

## TITLE VII - THE COURTS

*Last Amended by S.B. 2014-2015.7 "Supreme Court Powers Act"*

### CHAPTER 100 - JUDICIAL CODE

#### ARTICLE I. ADMINISTRATIVE

- §1 **AUTHORIZATION.** This Title and all of its regulations are authorized pursuant to Article III(10)(h),(i),(j) of the Student Government Constitution.
- §2 **PURPOSE.** To establish a policy and procedure for the proper and orderly conduct of judicial business.
- §3 **TERMS OF OFFICE.** The terms and conditions of office for officials of the Supreme Court and other judicial officers shall be those designated under the Student Government Constitution and Student Government Code.
- §4 **DEFINITIONS.** Unless specified the term "Constitution" "constitutional" or "statute" or any variation of these words shall reference the Student Government Constitution and Student Government Code.
- (a) A "business day" shall be defined as a day of normal business operation for the University between Monday and Friday between 8:00 AM and 5:00 PM.
- §5 **JUDICIAL REVIEW.** In all cases the Supreme Court is vested with the power of Judicial Review, which shall be applied to resolve a case before it by taking no action or invalidating the actions, orders or legislation through its Court Orders. The Court shall not apply specific remedy outside of its constitutional jurisdiction. The only power given to the Court per the Constitution is that of Judicial Review.
- §6 **UNIVERSAL APPLICATION.** This chapter may be used as a guide for any disciplinary hearing by lower courts to provide direction and regulation unless the lower court has a set of rules it must follow as established by statute.
- (a) If a lower court adopts this as its rules of court it shall not be able to suspend them unless provided for by statute.
- (b) If the lower court has standing rules this Judicial Code can still provide additional useful guidelines. That lower court may adopt the Judicial Code or parts of it as a

general procedure except when they conflict with the lower court's standing rules, in which case the lower courts standing rules shall apply.

§7 **ABSENCE.** Notice of an absence must be submitted to the Chief Justice, twenty-four (24) hours in advance of the missed Supreme Court meeting or hearing.

(a) Absences in excess of two (2), no matter the circumstances or excuse shall be just cause for impeachment.

§8 **RECORDING.** Documentation for excused absences must be submitted to the Chief Justice no later than twenty-four (24) hours after the missed Supreme Court meeting or hearing.

§9 **ABSENCE OF CHIEF JUSTICE.** If the Chief Justice is, at any time, temporarily unable to perform his duties or if his office is vacant, an alternate shall take his place until such time a permanent replacement is confirmed. This alternate shall be the next longest serving justice, and if all Associate Justice shall have served for the same period the oldest of the longest serving Associate Justice shall serve as Chief.

§10 **OATH OF OFFICE.** All officials of the Supreme Court shall take an oath of office before taking office. This oath shall be administered by the Chief Justice. If the Chief Justice is to take the oath it shall be administered by the President.

(a) All members of the Judicial Branch shall notify the Chief Justice of the intent to resign from his position. Upon notification, the Chief Justice shall inform the President of the vacancy.

§11 **RULES OF LAW.** The Supreme Court shall provide an adequate remedy to all complaints filed, so long as the complaint is within the Supreme Court's constitutional jurisdiction and provides a remedy which affords equitable, practical, and appropriate relief under the circumstances.

(a) The Supreme Court shall use Acts of the Senate and House, the Student Government Code, Constitution, as well as the principles and spirit of Student Government law to base its decisions. It shall cite its reasoning's and justifications under those documents pertaining to each case.

(b) The Supreme Court shall hear information relevant to the case.

(c) All Student Government legislation, Orders, the Student Government Code, and University regulations shall be given a strict construction. Any ambiguous provision shall be interpreted in such a way as to give full meaning and effect to that provision,

with reference to the intent of the provision. If the intent of a given provision cannot be determined, the Supreme Court shall use the context of the provision, as well as general principles of justice and equity, to give full meaning to the provision in question.

**§12 JURISDICTION AND APPEALS.** As provided for in the Constitution, the Supreme Court’s jurisdiction is limited to the constitutionality of whatever act is before them for review, which shall include statutes.

- (a) When hearing an appeal, the Supreme Court is to confine itself to the correctness of the applicable statute or rule as provided in the Constitution and Student Government Code. At no time shall should the Supreme Court embrace a question that is not related to the statute or rule that is cited in the complaint or petition.
- (b) The Court shall be confined to discuss, hear and issue orders on arguments presented by the complaint or questions brought forth in the written brief or anything else presented in writing or orally. This is not to be construed to mean that the court can ignore the question or issue within the original complaint, or redirect its focus to another question not formally on the complaint. It means that in answering the complaint, the court may address related issues.

**§13 COUNSEL.** Any party brought before the Supreme Court has the right to a maximum of two (2) Texas State students to serve as counsels. This right shall not be suspended by any court or component of Student Government. Any party that elects representation by counsel shall be bound to all actions and statements made by said counsel.

**§14 STANDING.** Any aggrieved party, who is a Texas State student, must demonstrate to the court a connection to the action on which the complaint is based.

