students in doing this.

A rushed decision, which was perceived by members of the Student Body as representing the position of the Student Government, and the failure to receive authorization from the House and Senate, are what created a situation where Petitioners and other students believe the Respondent took undue liberties in representing the Student Government in violation of the Student Government Constitution.

## **DEAN OF STUDENTS OPINION**

The majority of the articles filed with the Supreme Court and the appeal to the Dean of Students by the Petitioners in Case No. 04-02 (Gasponi, et al. Petitioners V. Clegg) are issues that pertain primarily to the Code of Ethics (Title II-Code of Ethics Ch. 100 Art 2 §3(a)(f) §4(f) §5(b)). The other two allegations in question are under the Student Government Constitution but they are also issues relevant in ethical matters SGC Art 1§2 and 6.

A code of ethics is commonly seen as a set of principles of conduct within an organization that guide its members in decision-making and behavior. The principle behind a code of ethics is to provide the members of an organization with guidance for making ethical choices as they make decisions in the scope of their duties.

The Dean's role is to review on appeal the Opinion of the Supreme Court sitting as the Impeachment Review Committee. The Dean disagrees with the Petitioners with regards to all of the technical and procedural issues that were brought up on appeal. The Dean, however, disagrees with the Supreme Court and finds that there is sufficient evidence associated with Articles of Impeachment I through VI to warrant an order for an impeachment trial to occur at a joint session of the Student Senate and Graduate House of Representatives within ten (10) business days from this decision.

The Dean also believes that there are other issues as noted above related to the clarification of some of the governing documents that will need to be addressed in the future. Some of these changes will support checks and balances and due process that should be addressed by a Student Government Task Force composed of members of the House, the Senate and the Supreme Court within the next year. These changes should receive approval during a joint session of the House and Senate before following the usual route for final approval of the governing documents.

The Dean is forwarding this decision to the Chair of the Senate and Leader of the Graduate House of Representatives for immediate action. The role of the Dean is only to determine if there is enough evidence that supports an impeachment trial. It is to be noted that it is up to the members of the House and the Senate to make a decision regarding impeachment.

As a final personal statement, I want to reiterate that I, as your Dean, am an educator and as such, it is my philosophy that matters be resolved in a way that is conducive to civic discourse, and also to keep in mind that our goal should be to advance student growth and development of all parties involved.

**ORDER ISSUED:** March 28, 2018

**BY:** Dr. Margarita M. Arellano  
Associate Vice President for Student Affairs and Dean of Students  
Texas State University

## APPENDIX A

## INDEX OF AUTHORITIES PERTAINING TO CASE 02-04

### **Authority of the Dean of Students and the Vice President for Student Affairs**

#### Constitution Art. VI§6

“Decisions of the Supreme Court may be appealed to the Dean of Students and then to the Vice President for Student Affairs.”

### **Authority of the Supreme Court 3450**

#### Constitution Art. VI §1(a)

*“The courts shall consist of the Supreme Court, and other courts lower to the Supreme Court.*

*(a) “Courts” for the purposes of Student Government are defined as the subcomponents of Student Government which may hear testimony and provide remedy to specific cases where this constitution does not provide the Supreme Court direct jurisdiction. Examples of this include but are not limited to; minor disciplinary issues, election related violations, and maintenance of ethical and performance standards. In these cases, and others, the Senate may establish other judicial bodies that will hear specific cases as it sees fit. In the interest of flexibility these lower courts are not listed in the constitution.”*

#### Constitution Art. VI §2(c)

*“The Supreme Court shall be the superior court and only appellate court within the Student Government. The Supreme Court shall have the power of Judicial Review in relation to the constitutionality of any action of Student Government.*

*(c) The Supreme Court shall be the final interpreter of all legislative or policy instruments in this constitution for the Student Government.”*

#### Constitution Art. VII §1(a)-(f)

*“Impeachment shall not be vetoed nor need the approval of the President. Impeachable acts shall include:*

- (a) Violation(s) of the rules, regulations and laws of the Student Government,*
- (b) Violation(s) of this constitution,*
- (c) Violation(s) of orders or opinions of the Supreme Court or other courts;*
- (d) Gross violation(s) of the Code of Student Conduct and university polices,*
- (e) Dereliction of duty,*
- (f) Conviction of any federal, state, or local crime above that of a class C misdemeanor.”*

Constitution Art. VII §3

*“A review commission shall investigate the allegations presented in the Articles of Impeachment within five business days of it being submitted.”*

Constitution Art. I § 2

*“The Student Government shall be the primary recognized forum for student opinion, represent the student interests and concerns to the administration, and provide those activities and services it deems useful to students.”*

Constitution Art. I § 6

*“No member may take undue liberties in the representation of Student Government without authorization from either the House or Senate.”*

***Statutes***

SGC Title VII Ch. 200 Art. 1 §2(a)(d)

*“In addition to the powers and responsibilities granted to it by the Student Government Constitution the Supreme Court shall assist the President in the enforcement of Student Government rules and regulations, provide oversight whenever rules are violated, provide a judicial remedy when conflicts arise, ensure the Student Government Code is kept up to date and accurate, and address any issue of a disciplinary nature.*

*(a) When Articles of Impeachment are filed, the Supreme Court shall act as the impeachment review committee as indicated in the Student Government Constitution.*

*(d) Decide if actions of members of Student Government are impeachable.”*

SGC Title VII Ch. 200 Art. 1 §3

*“In addition to the jurisdiction granted to the Supreme Court by the constitution, the Supreme Court will have jurisdiction over the Code of Ethics and the each of the legislative Standing Rules and other rules that do not have direct judicial oversight by another court.”*

SGC Title VII Ch. 200 Art. 6 §1(d)

*“The Supreme Court shall serve as the Impeachment Review Commission for all impeachments as outlined in the Constitution. In the event that the Supreme Court meets to review Articles of Impeachment it is charged simply to determine if enough evidence of wrong doing exists related to the Articles listed. It can accept or reject all or some of the charges listed in the Articles*

*(d) The Supreme Court may reject the Articles of Impeachment, in whole or part. They may accept the Articles of Impeachment, or parts, which will automatically result in a trial in whichever legislative body has jurisdiction on those Articles that are accepted. The Supreme Court may also reject the Articles of Impeachment, in whole or part, with an agreement that those cited are responsible of wrong doing, which will automatically result in a Standards Review by the Supreme Court which may result in lesser sanctions.”*

SGC Title II Ch. 100 Art. 2 §3(a)(f) - Ethical Standards

*Serving the Student Body: To serve the student body, beyond serving oneself, members of Student Government are dedicated to:*

*(a) Represent our peers’ interests to University officials above that of our own opinion or that of University administrators or others.*

*(f) Be clear and concise, thoughtful and prepared.”*

SGC Title II Ch. 100 Art. 2 §4(h) –Ethical Standards

*“To respect, support, and study the Student Government Constitution, be objective and expressive concerning the interests of students and to understand the defined responsibilities, rights and powers of every member of Student Government members are committed to:*

*(h) Encourage and facilitate legitimate dissenting opinions.”*

SGC Title II Ch. 100 Art. 2 §5(b) –Ethical Standards

*“Members should demonstrate high standards of work and professional integrity. To exemplify membership in Student Government, you are expected to:*

*(b) Not abuse power or posi*

## Appendix B

No. 04-02

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In the Supreme Court of Student Government, Texas State University

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**Senator Claudia Gasponi, et al.**  
Petitioners

v.

