

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

No. 01-04

Syllabus

KELLY TORPEY, et al., Texas State Students
v.
CATCHING VALENTINIS-DEE, Student Body President

Heard October 21st, 2020 – Decided October 21st, 2020

A Notice of Complaint was filed with the Supreme Court by Ms. Kelly Torpey, Ms. Regina Macias, and Mr. Matthew Gonzales concerning an accused violation of Student Government Constitution Article IV, Section 1, 4(a), 4(c), and Article VI, Section 27. Along with accused violation of S.G.C. Title IV, Chapter 100, Article I, Section 3 and Title V, Chapter 501, Article II, Section 1(a). This requires strong standards of transparency as it relates to Student Government and the Student Senate's operations as this information should be posted on the Student Government Website. Ms. Macias argued that the Student Body President, even though not explicitly stated in the Governing Documents of Student Government, that the President must update this information, but because the Constitution rests the responsibility of execution of the laws and rules of Student Government with the Student Body President. The established law clarifies that the Student Government rules' final execution, unless specifically outlined in the law, rests with the Student Body President. The Student Body President Catching Valentinis-Dee failed to execute the Student Government laws he is entitled to by statute.

The Notice of Complaint provided a clear citation of the violation and presented several critical questions for the Court. As a result, Chief Justice Frank Cadoree and Associate Justices Wosnig, Guilhas, and Malcom agreed to hear on the case. A hearing date was set for October 21st. and testimony

was recorded by both the Complainant and Respondent, along with the Respondent's Counsel.

Held: The President has not been updating the Student Government website with Legislation, Senate Agenda, Senate Minutes, and recordings of the Senate Meetings. Not explicitly stated, the President must make sure all final execution of the Student Government rules is adequately executed according to the Student Government laws.

Chief Justice FRANK CADOREE delivered the Majority Opinion of the Court in which Justices WOSNIG, GUILHAS, AND MALCOM joined.

I. President's Power to Delegate

During arguments, both the Complainant and the Respondent's Counsel, Attorney General Corey Benbow, mention the President's role to delegate responsibilities. The Student Government Code of Laws permits the President to delegate specific responsibilities to Cabinet members and executive staff.¹ At the same time, they provide that those directors and other officers in the Executive Branch cannot have duplicate or transfer responsibilities among the powers established by statute².

Ultimately, the Executive Branch is of ridged construction – the President wields enormous constitutional executive power to control and be responsible for the executive branch. The President is ultimately responsible for supervising, managing, and executing the various functions established by law.^{3 4} Further, the Constitution envisions the Cabinet members as "assistants," not as the principally responsible parties in the law's executive⁵. Like how the U.S. Constitution envision the Secretaries of the Cabinet. The Senate has provided, by law, for specific offices to execute

¹ Title IV, Chapter 100, Article I, Section 3

² Title IV, Chapter 100, Article II, Section 4

³ S.G. Const. Article III, Section 1(a)

⁴ S.G. Const. Article IV, Section 4

⁵ S.G. Const. Article IV, Section 1

some function. However, when those positions are vacant, the President maintains ultimate responsibility.⁶

The President can delegate responsibilities to Cabinet Members or Executive Staff but not to those outside the Executive Branch⁷. This ability is limited, and transference of responsibilities between statutorily established positions is not permitted.

The Court holds that delegation and transference are different terms with different implications for the Student Government's effective management. While the President may delegate specific responsibilities to others in the Executive Branch, the President does not have the power to transfer responsibilities, especially those established by law, to other Directors or statutorily established Cabinet positions. As a principle of "co-equal" branches with Separation of Power, the President cannot delegate authority to anyone outside the Executive Branch.⁸

The Senate established Cabinet's roles with specific intention and job responsibilities and confirmed them based on reviewing specific skill sets. Assumedly, they confirm those positions based on their knowledge and background in the area for which the position retains responsibility. Allowing the transfer of responsibilities between Cabinet positions is not conducive to transparency, accountability, and statutory compliance.

There can be some confusion; therefore, it is essential to understand what the "law" or "statute" serves to provide. The Court understands a "law" or "statute," once approved by the President to be an act of the legislature which declares, proscribes, or commands some specific action that is expressed in writing⁹. In establishing a law or statute (which the Court finds to be synonymous), the Legislative Branch with the Executive Branch's accent establishes a command which cannot be broken unless specific exceptions or conflicts within it occur. As a result, the positions established by law create responsibilities and commands for those positions. Based on the idea that transference is not permitted under the law, the statutorily established

⁶ Title IV, Chapter 100, Article I, Section 3

⁷ Title IV, Chapter 100, Article I, Section 3

⁸ S.G. Const. Article III, Section 1(a), (b), (c) AND Article VI, Section 14

⁹ thefreedictionary.com "statute"

positions must fulfill the positions' responsibilities. Further, a simple logic test can help explain why it would not be desirable for transference.