- (a) An aggrieved party must file in the complaint the rules that have been broken or applied incorrectly and how this has impacted them.
- (b) Members of the Supreme Court and Supreme Court staff shall not have standing to file complaints with the court.

**§15 STATUTE OF LIMITATIONS.** No case shall be heard by the Supreme Court more than sixty 60 business days after the alleged act, occurrence, or transaction that constitutes the basis of the case.

- (a) Should a contested action occur during a recess of court business the start date for the statute of limitations shall begin on the first day that court business resumes.
- (b) Actions outside of the sixty (60) class day statute of limitations shall still be admissible to establish a pattern of behavior related to the case and is completely admissible as evidence.

§16 **ORIGINAL JURISDICTION.** The Supreme Court shall have original jurisdiction as prescribed in the Student Government Constitution.

§17 **JUDICIAL MEMORANDUM.** All administrative matters of the Supreme Court shall be issued by Judicial Memorandum; this includes, but is not limited to: all internal appointments, resignations, and expenses. All Judicial Memorandums issued by the Chief Justice are public record. Each Judicial Memorandum, as well as all injunctions, advisory opinions or Court Orders and Opinions must be forwarded to the Director Rules and Standards.

§18 **TIMELINE.** All requests shall be responded to within 10 days whereby the court will inform the requestor of the status of the request and if accepted shall include a hearing date to be set no more than seven (7) days from the date of contact.

- (a) The Court Clerk shall assign a docket number to the case and notify the Chief Justice of the complaint within one (1) class day of receiving a filed complaint.
- (b) Within three (3) business days of receiving a filed complaint from the Court Clerk, the Chief Justice shall notify the Supreme Court, the President, the Student Vice President, the Dean of Students, the complainant, and the respondent of the complaint and shall arrange a date and place for the hearing to be held.
- (c) The Chief Justice shall notify the Court Clerk and the Supreme Court of the date and time of the hearing. Within twenty-four 24 hours, the Clerk shall forward this information to the complainant and the respondent by official Texas State e-mail.
- (d) All hearings shall be heard by the Supreme Court within seven (7) business days of the filing of a Notice of Complaint.
- (e) If a case arises from a Student Government Election, the hearing involving that case shall be held within twenty-four 24 hours of the filing of a Notice of Complaint with the Court Clerk.

## **ARTICLE II. GENERAL PROCEDURES**

§1 **MEETINGS.** Apart from hearings, the Supreme Court may meet in open door proceedings with the attendance of the Court Clerk and any counsel to address administrative or hearing related issue. They shall meet informally to discuss with any person planning to be before the Court to discuss and clarify procedural issues. Pretrial preparatory meetings between complainant and respondent shall be closed to the public and all other court members unless permitted by the Chief Justice.

§2 **COMPLAINTS.** All causes of action pursued in the Supreme Court shall be initiated by the filing of a Notice of Complaint with the Court Clerk. The court shall hear no case unless a complaint has been filed and the justices agree by majority vote to hear the case. A complaint filed with the Supreme Court shall conform to the template found in the [Appendix V](#) of this document and shall be made available to the complainant by the Court Clerk. Complaints shall contain basic information as outlined in the appendix including:

- (a) A statement of pursuance under which the complainant is filing the complaint, usually in the form of a question.
- (b) A statement relating to the cause for action, or claim of harm, under which the court can act to remedy, citing the relevant Student Government rule or regulation that has been violated.
- (c) A summary of the requested action to be taken by the court.
- (d) A citation of the Student Government Code or Constitution which grants the complainant standing with the Supreme Court. The Supreme Court shall decide if the statement of standing is within their jurisdiction.

§3 **REMEDY.** The court shall, by the consent of the majority issue Court Orders to rectify, provide temporary or permanent relief in regards to the harm as filed in the Notice of Complaint.

- (a) Justices shall be prohibited from filing a complaint or any other request before the Supreme Court or any lower court.

§4 **REQUEST FOR AN ADVISORY OPINION.** A request for an Advisory Opinion may be made to request the Supreme Court review specific language of any Student Government, Code, statute, regulation or action to test its meaning and constitutionality so long as no person or entity requires relief or correction. The request for an Advisory Opinion shall be in accordance with [Appendix X](#).

- (a) A request for an Advisory Opinion shall be heard, decided and made public in the same way as a Complaint.
- (b) A request for an Advisory Opinion shall contain all the same provisions as a Complaint except for the Cause of Action. The Cause of Action shall be replaced with a single question about a single section of the rule or statute in question.
- (c) A Supreme Court Advisory Opinion shall have the same force and effect as any other court opinion.

§5 **POSTING REQUIREMENTS.** The Court Clerk shall provide the complainant with a citation, which shall contain:

- (a) A list of the charges and/or claims brought against the respondent.
- (b) The date, time, and place of the scheduled proceedings.
- (c) The penalties for failure to appear before the Court, including default judgment, and suspension and/or expulsion from office.