**President Connor Clegg**  
Respondent

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On Petition for Review of Articles of Impeachment from the  
Student Government, Texas State University

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**MEMORANDUM OPINION**

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## **IDENTITY OF THE PARTIES**

### **Petitioners**

Claudia Gasponi, Senator  
Cristian Cienfuegos, Senator  
Emari Shelvin, Senator  
Elijah Miller, Senator  
John Santillan, Senator  
Alexander Molina, Senator  
Sorosh Omidvarnia, Senator  
Tucker Thompson, Senator  
Anthony Gallardo, Graduate Representative  
Amarilis M. Castillo, Graduate Representative  
Brittany M. Davis, Graduate Representative  
Blair Didion Sr, Graduate Representative  
Maël Le Noc, Graduate Representative  
Kelly E. Gourluck, Graduate Representative  
Jennifer L. Idema, Graduate Representative  
Amanda R. Faggard, Graduate Representative

### **Respondent**

Connor Clegg, President

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## INDEX OF AUTHORITIES

### Constitution

#### Constitution Art. VI§1(a)

*“The courts shall consist of the Supreme Court, and other courts lower to the Supreme Court.*

(a) *“Courts” for the purposes of Student Government are defined as the sub-components of Student Government which may hear testimony and provide remedy to specific cases where this constitution does not provide the Supreme Court direct jurisdiction. Examples of this include but are not limited to; minor disciplinary issues, election related violations, and maintenance of ethical and performance standards. In these cases, and others, the Senate may establish other judicial bodies that will hear specific cases as it sees fit. In the interest of flexibility these lower courts are not listed in the constitution.”*

#### Constitution Art. VI§2(c)

*“The Supreme Court shall be the superior court and only appellate court within the Student Government. The Supreme Court shall have the power of Judicial Review in relation to the constitutionality of any action of Student Government.*

(c) *The Supreme Court shall be the final interpreter of all legislative or policy instruments in this constitution for the Student Government.”*

#### Constitution Art. VII§1(a)-(f)

*“Impeachment shall not be vetoed nor need the approval of the President. Impeachable acts shall include;*

(a) *Violation(s) of the rules, regulations and laws of the Student Government,*  
(b) *Violation(s) of this constitution,*  
(c) *Violation(s) of orders or opinions of the Supreme Court or other courts;*  
(d) *Gross violation(s) of the Code of Student Conduct and university polices,*  
(e) *Dereliction of duty,*  
(f) *Conviction of any federal, state, or local crime above that of a class C misdemeanor.”*

#### Constitution Art. VII§3

*“A review commission shall investigate the allegations presented in the Articles of Impeachment within five business days of it being submitted.”*

Constitution Art. I§2

*“The Student Government shall be the primary recognized forum for student opinion, represent the student interests and concerns to the administration, and provide those activities and services it deems useful to students.”*

Constitution Art. I§6

*“No member may take undue liberties in the representation of Student Government without authorization from either the House or Senate.”*

**Statutes**

SGC Title VII Ch. 200 Art. 1§2(a)(d)

*“In addition to the powers and responsibilities granted to it by the Student Government Constitution the Supreme Court shall assist the President in the enforcement of Student Government rules and regulations, provide oversight whenever rules are violated, provide a judicial remedy when conflicts arise, ensure the Student Government Code is kept up to date and accurate, and address any issue of a disciplinary nature.*

*(a) When Articles of Impeachment are filed, the Supreme Court shall act as the impeachment review committee as indicated in the Student Government Constitution.*

*(d) Decide if actions of members of Student Government are impeachable.”*

SGC Title VII Ch. 200 Art. 1§3

*“In addition to the jurisdiction granted to the Supreme Court by the constitution the Supreme Court will have jurisdiction over the Code of Ethics and the each of the legislative Standing Rules and other rules that do not have direct judicial oversight by another court.”*

SGC Title VII Ch. 200 Art. 6§1(d)

*“The Supreme Court shall serve as the Impeachment Review Commission for all impeachments as outlined in the Constitution. In the event that the Supreme Court meets to review Articles of Impeachment it is charged simply to determine if enough evidence of wrong doing exists related to the Articles listed. It can accept or reject all or some of the charges listed in the Articles.*

(d) *The Supreme Court may reject the Articles of Impeachment, in whole or part. They may accept the Articles of Impeachment, or parts, which will automatically result in a trial in whichever legislative body has jurisdiction on those Articles that are accepted. The Supreme Court may also reject the Articles of Impeachment, in whole or part, with an agreement that those cited are responsible of wrong doing, which will automatically result in a Standards Review by the Supreme Court which may result in lesser sanctions.*”

SGC Title II Ch. 100 Art. 2§3(a)(f)

*“To serve the student body, beyond serving oneself, members of Student Government are dedicated to:*

(a) *Represent our peers’ interests to University officials above that of our own opinion or that of University administrators or others.*

(f) *Be clear and concise, thoughtful and prepared.”*

SGC Title II Ch. 100 Art. 2§4(h)

*“To respect, support, and study the Student Government Constitution, be objective and expressive concerning the interests of students and to understand the defined responsibilities, rights and powers of every member of Student Government, members are committed to:*

(h) *Encourage and facilitate legitimate dissenting opinions.”*

SGC Title II Ch. 100 Art. 2§5(b)

*“Members should demonstrate high standards of work and professional integrity. To exemplify membership in Student Government, you are expected to:*

(b) *Not abuse power or position.”*

TO THE HONORABLE MEMBERS OF  
TEXAS STATE UNIVERSITY STUDENT GOVERNMENT

For the purpose of providing the Court's decision concerning the impeachment review of President Connor Clegg, the Supreme Court provides the following opinion and ruling.

**STATEMENT OF JURISDICTION**

The Supreme Court has jurisdiction of this case under SGC Title VII Ch. 200 Art. 1§2(a)(d).

