

SUPREME COURT OF STUDENT GOVERNMENT AT TEXAS STATE UNIVERSITY

No. 08-07

ADVISORY OPINION

Syllabus

PETITIONER: CODY DESALVO, SENATOR

Heard August 19, 2020 – Decided August 19, 2020

A petition for an Advisory Opinion and an Injunction Relief was filed with the Supreme Court by Senator Cody DeSalvo (Petitioner) concerning the fate of the Department of Freshman Leadership and, by extension Freshmen Council at Midnight of August 24, 2020, when the new Student Government Constitution (2020 Constitution) is implemented. The Supreme Court will address the concerns, and this ruling is binding now and, in the future, and is specifically paired with the 2020 Constitution, as provided for in Article XIII, Section 1.

The primary questions before the Court was

1. Whether there is a Department of Freshman Leadership and, by extension, Freshman Council come midnight of August 24, 2020, when the 2020 Constitution takes effect?
2. Are all operations of the Department of Freshman Leadership, and by extension, the program known as Freshman Council before August 24 legal and acceptable?
3. Furthermore, will rules enacted under the new 2020 Constitution retroactively affect the Department and Council after August 24, 2020?

The Petitioner request for an Emergency Injunction Relief preventing any member, officer, or person from taking any action related to the Freshman Council and Department of Freshman Leadership and temporarily suspend the operations of the same until the Court rules, if the Court cannot hold a hearing before Midnight of August 24, 2020.

The application for Injunction is discussed in its own Opinion and Court Order titled *Injunction Relief No. 08-07*.

Chief Justice Frank Cadoree delivered the opinion of the Court, with Justice Wosnig, Guilhas, and Malcom concurring.

Advisory Opinion

Case No. 08-07

Petitioner: Cody DeSalvo

Before: Chief Justice Frank Cadoree and Justices Wosnig, Guilhas and Malcom

Advisory Opinion

Concerning the first question petitioned to the Court, whether there is a Department of Freshman Leadership and, by extension, Freshmen Council come midnight of August 24, 2020, when the 2020 Constitution takes effect?

It is the opinion of the Court that the question, whether there is a Department of Freshman Leadership come midnight of August 24, 2020, when the 2020 Constitution takes effect? The Court has agreed by a Majority that come August 24, 2020, at midnight that there is no longer a Department of Freshmen Leadership. Article XIII, section 1:

Upon ratification and approval, this Constitution will supersede all other constitutions and will make void all rules, regulations, and court rulings established before its ratification unless those rules are specifically paired with this Constitution.

The 2020 Constitution is clear, because of the veto and the Senate failure to override the veto there was not any enabling legislation paired with the 2020 Constitution that would have kept the Department of Freshmen Leadership active come August 24, 2020, at midnight.

It is also the opinion of the Court to acknowledge that the Freshman Council is a program of the Department of Freshman Leadership and will dissolve and no longer exist as of August 24, 2020, at midnight. The Constitution does not mandate the Department of Freshman Leadership, and since Freshman Council is a program and funded through the SG budget, it must be authorized by the by-law as outlined in the 2020 Constitution Article III, Section 4:

Bill, when properly passed and approved, will establish Student Government law as statutes to guide specific actions and detailed the methods by which the provisions of the Constitution, programs, and policies of the Student Government are to be executed.

On the second question relating all operations of the Department of Freshman Leadership and the program Freshman Council being legal and acceptable before August 24, 2020.

The Court has agreed by a Majority that all operations of the Department of Freshman Leadership and the program Freshman Council was legal and acceptable before August 24, 2020. Due to the 2020 Constitution not being in effect until August 24, 2020, at midnight and the Student Government Association of Texas State University currently under the Constitution that was ratified in 2014 (2014 Constitution). There is a Department of Freshman Leadership and the Program Freshman Council specifically paired with the 2014 Constitution, this makes all

operations that were conducted by the Department of Freshman Leadership and the program Freshman Council legal and acceptable before the date and time of August 24, 2020, at midnight.

The third question asked to the Court, will rules enacted under the new 2020 Constitution retroactively affect the Department and Council after August 24, 2020?

The Court has agreed by a Majority vote that yes, rules enacted under the new 2020 Constitution retroactively affect the Department and Council after August 24, 2020. However, we agreed by a Majority that legislation must be passed by the Senate for this to take place. As stated in the 2020 Constitution Article VI, Section 17(b) has power to establish, disband, and regulate departments.