It is essential to remember that the law has established specific positions with specific roles and responsibilities within the Executive Branch. The law empowers the President to delegate their responsibilities. However, they cannot swap responsibilities among Cabinet positions because those responsibilities are established by law. Only an Act of the law can do that.¹⁰ The two sections of the Code of Laws that are perceived to conflict create a balance of flexibility within the Executive Branch while maintaining constitutional compliance by preventing the transference of responsibility between constitutional Directorships and legally established offices.

Lastly, when the Senate confirms a Director, they assume that they can perform their function effectively based on the nominee's credentials. It would not assume that a Director of Marketing and Outreach has the same skill and ability to perform the Director of Finance functions. While the President may have the power to delegate some of the President's responsibilities to other Executive Branch positions, it cannot be acceptable to transfer the responsibilities from one statutorily created position to another if, for no other reason, Senate confirms a person on their position specific qualifications. In another example, would a Director of Freshman Council properly be vetted if the Attorney General's responsibilities could be transferred to them? It is not likely the Senate confirms either position with this in mind, or the statute does not support it.

However, the current COVID-19 pandemic has created a situation that the Constitution's framers could not have provided for. The Respondent has asked for specific relief to provide for the functions of the Student Government. The same principle that the Attorney General previously argued against, this Court's power to remedy cases and interpret the law, will now serve the Respondent and the Attorney General in this case before us.¹¹ The Court has the power to provide temporary relief and remedy

¹⁰ Article IV, Section 10(b)

¹¹ See Cody DeSalvo v. Andrew Florence (No. 01-02, 2020, pg. 2)

to specific cases and, in this case, to the President – and we grant it.¹²

In this one-time exception, given that COVID-19 has presented incredible challenges to organization recruitment that were unforeseeable, the Court will grant a 14-day period whereby the prohibited "transference" we established above will be permitted.

The Court must state this clearly. We grant this extraordinary relief once and are intentionally stating that we do not wish this to be precedent going forward.

II. Senate Meeting Recordings and TSPAN

During arguments, the Respondent's Counsel Attorney General Corey Benbow stated video records of Senate Meetings could not be posted as it violates the Family Educational Rights and Privacy Act (FERPA), which is a federal law that protects the privacy of the student education records and guarantees students' access to their records. The specific right Attorney General Benbow cited was

"The right to know the types of personally identifiable information that Texas State deems directory information that it may release without consent. Texas State has designated the following information as directory information: (1) name..."

This would be a real problem if not everyone was made aware of the recording before their admittance to the meeting. The Zoom platform announces the recording to everyone who is entering. If they opt to stay, they accept that their name and information may become available to the public. In the balance of interests, the Student Government's transparency outweighs any privacy interest of the public. Further, Senators and Representatives waive a certain level of privacy when they opt to serve in these positions, especially while conducting Student Government's business in an open to the public session. All Senate meetings are posted to the S.G. website. As a result of this and the fact that the recording announces the participants waive their right to privacy in this case.

¹² S.G. Const. Article VIII, Section 2

It is the order of the Court that the Student Body President, as Chief Executive of the Student Government, must make sure all Cabinet-level positions duties and responsibilities are completed if there is a vacancy of a cabinet positions. The President cannot transfer the responsibilities of a position created by the law to other positions established by law. The President's priority is to recruit and fill his Cabinet and not solely rely on delegated powers.

On posting Senate meeting recordings on the Student Government website. The order of the Court that an audio recording must be upload to the Student Government website and made available to students to stay compliant with Title V, Chapter 501 (TSPAN), Article II, Section 1(a) of the Student Government Code of Laws.

The Court will investigate with the appropriate authorities to make sure posting an audio recording follows FERPA. If the Court finds out that an audio recording violates FERPA, the Court will amend the order accordingly.

Lastly, the Court grants the President temporary relief given the extraordinary situation with COVID-19, which has depressed recruitment for Cabinet-level positions. We permit a 14-day period where any member of the Executive Branch can transfer and fulfill the other positions in the Executive Branch to comply with the Student Government's laws and the edicts of this order. After the conclusion of the 14 period, our order and previous about transference will stand as the Precedent of this Court after the 14 days transference is banned. The President cannot delegate or permit transference to other Branches members. The President cannot delegate or transfer these responsibilities to non-student government members.

After the 14 days, the Court orders that the President fulfill all vacant Cabinet-level positions' duties and responsibilities as the Chief Executive of Student Government. The law provides the President with all the support they need to fulfill the Student Government's functions through Director and other Cabinet-level positions. The President need only recruit,

nomination and have confirmed those positions to have all the support he needs.

Until those positions are filled, the President retains ultimate responsibility for ensuring the law is executed. Furthermore, it must ensure that the duties and responsibilities and the past duties and responsibilities are fulfilled to date. This may include issuing a properly established proposed budget, updating the website with minimal information in the interest of transparency, and other items required by law (this list is not comprehensive). This must be completed within two weeks (14 days) of this order.

It is so ordered...