**STATEMENT OF THE CASE**

**Letter to the Editor of the University Star**

On or about November 28, 2017, Rudy Martinez, a columnist for the University Star, published an opinion article titled, "Your DNA is an Abomination". This opinion was published with the approval of the editorial board for the Star. The Court will only be discussing the subject matter of this opinion article to the extent it is relevant to the events that followed. The subject matter of the opinion article dealt with race, race identity, and "whiteness". The rhetoric in the opinion, regardless of how it was intended to be received, caused widespread controversy between students, faculty, and people outside of the University. University President Denise Trauth, some students at the University, and even some national news outlets, made statements concerning the rhetoric of the opinion article through various outlets.

**President Connor Clegg's Response Statement**

On or about November 29, 2017, Student Government President Connor Clegg published a statement condemning the opinion article via the "From the President's Desk" webpage on the Texas State University Student Government Website, as well as the official twitter page for the University's Student Government. His statement called for the resignations of Rudy Martinez, Opinions Editor May Olvera, and Editor-in-Chief Denise Cervantes from their positions in the University Star. He further stated that if they chose not to resign, he would "call for a full divestment of student fees from the Star". This statement on the "From the President's Desk" webpage included President Clegg's email as well as the email for ex-student body president Andrew Homann. On or about November 30, 2017, KTSW, the University affiliated radio station, released a tweet stating "#txst SGA President Connor Clegg says the statement is not a reflection of the University, it is his own opinion". KTSW also disseminated a phone recording of President Clegg confirming that this statement was his own opinion and not representative of the student body. Petitioners and Respondent both provided evidence in their oral arguments that President Clegg's tweet was not the confirmed position of the Student Government as a whole.

## ISSUES PRESENTED

Based on the above statement of the facts of this case, the Supreme Court will seek to answer the following questions:

**Article 1.** Did President Connor Clegg grossly fail to represent his peers' interests to University officials over that of his own interests as set out in Title II Ch. 100 Art. 2§3(a)?

**Article 2.** Did President Connor Clegg grossly fail to be clear and concise, thoughtful and prepared as set out in SGC Title II Ch. 100 Art. 2§3(f)?

**Article 3.** Did President Connor Clegg grossly fail to encourage and facilitate legitimate dissenting opinions as set out in SGC Title II Ch. 100 Art. 2§4(h)?

**Article 4.** Did President Connor Clegg grossly fail to not abuse his power or position as set out in SGC Title II Ch. 100 Art. 2§5(b)?

**Article 5.** Did President Connor Clegg grossly violate the purpose of the Student Government Constitution as set out in Art. I§2?

**Article 6.** Did President Connor Clegg grossly take undue liberties as a member of student government without authorization from the House or Senate as set out in the Student Government Constitution Art. I§6?

## SUMMARY JUDGMENT

**Article 5.** Although Petitioners provided both oral and written arguments for impeachment under Article 5 above, the Court finds that this provision of the Constitution is designed to establish basic structure of Student Government and is not one under which a cause of action for impeachment may be brought. Even if it were to be an actionable cause, the Court's findings for Article 1 will address the same issue.

## DISCUSSION

**Article 1.** In their case brief and oral arguments, Petitioners allege that Respondent failed to represent the student body's interests and concerns to the administration above that of his own opinion. Specifically, they allege that, because there was a lack of consensus amongst the student body about the opinion article in the Star, Respondent's condemning response to that article failed to represent the interests of all students and as such violates SGC Title II Ch. 100 Art. 2§3(a). The Court disagrees with this interpretation for two reasons:

First, the idea of “agency” is a longstanding concept in American Jurisprudence. In its simplest form, agency is one or several persons (the principal(s)), granting authority to another person (the agent), to act on behalf of and under the control of the principal(s) to deal with third parties. Although the concept of agency is fairly straightforward, its application in political representation is broader.

There are two main types of agency in political representation that America has previously recognized. A “delegate” is a statesman who simply follows the expressed preferences of their constituents. But what if the preferences of the constituents are not so easily discovered? On the other hand, a “trustee” is a statesman who follows their own understanding of the best action pursuant to the general interest of their constituents.

Our national and state governments generally operate under this latter form of political representation because it disposes of obvious logistical issues present under the former. Additionally, candidates for elections hold their opinions out to the electorate to give those they intend to represent a clear indication of who they are voting. The expectation being that the chosen representative’s opinions and interests are closely enough aligned with their own that the representative will act and vote on matters in a fashion similar to how they themselves would.

Our Student Government is structured in the same fashion. Student candidates campaign with their opinions and beliefs held out to the student body for the purpose of clarifying their position on issues important to the student body. Those elected are voted into office with the expectation that they will represent the interests of those who voted for them. With these concepts in mind, the Court finds that the President of Student Government has a mandate, to the extent that he or she was elected to act as a “trustee” for the interests of the student body, to voice his or her opinion in the interests of those students who voted for them.

Second, the Court believes that finding Respondent in violation of SGC Title II Ch. 100 Art. 2§3(a) for voicing an opinion that not all students agree with or feel is in their interest would create disastrous precedent. Every member of student government has opinions that they hold out to the student body on important issues, but not every student will agree with that position or feel it is in their best interest. Art. 2§3(a) applies to all members of student government, and as such every member of student government would be impeachable simply as a matter of being in office.

**Article 2.** In their oral and written arguments, Petitioners allege that Respondent failed to be clear and concise, thoughtful and prepared, as set out in SGC Title II Ch. 100 Art. 2§3(f), when he posted his statement in response to the Star opinion article. Specifically, they allege the following: (1) that using Student Government affiliated social media made his opinion appear to be the collective opinion of Student Government, (2) that he failed to be clear when he added Andrew Homman’s email address to his statement on the “From the President’s Desk”

webpage, and (3) that he failed to be thoughtful by not talking to Opinions Editor May Olvera or other

students in general about their opinions on the matter before posting his statement. The Court disagrees for several reasons.

First, the Student Government Twitter Page may be affiliated with Student Government, but it is not officially sanctioned by the University or any laws in Student Government. There is no specified list of people who can and can't have access to it or post statements from it. With this in mind, the Court does not find that it has the authority to make that determination unilaterally. Furthermore, Respondent's opinion on the Student Government Twitter page clearly noted who it was from when it stated, "Student Body President Connor Clegg Calls for Resignation of the Editorial Board or Defunding of the University Star". It did not say, "This is the official opinion of the Texas State University Student Government", or anything similar to that. Furthermore, Respondent signed the statement at the bottom with his name and title.

In their brief, Petitioners make the argument that KTSW's misinterpretation of the statement on twitter as being representative of the Student Government is proof that Respondent failed to be clear, but a misinterpretation of information by a third party does not constitute a gross violation in and of itself. People misinterpret information all the time. KTSW, President Clegg, and members of student government even clarified the issue shortly thereafter. Therefore, we do not believe that any irreparable harm could have been caused as a result.