Summary

In summary, the Freshman Council is a program of the Department of Freshman Leadership, it must dissolve and no longer exist as of August 24, 2020, at midnight. Due to the 2020 Constitution not mandating the Department of Freshman Leadership and its program the Freshman Council and being that the Freshman Council is a program of the Department of Freshman Leadership and is funded through Student Government it has to be authorized by law as defined in the 2020 Constitution Article III, Section 4. All operations of the Department of Freshman Leadership and Freshman Council before August 24, 2020, were legal and acceptable expect one exception the appointment of Freshman Council members is not legal and acceptable as there will not be a Freshman Council August 24, 2020, at midnight. The Court will clarify that any laws enabling the Department of Freshman Leadership under the 2020 Constitution will retroactively apply to the Department of Freshman Leadership if reauthorized after August 24, 2020, as long it is passed by the Senate. The Court hereby makes clear that all formal and informal operations of the Freshman Council and Department of Freshman Leadership must cease on August 24, 2020, at midnight. If legislation is passed in the Senate reestablishing the Department of Freshman Leadership and its program Freshman Council, the Department and the Council are allowed to continue where they left off before their disbandment on August 24, 2020, at midnight and do not have to redo what they have accomplished in 2014 Constitution. This order is binding, and failure to do so by any member or officer of the Student Government of Texas State University is in direct violation of the Constitution and is punishable by impeachment or expulsion.

It is so ordered.

TO: William Frank Cadoree, Chief Justice of the Supreme Court
FROM: Cody DeSalvo, Senator
DATE: August 18, 2020

Statement of Pursuance

I petition the Court for an advisory opinion in accordance with SGC Title VII, Chapter 100, Article II, Section 4.

The Supreme Court has the authority to hear this case under its original jurisdiction as described by the Student Government Constitution Article VI, Section 2: “The Supreme Court shall have original jurisdiction involving... any issues of constitutional interpretations...” and Article VI, Section 2 (c) provides the Supreme Court authority as “...final interpreter of all legislative or policy instruments in under this constitution.”

Statement of Rules

The Student Government Constitution ratified in February 2020, which takes effect on August 24, 2020, states in Article XIII, Section 2:

Upon ratification and approval, this Constitution will supersede all other constitutions and will make void all rules, regulations, and court rulings established before its ratification unless those rules are specifically paired with this Constitution.

In April 2020, the Senate approved legislation to establish a Department of Freshman Leadership and authorize a Freshman Council program with the stated purpose to “...enact a Freshman Council to representing the Freshman Class, elect a Freshman Senator, and to prepare students to for future service in student government.”

The legislation was vetoed by then Student Body President Corey Benbow in April 2020. The Senate attempted and failed to override the veto. The failure to override the veto resulted in the Department of Freshman Leadership and by extension the program of Freshman Council was excluded from the new Student Government Code of Laws.

The 2020 Constitution only identifies three (3) mandatory departments under Article IV, Section 11 (b).3: Department of Finance, Department of Marketing, and Department of Diversity, Equity, and Inclusion.

The 2020 Constitution Article III, Section 4, states that:

Bill, when properly passed and approved, will establish Student Government law as statutes to guide specific actions and detailed the methods by which the provisions of the Constitution, programs, and policies of the Student Government are to be executed.

The Questions

1. Department of Freshman Leadership and by extension the program called Freshman Council no longer existing on August 24, at midnight when the new Constitution comes into effect?
2. Are all operations of the Department of Freshman Leadership and by extension the program known as Freshman Council before August 24 legal and acceptable?
3. Will rules enacted under the new 2020 Constitution retroactively affect the Department and Council after August 24, 2020?

Requested Interpretation

The requestor suggests the Supreme Court adopt the following:

1. The Court acknowledges that the Freshman Council is a program of the Department of Freshman Leadership and it will dissolve and no longer exist as of August 24, 2020, at midnight. The Constitution does not mandate the Department of Freshman Leadership and since Freshman Council is a program and funded through the SG budget, it must be authorized by the law as outlined in the 2020 Constitution Article III, Section 4.
2. However, the Court should expressly provide that all operations of the Department of Freshman Leadership and Freshman Council before August midnight were legal and acceptable with one exception, the appointment of Freshman Council members. This exception exists because if the first point is adopted, then there will be no Freshman Council seats to appoint.
3. The Court should clarify that any laws enabling the Department or Freshman Leadership under the 2020 Constitution will retroactively apply to the department if reauthorized after August 24, 2020.
4. Lastly, the Court should make clear that all formal and informal operations of the Freshman Council and Department of Freshman Leadership must cease on August 24, 2020, at midnight, and any failure to do so by any member or officer of Student Government is a direct violation of the Constitution and punishable by impeachment or expulsion.

Advisory Opinion

Case No. 08-07

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Before: Chief Justice Frank Cadoree and Justices Wosnig, Guilhas and Malcom