§6 **HEARING AND MEETING NOTICE.** After receiving notification from the Chief Justice, the Court Clerk shall post a notice for any hearing and meeting of the Supreme Court where decisions are made on the Texas State Student Government website.

§7 **BRIEFS.** Both parties to a case and any interested parties may file briefs with the Court Clerk. Briefs must be received by the Court Clerk no later than thirty30 hours prior to the commencement of a hearing.

- (a) In the event of an election hearing, briefs must be submitted no later than fifteen15 hours prior to the hearing.
- (b) Briefs must conform to the template provided to both parties by the Court Clerk. The template can be found in the [Appendix VI](#) of this document. The brief submitted to the Court Clerk shall not exceed eight (8) typed pages.
- (c) Supplementary documents must be submitted at the same time as the brief. If supplementary documentation is not included with the brief, it may be presented at the hearing with a majority vote of the justices.
- (d) The Court Clerk, acting under the direction of the Chief Justice, shall distribute copies of all briefs at least five (5) hours before the scheduled hearing, to all parties including the respondent, the complainant, and counsel.

- (e) The Chief Justice reserves the right to deny the admission of an excessive number of briefs.

§8 **TRANSCRIPTION OF PROCEEDINGS.** All proceedings of the Supreme Court shall be recorded with an audio recorder or written transcript. Parties may access the recording upon request to the Chief Justice. Anything recorded during the hearing will be stored in a court archive for 5 years.

- (a) Any interested parties shall contact the Chief Justice to request access to the recordings. Access must be granted or denied within two (2) business days of the request.
- (b) The Court Clerk shall present a thorough written summary of the testimony and arguments produced during the hearing.

### **ARTICLE III. HEARINGS**

§1 **ORDER OF PROCEEDINGS.** The Chief Justice shall call a hearing to order and shall verify that all relevant parties are present. The Court shall hear one question at a time.

- (a) The oath or affirmation of truth shall be administered by the Chief Justice or his designee, in accordance with this code.
- (b) The Chief Justice shall entertain any motions from the parties, in accordance with this code.
- (c) The Court shall hear opening and closing arguments from both parties, and the Court shall also hear the examination and cross-examination of all witnesses or arguments. The Chief Justice shall dismiss all parties from the room and deliberation shall begin.
- (d) The Court shall reconvene and announce its decision after deliberation has ended.
- (e) The Chief Justice shall then adjourn the Court.
- (f) The verdict of the Supreme Court shall be posted on the official Student Government website.
- (g) A sample agenda has been established.

§2 **DRESS CODE.** The Supreme Court may issue before the hearing the proper dress attire. Any person to present to the Court not properly dressed shall not be recognized by the Court.

§3 **OATH OF AFFIRMATION OF TRUTH.** An oath or affirmation of truth shall be administered to all participating parties and witnesses prior to motions and arguments in

every Supreme Court hearing, and serves as agreement on the part of the witness to tell the truth. Failure to do so shall result in disciplinary penalty as prescribed by the court.

- (a) The oath or affirmation of truth shall be administered by the Chief Justice or his designee.
- (b) The form for the oath or affirmation of truth shall be as follows:
  - (1) "I [state your full name] – do solemnly swear (or affirm) – that I will tell the truth, the whole truth, and nothing but the truth – as the laws of Student Government require."

§4 **MOTIONS.** At the commencement of proceedings the Chief Justice shall entertain any motions from the parties. If necessary, the Court shall hear arguments and testimony on the motions, provided that the Chief Justice, at his discretion, may limit the time allotted for arguments and testimony.

- (a) At any time after the commencement of proceedings, the Chief Justice shall entertain any motions.
- (b) The Supreme Court shall recognize nine (9) motions which, if granted, shall have the effect of delaying or dismissing the case, as appropriate:
  - (1) Motion for a Continuance
    - (i) Allows for the Court to continue hearing the case at a later time.
  - (2) Motion for Dismissal on the Grounds of Lack of Subject Matter Jurisdiction
    - (i) Allows for the Court to dismiss a case outside the realm of its original jurisdiction. This motion shall automatically be heard if a court with original jurisdiction has not issued orders or opinions on the issue before the Supreme Court. If this is the case the Supreme Court must refer the case back to the court with original jurisdiction.
  - (3) Motion for Dismissal on the Grounds of Lack of Standing on the Part of the Complainant.
    - (i) Reference Article I, Section 9 of the Judicial Code.
  - (4) Motion for Dismissal on the Grounds of statute Limitations.
    - (i) Reference Article I, Section 10 of the Judicial Code.
  - (5) Motion for Dismissal on the Grounds of Issue at Hand has Already been Decided.

- (i) Allows for the Court to dismiss the case in whole or part based on previous interpretation of the Supreme Court.
- (6) Motion for Intervention of Interested Parties.
  - (i) Allows for the Court to define individuals who possess material information relevant to the case at hand.
- (7) Motion for Recusal.
  - (i) Reference Article VI of the Judicial Code.
- (8) Motion for Default Judgment.
  - (i) A motion applicable when one or both parties are not present at a hearing resulting in an immediate closing of the public proceedings for deliberations by the court.
- (9) Motion for recess.
  - (i) The time for a recess will be proscribed by the Court or proposed to the Court.