Second, Petitioners argued that leaving Andrew Homman's email address on the "From the President's Desk" webpage caused Respondent to be unclear in his statement. However, Respondent provided evidence in his oral argument that this email was added intentionally and that Andrew Homman intended to have his information available to encourage multiple points of communication with the President. Petitioners did not provide any evidence to refute this information. Regardless, even if Respondent had accidentally left Andrew Homman's email on the template he used, we do not believe that a simple clerical error constitutes a gross violation.

Lastly, while the Court agrees that speaking with Rudy Martinez and Opinions Editor May Olvera could have greatly affected the tone of Respondent's statement, we do not find that there is any law or rule requiring the President to consult with members of the school newspaper before making public statements. Petitioners also argue that Respondent should have sought out the opinions of members of the student body before making his statement. However, they provided no evidence that he did not. Furthermore, Respondent provided evidence that he did communicate with multiple students on the issue, and also stated that he consulted with members of his cabinet and some members of student government before making his statement.

**Article 3.** In their written and oral arguments, Petitioners allege that Respondent failed to facilitate legitimate dissenting opinions, as set out in SGC Title II Ch. 100 Art. 2§4(h), on the issues surrounding the opinion article in the Star. Specifically, they allege that, (1) Respondent did not speak with Rudy Martinez or Editor Denise Cervantes before publishing his statement, and (2) did not host a public opinion forum to discuss the issue with members of the student body before publishing his statement. The Court disagrees for the following reason:

As noted in the Court’s discussion of Article 2, there is no mechanism that requires the Student Government President to consult with members of the school newspaper before making public statements. We absolutely agree that the Student Government President should host public opinion forums before making public statements on extremely controversial issues relevant to the student body, and we encourage all future presidents to do so. However, we do not find any mechanism in the Constitution or Student Government Code that requires the President to do so.

**Article 4.** Petitioners allege that Respondent abused his power or position, as set out in SGC Title II Ch. 100 Art. 2§5(b), by using University affiliated social media to disseminate his opinion without regard for the opinions of the student body as a whole. We disagree for the following reason:

As noted in the discussion of Article 2, there are no laws or rules concerning access and use of the Student Government Twitter page. The Court cannot find a violation where a cause of action doesn’t exist as a matter of law. As noted in the discussion of Article 1, we do not find that the President must consult with members of the student body before making a public opinion. The President is a “trustee” for the interests of the student body, and may voice his opinion in the interests of those students who voted for him.

**Article 6.** Petitioners allege that Respondent took undue liberties in his representation of student government without prior authorization from the House or Senate as set out in the Student Government Constitution Art. I§6. The Court disagrees. As noted in the discussion of Article 2, Respondent clearly indicated who the statement was coming from both at the beginning and end of his statement. Any reasonable person who read the whole statement would know that it came from President Clegg and not the Student Government as a whole.

## CONCLUSION

The Supreme Court’s role in the review of Articles of Impeachment is to determine if enough substantive evidence exists to indict a member of student government, similar to a grand jury indictment. Based on the evidence presented, the Justices of the Supreme Court do hereby unanimously find that there is insufficient evidence to indict President Clegg under articles 1-6 of the Articles of Impeachment.

*It is so ordered.*

/s/ - Brent A. Bauer

Brent A. Bauer,  
Associate Justice

Before Chief Justice Garcia, and Justices Bauer, McKie, Scott, Duran, Milligan, and Martinez

## Appendix C

Appeal of Majority Opinion No. 04-02  
Pertaining to the Impeachment of Student Body President Connor Clegg

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For the Review and Decision of  
Dr. Margarita Arellano

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Submitted by Petitioners  
Mael Le Noc, Graduate House Representative  
Claudia Gasponi, Senator  
Alissa Guerrero, Student

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\*Appendices too lengthy to be attached in the end of this document.

## **Opening Statement:**

It is the stance of this appeal that the Majority Opinion 04-02 issued by the Supreme Court of Texas State University's Student Government was a gross violation of justice for reasons of failure to comply with the due process deserved by this trial and failure to interpret events and code with justice. This appeal will expose these failures. The authors hope that exposure of these failures will result in the impeachment of Student Body President Connor Clegg.

- **Quality of Investigation**
  - **Quality of Justices**
    - **Garcia and others said to resign**

John Garcia is noted to have said to multiple students that he has full intention of resigning from his position as Chief Justice as soon as the impeachment trial is over. He noted that he and others had fatigue and would prefer to focus on their school work. This mentality, while fair and valid to have from student justices, is not fair to the trial and the student body that is misrepresented by Connor Clegg.

This low quality of judges did not allow for full, true, and fair due process that is deserved for the student government and student body.

- **Time Spent Investigating and Deliberating Evidence**

As admitted by Chief Justice John Garcia, the Supreme Court did not meet once to discuss the articles of impeachment prior to the hearing allotted for Connor Clegg's impeachment trial. It was expected that each Justice would review the articles individually prior to the impeachment trial. No assurance can be given that this occurred.

With this considered, it can be concluded that the only time the Justices met to discuss the articles of impeachment was immediately following the trial. The Justices spent a total of one hour deliberating not only these articles, but also both sides of testimony. This appeal argues that this is not sufficient time to deliberate 40+ minutes of testimony and a 12 page document of the Court while referencing student government code and the constitution.

It is further evidenced that sufficient time was not given to deliberation by the false evidence accepted by the Justices. One example of this is defendant Connor Clegg claiming that Andrew Homann was appointed special advisor and therefore his email is justifiable on the press release in Appendix D of the impeachment articles. The Justices accepted this information as fact, when, in reality, this was a lie. Andrew Homann may have been acting as special advisor to Connor Clegg, but he was never confirmed by the senate, thereby making his role as Special Advisor unconstitutional. This should have been noticed by the Justices, but they did not give themselves sufficient time to investigate evidence.

Further examples of the Justices accepting false evidence is not easily acquired as Chief Justice John Garcia did not arrange for TSPAN or any recording be taken of the trial.

- **Nepotism in the Court**

A rapid examination of the identity of the Justices reveals close connections between the court Justices and the current and past Student Body Presidents.

Indeed, first, as noted before, six of the seven justices are students of the same department, Political Science, which happens to also be the department where Clegg is studying.

Second, John Garcia, the current Chief Justice, Brandon Milligan, one of the current Justice, Andrew Homann, the former Student Body President and current "special advisor" to Clegg, and Clegg himself are all members (or were members until recently) of the same student programs, the Model

United Nations and the Mock Organization of American States.

Third, in 2016-2017, Clegg was chief of staff for the Homann/Martinez administration, and Samantha Martinez is now one of the current justices.