§5 **PROPER USAGE OF MOTIONS.** Motion 1 may be issued prior to the commencement of the Supreme Court proceedings provided that the motion is submitted in writing before the convening of the case at hand and is signed by the party submitting the motion.

- (a) Motions 2, 3, 4, and 5 (above) may not be waived by the parties. If the parties fail to make these motions when applicable, the Chief Justice may make and grant them himself.
- (b) Motion 8 may be issued if the respondent fails to appear at a duly convened hearing after having been notified.
- (c) Motion 6 may be addressed after opening remarks by either parties but before evidence is submitted. This applies to witnesses or those with evidence not already provided by either party which may come forward and present information to the court.
- (d) For motion 7 please reference Article VI of the Judicial Code.
- (e) In response to a motion for default judgment, the Chief Justice shall order the complainant to present his case. At the close of complainant's case, the Supreme Court may enter a default judgment. The judgment shall then be forwarded to the Court Clerk

(f) Upon receiving a default judgment, the Court Clerk shall post a notice informing the respondent that a default judgment has been entered.

§6 **OPENING AND CLOSING ARGUMENTS.** The complainant(s) and respondent(s), along with any of their counsel, who have filed briefs with the Court Clerk may present opening and closing arguments to the Supreme Court after all motions have been ruled upon.

(a) The Chief Justice may limit the length of time allotted for opening and closing arguments at his discretion provided that each party shall be allowed an equal amount of time to present arguments.

(b) Any party may waive its right to an opening and/or closing argument.

§7 **WITNESSES.** Parties may present witnesses in support of their respective cases provided that the oath or affirmation of truth is administered to the witnesses prior to testimony.

(a) Parties shall have the right to cross-examine all witnesses, so long as they submit their questions in a court brief and the Supreme Court Chief Justice has given permission for the questions to be asked.

(b) The Chief Justice may limit the time to examine and cross-examine witnesses, provided that each party has an equal amount of time. This additional time shall not be included in the total time the Chief Justice affords to all parties.

§8 **SUBPOENA POWERS.** The Chief Justice may compel, through subpoena any member of Student Government, either elected or appointed, to appear in court as a witness, and may also request, through formal letter any Texas State student, faculty, or staff member to appear in court as a witness. No member of the Texas State faculty or staff is required to attend or comply with anything the Supreme Court requests and any request will come with an explicit statement of this fact. Matters of public record may be requested per local, state and federal law.

(a) A subpoena may also be issued to any Student Government member, either elected or appointed, to provide documentation relevant to the cases being heard.

(b) Any member of Student Government, either elected or appointed, who fails to appear or provide subpoenaed documents before the Supreme Court when so compelled may face penalties as specified in the Judicial Code.

§9 **QUESTIONS FROM THE BENCH.** Any Supreme Court Justice may question the parties at any time during the proceedings for purposes of clarification.

- (a) Any time spent answering questions from the bench shall not be included in the total amount of time allotted by the Chief Justice to all parties.
- (b) If any party objects to the questions of any Supreme Court Justice, they shall make an oral objection.
- (c) Such objections shall be ruled on by the Chief Justice at the time of objection and placed on record by the Court Clerk.

§10 **DELIBERATION AND JUDGMENT.** At the close of arguments, the hearing shall recess for deliberation. Only members of the Supreme Court and their counsel shall be admitted into deliberation.

- (a) The Chief Justice may poll the justices at any time during deliberation to decide when to close the public hearing.
- (b) Deliberation shall end when a majority of the justices constituting quorum agree to either grant the relief requested, grant a relief agreed upon by the Supreme Court, or to deny the relief requested.
  - (1) Voting of the court by proxy or remote shall be prohibited.
- (c) Deliberation shall not exceed three (3) business days. Concentrated study period, finals week, and University sanctioned holidays or emergency closures shall not be included in the tabulation of time spent in deliberation.
- (d) When a decision has been reached, the Court shall reconvene in open session. The decision of the Supreme Court shall be announced to the parties by the Chief Justice, along with the reasons for the decision.
- (e) The Chief Justice shall assign a justice to write a majority opinion of every case, or shall reserve the right for himself. All judgments, together with the opinion of the Supreme Court shall be forwarded to the Court Clerk within five (5) business days of the oral judgment.
- (f) Any justice may write a concurring or dissenting opinion at his discretion, which should be filed separately with the Court Clerk.
- (g) Upon receipt of the majority opinion, the Court Clerk shall forward copies to the President, Rules and Standards Director, and to the Dean of Students. Additional copies shall be filed in the Court archive and posted on the Student Government website.

- (1) Any minority or concurrent opinions will be directed to the Rules and Regulations Chair and placed on the Student Government website with distinct notification of its minority status.
- (h) If the judgment is returned by the Dean of Students for correction as to University regulation (excluding Student Government documents), the Court shall reconvene at the order of the Chief Justice. The Court shall resume its deliberations and reconsider its findings, as recommended.
- (i) The Chief Justice shall preside over all deliberations of the Supreme Court.

**§11 COURT ORDERS AND OPINIONS.** Supreme Court and Election Board Orders and Opinions should be written in a scholarly, detailed and deliberative way, citing, whenever possible the constitutional provision or statute which substantiates the Court’s opinion and actions.

- (a) The Court shall issue one or all of the following: Majority Opinion, Minority Opinion or a Concurrent Opinion, or if not reaching a majority a per curium decision.
  - (1) A Majority opinion shall be the written opinion of the majority of the justices and basis of any court orders.
  - (2) A Minority opinion shall be written opinion of the minority embracing any issue presented or discussed in the majority opinion.
    - (i) The Election Board shall not issue minority opinions.
  - (3) A Concurrent opinion will provide support for the majority opinion but may deviate in its application or method of support from that which is listed in the Majority Opinion.
  - (4) A per curiam decision is one where the court was unable to reach a majority decision and shall affirm the lower court’s decision or provide no precedent, action or remedy.
- (b) Upon the conclusion of a hearing and after deliberation the Supreme Court shall provide a written decision. This decision will come in the way of court orders and opinions. This document will come in two distinct parts, but are to remain one document. The majority opinion of the court shall detail the reasoning and justifications for its orders and shall meet the standards as outlined in this section. The courts orders shall detail the actions it is taking or is commanding other

components of Student Government to take in order to comply with its majority opinion.

- (c) Majority opinions may be opposed through a written minority opinion or agreed with in part or whole by a concurring opinion, however no minority order or concurrent order may ever be written.
- (d) Orders and opinions must, whenever possible, cite under what statute or constitutional provision the Court is acting in order to provide judicial direction for lower courts and Student Government to use in making and justifying decisions.
- (e) Orders and opinions can only embrace the question before the Court and the Court may not take the liberty to decide on any other issues. The Court shall have the power in its opinions address related issues and questions which arise in the course of the hearing and discussion but shall not embrace issues not directly relating to the question before them.
- (f) Orders and opinions should have an introduction, set of conclusions, findings, opinions, and any related orders in that sequence.

#### **ARTICLE IV. FAILURE TO APPEAR**

§1 **DEFINITION.** A respondent has failed to appear before the Court when, after proper notification via Texas State e-mail, he does not make an appearance, in person or by counsel, at a duly convened proceeding of the Supreme Court.

§2 **PENALTIES.** If a Student Government official, elected or appointed, knowingly fails to appear before the Supreme Court, he may be suspended by the Supreme Court.

- (a) The decision to suspend a Student Government official shall be made only by the Supreme Court and shall be executed by the President or the Dean of Students, as appropriate.

§3 **PROCESS OF SUSPENSION.** If the official has failed to appear before the Supreme Court, the Chief Justice, or two Associate Justices in conjunction, may begin the process of suspension.

- (a) The Chief Justice shall set a date for a hearing, which is to take place no later than three (3) business days from the date he failed to appear, regarding the suspension.

§4 **SUSPENSION HEARING.** If the official appears before the Supreme Court at the appointed time, he shall be allowed to present his rebuttal to the charges.

- (a) If the official fails to appear before the Supreme Court at the appointed time, the Court shall adjourn immediately for deliberation.
- (b) Only members of the Supreme Court and their counsel shall be admitted into deliberation.
- (c) In deliberation, the Supreme Court shall decide whether the failure of the official to appear was reasonably excusable under the circumstances.
- (d) If the official's failure to appear is found to be inexcusable by a majority of the justices, the Chief Justice shall forward an order of suspension to the President or the Dean of Students for immediate action. If the official fails to appear before the Supreme Court in the matter of his failure to appear, the Supreme Court may issue a judgment for suspension.

## **ARTICLE V. RECUSATION**

§1 **RULE FOR RECUSAL.** Any justice of the Supreme Court shall recuse himself from participation in a case if he believes that, by virtue of his relationship or association with any of the parties to the case, he is unable to decide the case impartially.

- (a) A motion for recusal made by the justices or either party or their counsel may be requested anytime during the hearing.
- (b) A justice's refusal to recuse himself is subject to challenge if the aggrieved party believes that a justice who participated in deciding the aggrieved party's case should have recused himself.

§2 **RELATED PARTIES.** Related parties include, but are not limited to:

- (a) Anyone legally related to a party of the case before the Court, in a direct line of either ascendance, descendants, or collaterals within the first degree.
- (b) Anyone whose name appears on campaigning material or is/was the agent or worker for any campaign.
- (c) Anyone who has publicly announced his support of a party to the case before the Court. Public announcement is defined as:
  - (1) A letter of support to any periodical.
  - (2) Distributing campaign materials of a party of the case.
  - (3) Providing material or financial support of any kind.

- (4) Announcing said support in student organization meetings, social networking websites, e-mail, text messaging, or any other form of communication at the discretion of the Supreme Court.