As Justices are appointed by the Student Body President, typically upon recommendation from the Chief Justice, such close connections between the Executive and the Judiciary branch of student government are quite disturbing. These close interpersonal relations increases the likelihood of unethical collusion, manipulation, or coercion. A handful of students are given unfair weight in judicial decisions, simply by being classmates and acquaintances with most of the Justices. Overall, these connections lead to and demonstrate a weak separation of power, which should be of particular concern when the Court is entrusted with making a decisions regarding the Student Body President.

- **Unfair time distribution**

- **Replacement time for sides not determined fairly**

Both the defendant and prosecution were assured that they would be provided with twenty minutes of testimony and that if the Justices had any questions, the time used by answering these questions would be replaced with extra time. The defendant was asked two questions and was given two minutes of extra time. The prosecution was asked more than twelve questions and was given five minutes of extra time. This appeal argues that was not fair replacement of time for the prosecution's arguments being that there was only 25 minutes to present 6 articles.

The time-keeping was not public, nor was there a designated individual to keep time. In fact, Chief Justice John Garcia expected himself to track time while simultaneously taking notes, listening to testimony, and considering arguments in reference to evidence provided. It seems obvious that this was not a fair expectation to place on the chief justice and resulted in compromising the quality of him filling any of these roles. It follows that the trial was unfair to both the prosecution and defense due to the chief justice inattendant to so many aspects of the trial.

- **Unprecedented trial construction**

- **Structure in direct opposition to that provided in constitutional appendices**

Chief Justice John Garcia determined to forgo the trial structure set forth in the Student Government Code Appendices and developed his own trial construction. He did not provide reasoning behind this decision. This decision eliminated multiple important aspects of a trial, most notably: Rebuttal and Conclusion. Without a period of rebuttal from the prosecution, it was possible for the defendant to present incorrect information as factual.

This unprecedented trial structure may have compromised the entirety of the trial because it did not allow for the truth to be shown.

- **Structure flexibility not used**

The primary complaint by Chief Justice John Garcia to press and inquiring students was that the petitioners did not provide enough evidence. It is this appeal's stance that the flexibility of the trial and the sensitivity of the issue are reason enough to call for a second hearing at which further evidence could be provided by the petitioners, and the defense if it was deemed necessary. However, as mentioned before, in addition to the personal ties to the defense, the justices had severe fatigue and full intentions of resigning as soon as the trial was over, thereby prompting them to not make the suggestion and failing to give the full due process deserved to the petitioners and to the student body.

## Issues of Justice

In order to build our case, we will provide proofs to support the following arguments and explain how these arguments are relevant to our case. When applicable, we will refer back to the Supreme Court Majority Opinion or to Student Body President Connor Clegg's oral defense statements.

- **1 - The Statement released by Clegg on November 29<sup>th</sup>, 2017 reflected Connor's own opinion not that of the House, the Senate, or Student Government as a whole.**
- **2 - In his November 29<sup>th</sup>, 2017, statement, Clegg did not make clear that he was not speaking for the University, the Student Body, or for Student Government, thereby violating SA/PPS 03.10 and Student Government Constitution Art. I§6.**
- **3 - In his November 29<sup>th</sup>, 2017, statement, Clegg voiced his opinion before, or without, encouraging, facilitating, or even acknowledging dissenting opinions, thereby violating SGC Title II Ch. 100 Art. 2§4(h).**
- **4 - In his November 29<sup>th</sup>, 2017, statement, Clegg voiced his own opinion rather than representing his peers interest, or event to provide a nuanced assessment of the situation, thereby violating SGC Title II Ch. 100 Art. 2§3(a).**
- **5 - By using his title and position as president of Student government to threaten to defund the University Star, Clegg abused his power and position thereby violating SGC Title II Ch. 100 Art. 2§5(b).**
- **6 - The fact that the Supreme Court finds Connor Clegg effectively "represent[ed] his] peers' interests" in his November 29<sup>th</sup>, 2017, statement leads to an instance of manufactured consent**

### **1 - The statement released by Clegg on November 29<sup>th</sup>, 2017 reflected Clegg's own opinion not that of the House, the Senate, or Student Government as a whole.**

This is of course not a reason for impeachment, as Clegg is obviously entitled to his own opinion. This being said, as most of the following arguments rely on the fact that the statement released by Clegg on November 29<sup>th</sup>, 2017 reflected Clegg's own opinion and not that of the House, the Senate, or Student Government as a whole, the appeal believes that this is necessary to reiterate this fact at the beginning of our argument.

This fact has been widely accepted by all parties, and the last sentence of the first page of Supreme Court Majority Opinion intro reads "Petitioners and Respondent both provided evidence in their oral arguments that President Clegg's tweet [sic] was not the confirmed position of the Student Government as a whole". (Note that by "tweet", the Supreme Court refers to the Clegg's statement that was tweeted out of the Student Government twitter account). Since no parties have contested nor debated the fact that the statement in question was Clegg's own opinion and not that of any branch of Student Government, we will take it as a fact and will not expand on the matter.

**2 - In his November 29<sup>th</sup>, 2017, statement, Clegg did not make clear that he was not speaking for the University, the Student Body, or for Student Government, thereby violating SA/PPS 03.10 and Student Government Constitution Art. I§6.**

*SA/PPS 03.10:* Officers of Student Government will so identify themselves when they express their personal views, and they shall make it clear that they are not speaking for the University, the student body, or for Student Government unless the Senate has authorized the statement in advance.

*Student Government Constitution Art. I§6:* No member may take undue liberties in the representation of Student Government without authorization from either the House or Senate.

Although today, thanks to all the information provided during the impeachment trial, it is clear that the statement reflected Connor's own opinion and not that of the house, nothing in the statement itself or in the way it was published could have clearly indicated to a reader that it was indeed the case. It is typically much easier to prove that something is clear than to prove that something is unclear; nevertheless, we have ample evidence suggesting that the statement was at least confusing, if not misleading. We would like to specify that we are trying to prove that this lack of clarity was purposeful, but we do think that it misled students to believe that the opinion expressed in the statement was the official position of student government.

First, nowhere in his statement does Clegg explicitly state that the statement provides his personal opinion and not that of Student Government. A simple disclosure sentence could have avoided any confusion.

Second, given that Clegg uses his title, one could legitimately expect him to speak for or on behalf the organization of Student Government, as presidents of organizations or entities typically do, especially when the said organization does not have a spokesperson. When President Denise Trauth releases a "Message from the President", signing her name and title, it clearly implicates more than her own opinion. In addition, the very fact that a policy such as SA/PPS 03.10 exists suggests that one typically does not use one's title and position without engaging the responsibility of one's organization.