§3 **CHALLENGES.** The Supreme Court shall have original and exclusive jurisdiction in cases arising under this article and, therefore, shall proceed according to the procedures specified in Article I of the Judicial Code.

- (a) Only members of the Supreme Court and their counsel shall be admitted into the challenge hearing.
- (b) If a Supreme Court Justice is the subject of the challenge, the Chief Justice shall dismiss that justice from hearing the challenge. If the Chief Justice is the subject of the challenge, the Justice shall dismiss himself from hearing the challenge.
- (c) Any justice that is the subject of a challenge shall have the right to defend himself in the same manner as a respondent and shall retain all the rights and privileges guaranteed to him granted under this code.
- (d) If a majority of the justices find that the challenged justice should have recused himself and his/her failure to do so may have affected the outcome of the case, a new trial or hearing shall be ordered on behalf of the aggrieved party.

## **ARTICLE VI. INJUNCTIONS**

§1 **DEFINITION AND ISSUANCE.** The Supreme Court possesses the power to issue injunctions, pursuant to Student Government Constitution.

- (a) An injunction is an order, issued in the name of the Supreme Court and executed by the Student Body President or Dean of Students, depending, which requires a Student Government official to do the following:
  - (1) Temporarily cease and desist any activity or practice until such a time as a full hearing can be held regarding the case or controversy; or,
  - (2) Grant to applicant such relief as is requested on a temporary basis until such a time as a full hearing can be held on the case or controversy.

§2 **PROCEDURE FOR AN INJUNCTION BY THE SUPREME COURT.** Injunctions may be issued by the Chief Justice or any two (2) Associate Justices, in conjunction.

- (a) An injunction from the Supreme Court shall conform to the template found in the [Appendix IV](#) to this document, and shall be submitted to the Court Clerk.
- (b) The Clerk shall notify the Chief Justice and all interested parties of the injunction as soon as possible, but in no case more than twenty-four<sup>24</sup> hours after the receipt of the injunction.
- (c) Injunctions may be issued against any Student Government election, Student Government official function, Student Government official in his/her capacity, or any legislative and/or executive instrument. Justices of the Supreme Court shall injunct no action of the Student Government or any member of the Student Government in instances where no petitioner has requested such action.
- (d) Injunctions may only be effective for a maximum of five (5) consecutive days including weekends. Any injunction purporting to have effect for a longer period is null and void.
- (e) A petition for an injunction may be included in the complaint filed by the complainant with the Court Clerk.
- (f) The Injunction Petition Form can be found in the [Appendix VII](#) to this document.
- (g) The Chief Justice or any two (2) Associate Justices, in conjunction, need not convene a hearing in order to consider a petition for injunction. The injunction may be issued on the basis of the complaint alone.

§3 **BURDEN OF PETITIONER.** Injunctions shall not be issued unless the petitioner is able to demonstrate that immediate, irreparable harm will result without injunctive relief.

- (a) An injunction is to be considered an extraordinary remedy.

## **ARTICLE VII. RIGHT TO COUNSEL**

§1 **RIGHT TO COUNSEL.** All Texas State students wishing to pursue or defend themselves in a trained Supreme Court or lower court hearing has a right to effective counsel by a student of Texas State University in the way of a Judicial Advocate. Students shall be informed of this right upon being made aware of a pending action in any Student Government Court. To this end, two students, preferably focusing on Public Administration or paralegal studies, may serve as Judicial Advocates to any student requesting this counsel.

§2 **STUDENTS WISHING COUNSEL.** If any student wishes to have Judicial Advocates as counsel they shall inform the Supreme Court Chief Justice who shall assign an advocate to the student until the completion of the proceedings.

- (a) If the student grants the Judicial Advocate the power to act as their agent or prepare documents in their name, actions of the advocate shall be the same as if the student had acted themselves.
- (b) Students may revoke the counsel of an advocate at any time.
- (c) Students may provide their own outside counsel, which can act as their advocate, so long this person is a student.
- (d) Students may have a non-student, outside counsel, but any such counselor shall not be recognized to speak or present testimony or evidence.
- (e) Students may counsel themselves or have any other student who is not a Judicial Advocate provide them with counsel.

**ARTICLE VIII. INTERPRETATION OF THIS CODE**

§1 **STRICT INTERPRETATION.** The Judicial Code shall be strictly interpreted with reference to the precise terms of the document whenever possible. If a provision is ambiguous or leads to illogical consequences in its application, it shall be interpreted in terms of expediency, fair play, and equal justice to all parties.

## CHAPTER 200 - SUPREME COURT

### ARTICLE I. AUTHORIZATION AND PURPOSE

§1 **AUTHORIZATION.** This chapter and all its regulations are authorized pursuant to Article III(10)(a),(d) of the Student Government Constitution.

§2 **PURPOSE.** 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.
- (b) This Supreme Court shall provide legislative oversight on the judicial systems of Student Government and advise the President on any issues.
- (c) Review any changes to the Student Government Code or the Student Government Constitution.
- (d) Decide if actions of members of Student Government are impeachable.
- (e) Maintain ethical, professional and performance standards within Student Government, providing proper remedies when applicable.