Third, several people (including Clegg himself) felt the need to specify later that the statement was Clegg's own opinion and not that of Student Government. We provided four such examples in the impeachment resolution (One sound clip from Connor Clegg at the request of KTSW, one tweet by KTSW, one tweet by then senator Mariana Zamora, and one tweet by senator Alexander Molina, all available in Impeachment Resolution Appendices) . This, once again, suggests that the scope of the statement could easily have been (and has been) misinterpreted. The Supreme Court briefly responded to these evidence in their memorandum opinion stating "Petitioners make the argument that KTSW's misinterpretation of the statement on twitter as being representative of the Student Government is proof that Respondent failed to be clear, but a misinterpretation of information by a third party does not constitute a gross violation in and of itself." Indeed, one misinterpretation is not a violation; however, failing to be clear is. In addition, not one, but at least four needs for clarifications are a good indicator that the statement was not, in itself, clear. Furthermore, the Supreme Court Memorandum Opinion states "KTSW, President Clegg, and members of student government even clarified the issue shortly thereafter. Therefore, we do not believe that any irreparable harm could have been caused as a result." However, providing rectification post facto is not proof of clarity. In addition, all of these clarifications have been made through means of communications different from these with what the statement was

released, have not been added to the statement, nor was the statement rectified to enhance its clarity. Hence, no reader of the statement could have been expected to see the clarification that later unfolded.

Fourth, in multiple occasions, both Clegg and former Student Body president Homann used the “From the president’s desk” formula and template, signing with their names and titles, to speak on behalf of Student Government. Two such examples are provided in the appendices. For instance, in his letter regarding the “Sanctuary Campus Petition”, Andrew Homan wrote “The Cabinet—and indeed, the whole of Student Government—does not agree [...]”, clearly speaking on behalf of Texas State Student Government. Similarly, in the statement which is , to this day (3/8/18) published on the “From the President’s Desk” page of the official Texas State Student Government website, Clegg wrote “[...]we as an administration and as a body have recognized the need to move forward with an actionable solution.”, once again clearly speaking, rightly or wrongly, on behalf of Texas State Student Government.

Fifth, the Supreme Court and the defendant have argued orally that the use of the pronoun “I” in the statement was an indicator that the statement was Clegg’s own opinion. However, spokespersons, as well as presidents speaking on behalf of their organizations, use the pronoun “I” very frequently while providing the official position of the organization. In fact, in the two statements provided as evidence in the above paragraph, both Homann and Clegg use the pronoun “I” when speaking on behalf of student government. Therefore, using the pronoun “I” in this context does not clearly establish whether Clegg was expressing his personal opinion of speaking for Student Government.

We hold that we have provided ample evidence that, in his November 29th, 2017, statement, Clegg did not make clear that he was not speaking for the University, the Student Body, or for Student Government, thereby violating SA/PPS 03.10 and Student Government Constitution Art. I§6.

**3 - In his November 29<sup>th</sup>, 2017, statement, Clegg voiced his opinion before, or without, encouraging, facilitating, or even acknowledging dissenting opinions, thereby violating SGC Title II Ch. 100 Art. 2§4(h).**

*Student Government Code Title II Ch. 100 Art. 2§4(h) : To respect, support, and study the Student Government Constitution, be objective and expressive concerning the interests of students and to understand the defined responsibilities, rights and powers of every member of Student Government, members are committed to:*

*(h) Encourage and facilitate legitimate dissenting opinions.*

Although Clegg was allegedly able to provide a handful of emails he received regarding Martinez’s column (emails which the prosecution, the student body, and the public were not allowed to see), we believe he did not listen to his constituents, nor did he encouraged, facilitate, or acknowledge dissenting opinion.

First, the short period of time between the publication of Martinez’s opinion (Tuesday, November 28, 2017) and the release of Clegg’s statement (Wednesday, November 29, 2017) would hardly allow for anyone to have the time to seek, and even less to encourage or facilitate, dissenting opinions. Furthermore, by releasing such a strong statement immediately after the publication of the column, Clegg effectively shut down any potential conversation (at least within student government) and denied the possibility for Student Government to act as a student forum. In no way the tone of the statement nor the timeframe within which the statement was released encouraged or acknowledged dissenting opinions. This argument has not been acknowledged or discussed by the Supreme Court.

Second, the Supreme Court argued that “there is no mechanism that requires the Student Government President to consult with members of the school newspaper before making public

statements” or “to host public opinion forums”. Indeed, the constitution does not explicitly states *how* members of student government are supposed to “encourage and facilitate legitimate dissenting opinions”. However, it clearly states that they are obliged to do so. Clegg’s has not provided any evidence that he indeed tried to encourage or facilitate dissenting opinion, before or after releasing his statement. In fact he has provided little evidence that he tried to gage the opinion of the student body at all. We know that he did not speak with author Rudy Martinez, Opinions Editor May Olvera or Editor-in-Chief Denise Cervantez at any point prior to releasing his statement. We know that he Clegg did not reach out to the Cabinet (except perhaps informally to a few cabinet members, but certainly not to all), the Senate, nor the Graduate House<sup>1</sup>. Given the timeframe exposed above, we doubt that Clegg was able to reach out to even a small portion of the student population beyond a few acquaintances. Thus, we hold that Clegg failed to encourage or facilitate dissenting opinion, and even student’s opinion in general, hereby violating SGC Title II Ch. 100 Art. 2§4(h).

**4 - In his November 29<sup>th</sup>, 2017, statement, Clegg voiced his own opinion rather than representing his peers interest, (or even to provide a nuanced assessment of the situation), thereby violating SGC Title II Ch. 100 Art. 2§3(a).**

*Student Government Code Title II Ch. 100 Art. 2§3(a) : To serve the student body, beyond serving oneself, members of Student Government are dedicated to:*  
*(a) Represent our peers’ interests to University officials above that of our own opinion or that of University administrators or others.*

During the trial, all parties acknowledged that, as expressed by the supreme court, “there was a lack of consensus amongst the student body about the opinion article in the Star”. It was also recognized that Clegg’s opinion was “an opinion that not all students agree with or feel is in their interest”. We would even go further by stating that, specifically, Clegg’s threat to defund the Star was widely unpopular, and although it seems to have been supported by at least one organization on campus, the majority of students was opposed to this idea (Letters to the editor of the Star published on their website, a petition that collected more than 2,500 signatures, students speaking at public forum hosted weekly in the Student Government Senate, and numerous discussion with our peers and constituents support this allegation). Hence, Clegg’s statement, and in particular his uncompromising tone and his threat to defund the Star, constitutes a violation of SGC Title II Ch. 100 Art. 2§3(a) as a failure to represent Clegg’s peers interest above that of his own.