§1 **JURISDICTION.** 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.

### ARTICLE II. SUPREME COURT JUSTICES

§2 **THE CHIEF JUSTICE.** The Chief Justice shall adhere to all responsibilities outlined in the Judicial Code. The following include, but are not limited to, the responsibilities of the Chief Justice:

- (a) Arrange regularly scheduled meetings at which all Associate Justice shall be available to conduct official business.

- (b) Direct all matters of an administrative nature within the Student Government Court system as governed by S.G.C. VII.
- (c) Oversee an annual training of the Supreme Court, Election Board and Judicial Advocates.
- (d) Co-direct with the Election Board Chair the Rules Reading Seminar for all candidates.
- (e) Ensure all Associate Justice are informed of all upcoming hearings and meetings in order to meet quorum of Associate Justice, which must be present at every hearing and meeting.
- (f) Assign a justice to write a majority opinion in every case, or shall reserve the right for himself.
- (g) Carry out the various enumerated requirements outlined throughout the Judicial Code.
- (h) serve on all committees as requested or required. If not available, a designee must be sent in his place.
- (i) Consult with all Associate Justices to outline hearing procedures prior to any hearing of the Supreme Court.
- (j) Meet with all parties prior to any hearing of the Supreme Court to address Court procedures and any pretrial questions.
- (k) Serve as the official correspondent of the Judicial Branch to any parties in a hearing.
- (l) Participate in mediation or judicial board training by the Dean of Students Office.
- (m) Set the goals of the Student Government Court system and ensure the system meets its statutory and written expectations including deadlines and projects.
- (n) Provide any person coming before the Supreme Court their rights and responsibilities.
- (o) Advise the President on the proper and lawful execution of the Constitution and Student Government Code.
- (p) Coordinate and ensure the Student Government Code is properly formatted, updated and distributed and that any changes are properly transmitted.
- (q) Upon receipt of the attendance record from the Senate and House transmit those records to the Judicial Advocate and Court Clerk each week.

§3 **ASSOCIATE JUSTICES.** Associate Justices shall be responsible for attending meetings or hearings called to order by the Chief Justice.

- (a) Associate Justices shall adhere to attendance policies as stated in this code.
- (b) All Associate Justices must demonstrate their knowledge of all relevant Student Government documents and impartiality throughout their term of office.
- (c) No member of or nominee for a position within the Judicial Branch shall help, assist, serve on, campaign for, or advise any Fall or Spring Student Government Campaign.
- (d) Should undergo mediation or judicial board training by the Dean of Students Office.

### **ARTICLE III. OFFICERS OF THE COURT**

§1 **COURT CLERK.** The Chief Justice of the Supreme Court shall appoint at least one (1) Court Clerk, as an officer of the Court. If there is no Court Clerk the Chief Justice shall select an Associate Justice which will assist the Chief Justice in all administrative and clerical matters. The following include, but are not limited to the responsibilities of the Court Clerk:

- (a) Assist the Chief Justice in all administrative and clerical matters.
- (b) Receiving and forward all complaints filed with the Court to the Chief Justice.
- (c) Keep the records of the Court as the official archivist.
- (d) Obtain and record attendance of Student Outreach Events by all members of the Judicial Branch.
- (e) Assist any plaintiff, defendant and the court in administrative, procedural and clerical matters.
- (f) Forward all Court Orders and Opinions to the Supreme Court Chief Justice for codification under this title. Court Orders and opinions shall be formatted in accordance with [Appendix IV](#)
- (g) The Court Clerk may be removed for cause from his position by a two-thirds vote of the Supreme Court.

§2 **JUDICIAL ADVOCATES.** The purpose of Judicial Advocates shall be to advise and act as an agent on behalf of any student wishing or requesting their counsel. The Supreme Court Chief Justice shall vest the appointment of at least two (2) Judicial Advocates which shall be recognized as having standing with any court in Student Government, and shall be recognized as an advocate upon demonstrating to the Supreme Court Chief Justice a complete understanding of Student Government Constitution and Student Government Code.

To this effect the Supreme Court shall establish a method of evaluation for advocate candidates.

- (a) Advocates may also be called upon to advise any member of Student Government in the preparation of statutes.
- (b) The Supreme Court Chief Justice may relieve the judicial advocate at any time with approval of the Supreme Court.
- (c) The Judicial Advocate shall keep all matters related to the case they are assigned in the strictest confidence. Judicial Advocates primarily shall:
- (d) Assist students in preparing petitions, complaints, briefs, evidence, testimony and other documents to any court in Student Government.
- (e) Ensure the proper preparation of all documents for the courts.
- (f) May be called upon by any member of Student Government in the preparation of statutes.
- (g) With the permission of the student, act as an agent of the student in regards to their court proceedings, and speak and act on their behalf.
- (h) Uphold all principles of ethics and standards of Student Government.
- (i) Provide defense or prosecution to the best of their ability at all times. May recuse themselves or deny supporting any student for any reason of conscience

#### **ARTICLE IV. GENERAL PROCEDURE**

§1 **QUORUM.** Two-thirds (2/3) of the number of justices appointed to office at the time of a hearing shall constitute the quorum of the Supreme Court.