The Supreme court responded to our argument in two ways. First it contended that Texas State Student Body President was a “trustee”, rather than a “delegate”, and thus could “voice his or her own opinion in the interests of those students who voted for them”. However, SGC Title II Ch. 100 Art. 2§4(h), quoted above, suggest otherwise. At the very least, Texas State Student Body President is required to “encourage and facilitate legitimate dissenting opinions”, which goes beyond the traditional role of a trustee. In addition, the model of trustee relies on the fact that the trustee has “an electoral

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<sup>1</sup> Members of the House, the Senate, and the Cabinet have been involved in the writing of this appeal, and can testify on the matter.

incentive to pursue policies that he believes promote the general welfare”<sup>2</sup> (ie. that if trustees do not represent their peers interest, themselves or in their party will be voted out at the next election). This clearly cannot be the case for Texas State Student Body President as their term can not be renewed and the Student Government is (or claim to be) non-partisan.

Moreover even if Texas State Student Body President was indeed elected to act as a trustee, a trustee still owes his or her constituents, as put by Edmund Burke, the father of the “trustee vs delegate” model, “his unbiased opinion, his mature judgment, his enlightened conscience”<sup>3</sup>. As we have shown before, the timeline of the events could hardly lead to Clegg’s “mature judgement” or “enlightened conscience”, all of which are supposed result from being exposed to, without necessarily agreeing with, a diversity of opinion.

Second, the Court stated that they believed that “finding Respondent in violation of SGC Title II Ch. 100 Art. 2§3(a) for voicing an opinion that not all students agree with or feel is in their interest would create disastrous precedent”. To the contrary, we believe that finding not guilty a member of Student Government who voices out widely unshared opinion (defunding the Star), without taking the time to consult its constituents, and without acknowledging dissenting opinion would create a disastrous precedent and greatly erode trust in Student Government.

**5 – By using his title and position as president of Student government to threaten to defund the University Star, Clegg abused his power and position thereby violating SGC Title II Ch. 100 Art. 2§5(b).**

*Student Government Code Title II Ch. 100 Art. 2§5(B) : Members should demonstrate high standards of work and professional integrity. To exemplify membership in Student Government, you are expected to:*

*(b) Not abuse power or position*

As we argued during the trial reviewing of the articles of impeachment, threatening to defund the Star and to demand resignation over content is an infringement to the first amendment, and using his position as Student Body President to do so constitutes a gross abuse of power form Clegg. Multiple US Supreme Court Rulings have reiterated the protection of student first amendment rights. Since Clegg’s threat to defund the Star was issued over a dislike and disagreement of content, this threat is constitutionally illegal, as determined by Schiff v. Williams (1973); Leuth v. St. Clair County Comm. College, (1990); Kincaid v. Gibson (2001). These cases clearly state that no one is allowed to withdraw or reduce funding, or withhold student activity fees from a public school newspaper over content. In addition, in Bazaar v. Fortune (1973), it is determined that since public universities are considered an arm of the state, they are distinctly not a private publisher and cannot be treated like a private publication. Finally, in State Board for Community Colleges v. Olson, (1984), it is determined that Student Government Officials cannot exercise their power with the intent of taking these rights from student publications, even if the funding allocated for these publications falls within their jurisdiction.

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<sup>2</sup> Fox, Justin, and Kenneth W. Shotts. “Delegates or Trustees? A Theory of Political Accountability.” *The Journal of Politics*, vol. 71, no. 4, 2009, pp. 1225–1237

<sup>3</sup> <http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>

As ample evidence from jurisprudence show, a Student Body President does not have the right to threaten to defund a newspaper, especially not over a disagreement of content, and thus this threat, as an abuse of power or position, is a violation of SGC Title II Ch. 100 Art. 2§5(b).

This evidence was presented in front of the Supreme Court during Review of Articles of Impeachment. During the trial, one of the Supreme Court Justice asked if we believed that Clegg was supposed to be aware of the unconstitutionality of his threat. Our response is that, in law, ignorance is not an excuse. Hence, this evidence cannot and should not have be dismissed. However, Clegg’s unconstitutional threat to defund the star has, surprisingly, not be commented nor contested in the Supreme Court Majority opinion, even though it was perhaps one of the most flagrant evidence of Clegg’s abuse of power and position and thus of violation of SGC Title II Ch. 100 Art. 2§5(b).

**6 – The fact that the Supreme Court finds Connor Clegg effectively “represent[ed his] peers’ interests” in his November 29<sup>th</sup>, 2017, statement leads to an instance of manufactured consent.**

In the Majority Opinion, the Supreme Court finds Connor Clegg to be a trustee of the student body and to be considered representative of the student body due to his election into his position. However, the Supreme Court later determines that once elected, *“the President of Student Government has a mandate, to the extent that he or she was elected to act as a “trustee” for the interests of the student body, to voice his or her [or their] opinion in the interests of those students who voted for them.”* This statement negates multiple instances of Student Government Code and the Student Government Constitution by claiming that the President’s mandate is to represent the interests of those who voted for them, rather than the entire student body (see for instance the Student Government Constitution, Article V, section 5, subsection (d): *“The President shall: (d) Be the representative of **all** students”*

Considering how few students voted when Clegg was elected into the presidency, it is unreasonable to allow such a small portion of students to guide the voice of the entire student government. By simultaneously claiming that once elected, Clegg represents all students, and that as an elected official, he should represent the opinion of those who voted for him, the Majority opinion contradicts itself.

The claim that Clegg, as a trustee, “represents [his] peers’ interests” when presenting his personal opinion, steals the consent of the entire student body. It is true that elected officials are *supposed* to represent the interest of their constituents, but it is also considered necessary that citizens remain involved to ensure that their elected officials do uphold this role. Considering how much disagreement and critique Clegg received about his actions regarding the opinions piece published in the University Star, it is clear that in this instance, Clegg was not acting on behalf of the student body. For the Supreme Court to advocate that he was properly acting on the entire student body’s behalf is disrespectful and steals the consent of the students who disagreed with Clegg’s statement and were negatively impacted by its consequences.

**Conclusion**

We would like to specify that the articles of impeachment were focused on Clegg’s November 29<sup>th</sup>, 2017 statement, because it displayed, in our opinion, Clegg’s most flagrant violations of the Student Government Constitution, of the Student Government Code, and of the Texas State University Policy. Additionally, disciplinary actions were taken against those involved on the other side of November 29<sup>th</sup>, 2017 University Star situation, both column writer, Rudy Martinez, and Chief Editor,

May Olvera were asked to step down for abusing their positions in power and allowing “racist” content to tanish the university’s reputation. The articles of impeachment served to accomplish equality on both sides of the situation, Connor Clegg too, abused his position in power, and disciplinary action should be taken towards him as well.

We received many more concerns and complains about the way Clegg fulfilled his duty as Student Body President throughout the past year. If, taken individually, many of these issues might not justify an impeachment procedure and are not, per se, reprehensible, taken together, they have reinforced this appeal’s stance that Clegg does not represent the best interest of all Texas State students, in particular that of underrepresented groups. Some of these facts also suggest that Clegg has a concerning disregard for the democratic process. This clear lack of representation has given us additional motivation to pursue the impeachment process. We will not expand on these complaints and concerns but we will provide a non-exhaustive list in Appendix 5, and we are willing to provide additional proofs or testimonies if needed.

# Appendix 3 – From the President’s Desk, Andrew Homann and Connor Clegg:

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## From the President's Desk

### Sanctuary Campus Petition: Student Body President Andrew Homann's Statement

From the desk of the Student Body President...

A petition to make Texas State University a Sanctuary Campus has been brought to the attention of the Student Government and University administration. This petition calls for "actively and vigilantly protecting Texas State's most vulnerable populations" as well as declaring "Texas State University a sanctuary for undocumented students, workers, and community members."

It is unequivocally my duty as Student Body President to foster an environment of safety on our campus. I condemn any form of violence or intimidation which may occur on our campus. I envision a campus that embodies the shared values to which we all committed when we chose Texas State—a campus that is open to the free exchange of ideas, opinions, and ideologies. Any notion of violence toward our students, or any notion that incites fear in our students, is not and will not be tolerated at Texas State. Our University is better than that.

Those elected to govern must do so responsibly. Responsible governance means advocating for increased protection for those who are or feel as though they have been marginalized. Responsible governance means providing all students with equal access to resources and pushing for the expansion and addition to the resources we possess in accordance with emerging needs. Responsible governance is working toward adequate representation of opposing sides and coming together to work toward an acceptable compromise. Responsible governance is not advocating a regulation which would be unfeasible to implement due to the dangers it poses to intergovernmental relations. The Cabinet of Student Government cannot support, at this time and in its current form, the petition before us to make Texas State University a Sanctuary Campus.

The Cabinet—and indeed, the whole of Student Government—does not agree with the creation of laws that incite legitimate fear amongst the many students of our university. However, we cannot act at odds with the laws of the State of Texas and the United States of America. As an institution chartered by the legislature of the State of Texas, a state subjected to the Supremacy Clause and all other provisions of the United States Constitution, a direct defiance of existing law would be against our very nature. That is not to say we cannot express discontent when the legislature of either acts against us, but we must not support a direct violation of the law.

We will do all we can to make every member of our Bobcat family feel safe on campus. That is—and always has been—our goal. We will continue to support any initiative that fosters diversity and inclusion at our university. We have implemented a dialogue series, Bobcats United, which brings together opposing views for the purpose of engaging and observing respectful discourse. We have passed legislation which calls attention to invaluable resources like the Counseling Center at our university. We have repeatedly worked with high-level administration to represent what we have personally heard from students. We have responded decisively when events have occurred that threaten the unity of our campus community.

In the near future, we will be presenting legislation that advocates the hiring of an immigration attorney within the Attorney for Students office at Texas State to help those, at little to no charge, who feel that they are in need of legal help. Further, we will establish diversity and outreach liaisons within Student Government to better understand the needs of those who often feel they are not heard. We have been hard at work advocating for students, and we intend to continue these efforts.

Those are the actions of a responsible government. As representatives for the students, we must identify realistic solutions to solvable problems. We owe our students more than lip service. We owe them legitimate, responsible action. This petition pays no mind to the fact that the implementation of a Sanctuary Campus policy at Texas State would do more harm than good. Indeed, Governor Greg Abbott has since responded to the issue, threatening to cut funding for any campus that institutes such a policy.

Instead of violating legitimate law and inhibiting Texas State's efforts to help students in need mentioned, in part, in this letter, we encourage all who are passionate about the issue to engage in the law-making process with greater devotion. The Student Government is happy to help students connect with lawmakers and support student opinions, but will not stand for actions that threaten our institution's legitimacy.

Now is the time to come together and have difficult discussions. We affirm that when we come together and engage we are strongest. Quoting scripture, Abraham Lincoln warned our nation that "a house divided against itself cannot stand." His words bear even greater importance today. We ask all Bobcats to watch out for one another, be respectful of diverse opinions, and remember that we are one united community.

Andrew Paul C. Homann  
Student Body President

Student Government

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## From the President's Desk

### A Letter to the Students Concerning Legislation to Hire an Immigration Attorney

My fellow Bobcats,

After hearing the accounts of the students who attended our Student Government meeting yesterday evening, we as an administration and as a body have recognized the need to move forward with an actionable solution. We heard the fear, the pain, and the confusion felt by many of our fellow students and we saw too the anguish which characterized many of their faces. That is why we believe that those students not only need, but deserve to feel as though their Student Government hears them, cares for them, and will listen to them. At the end of the day, my role as your president is to do just that and then go one step further. I have a responsibility to enact the policies that will make students know that I care about them. And I do; I care about every student who made the wonderful decision to attend this university and that care knows no distinction between race, gender, ethnicity, immigrant status or nationality.

For that reason, moving forward, listening to your stories and hearing your concerns, I will be chartering the Student Government Subcommittee on Serving International and Immigrant Students which will be tasked with the august responsibility of working together towards a practical and tangible solution to the concerns we all share. Actionable solutions, which will be the goal of this subcommittee, will work towards recommitting this body – your body - to our singular purpose of “Students Serving Students”.

President Johnson said once that “there are no problems we cannot solve together, and very few we can solve by ourselves.” With this wisdom informing our minds and prudence guiding our hearts, we believe that this will be an important first step towards achieving the unity which we all must desire in these times of strife.

Humbly yours,

Connor Clegg

Student Body President

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Appendix 5 -- Non-exhaustive list of complaints and concerns voiced by Texas State Student regarding Clegg's actions:

1. Clegg has not publicly spoken against racist posters and banners posted on campus
2. Racist social media posts posted by Clegg before and while attending Texas State University were made public
3. Immediately following a public forum regarding specifically aiming at addressing complaints against him, Clegg stated that he would give an answer regarding a potential resignation within a week, and never got back to the student body or Student Government
4. Clegg told the American-Statesman he would not resign and that he did not think his opponents had the votes to force him out. (cf <https://www.mystatesman.com/news/local/more-than-100-call-for-ouster-texas-state-student-government-leader/fJMe4sYWJBrQ922hV7E8dL/>)
5. Clegg gave an interview, on university ground, to Infowars, a media described by CNN as “a far-right media organization run by Alex Jones and known for peddling unfounded conspiracy theories”.
6. Clegg did not present himself in front of the Graduate House on the day the item “Complaints and concerns regarding Texas State Student Body President Connor
7. Clegg's recent and less recent actions, conducts, and posts on social media” was on the agenda, even though he was personally made aware of the situation and invited to attend the meeting by the Graduate House Leader.
8. Clegg was reportedly heard claiming out-loud that he was “untouchable”, while in the McCoy Building