- (a) Any action taken by Supreme Court without quorum present shall be null and void, excluding the issuance of an injunction by the Chief Justice or any two Associate Justices in conjunction.

#### **ARTICLE V. REVIEWING RULE CHANGES**

§1 **AS A REVIEWER OF RULE CHANGES.** The Supreme Court must review all bills presented to the Senate which change the Student Government rules or regulations, excluding the Constitution.

- (a) Whenever such bills are presented and read in the Senate, the Supreme Court shall meet within 6 days of that first reading and report to the Senate its suggestions as amendments to the bill.
- (b) After Supreme Court review, and at the meeting where amendments are to be considered, the bill will be returned to the Senate with amendments from the Supreme Court as presented by the Chief Justice. After the Chief Justice answers any questions of Senators each amendment will be voted on either individually or as a group.
- (c) A declaration of emergency status does not change the timeline as outlined in this section and may only be amended if the Supreme Court reviews the bill prior to the first reading.

§2 The Supreme Court shall review and make amendment proposals for the following reasons:

- (a) If the Supreme Court rules a change to the S.G.C. incongruent with another section of the S.G.C. or the Constitution.
- (b) To change grammar, spelling, and punctuation.
- (c) To bring the bill up to the organizational standards of the S.G.C.
- (d) To more closely align the wording and tone of the bill to match the word usage and tone of the S.G.C.

§3 Approval from the Supreme Court does not prohibit filing an Advisory Opinion Request or Notice of Complaint and cannot be used as a basis for denying applications of either.

## **ARTICLE VI. IMPEACHMENT REVIEW**

§1 **AS THE REVIEW COMMISSION.** 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. The procedures for such a review shall include but are not limited to:

- (a) The Supreme Court will hold hearings and provide the opportunity for the plaintiff and accused to present arguments and evidence.
- (b) Hearing procedures and deliberation procedures shall comply with S.G.C. VII. §100, Judicial Code.

- (c) The deliberative proceedings to decide the case, will occur in closed session of the Supreme Court. No records will be taken of the deliberative proceedings.
- (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.
- (e) An agenda for the meeting and all questions of procedure or order shall be decided by the Chief Justice.

**ARTICLE VII. MEMBERSHIP CONDUCT AND STANDARDS REVIEW**

§1 **STANDARDS REVIEW.** The Supreme Court will collect complaints of ethical or other rule violations by members of Student Government and investigate other issues which violate the professional standards applicable to all members of Student Government.

- (a) The Supreme Court will establish a standardized form for the collection of standards and rule violation accusations.
- (b) The Supreme Court conduct an investigation into complaints it accepts and if a hearing is deemed necessary the court will provide any accused a hearing. Documentation will be kept for all investigations and hearings. These documents must be made open to the public at a time and in a manner as proscribed by the court.
- (c) The Supreme Court will use the Code of Ethics and good judgment to decide each case and provide any remedy including impeachment proceedings.

§2 **STATEMENT OF PURPOSE.** The Student Government and its members have a responsibility to uphold high standards and exemplify the ethical behavior requisite to the prestigious position of public office they hold. The Supreme Court as a Standards Board is responsible for maintaining and enforcing Student Government standards.

§3 **PHILOSOPHY.** Just as any organization at Texas State University, Student Government has rules and expectations for its members which all members accept upon taking their oath of office including the ethical parameters as outlined and norms of professionalism and quality

or quantity of work. Members must respect at all times the rights of other members as individuals. Members of Student Government accept that they will take on additional responsibilities beyond themselves in the service of students at Texas State University.

§4 **FILING A COMPLAINT.** The Supreme Court shall collect complaints using a Standards Review Complaint form which shall collect at least the following information:

- (a) Complainants full name, Texas State email, and Student ID number,
- (b) Accused full name,
- (c) An accounting from the complainant of the actions which warrant a Standards Review,
- (d) Any documents as evidence the complainant wishes to provide,
- (e) Selection of the complainants desired disciplinary remedy,
- (f) Justification of disciplinary remedy,
- (g) Other information the Supreme Court deems relevant to the case.

§5 **FOUNDATIONS FOR HEARING.** When collecting complaints the Supreme Court must use the following criteria to assess which actions are grounds for a hearing. Grounds for a hearing will be as follows:

- (a) Referral by any member of Student Government.
- (b) Violations of the Code of Ethics.
- (c) Direct violations of the Student Government procedure.
- (d) Failure to maintain standards of work, research, behavior or other standards as statute may require.
- (e) Excessive absences to meetings and required events.

§6 **HEARINGS.** Supreme Court will hold hearings and provide the opportunity for the respondent to address any allegations against them. A standards hearing does not require the presence of either the respondent or a complainant to proceed, so long as both have been given 48 hours' notice before the hearing date.

- (a) The process for hearings shall generally follow the process, when applicable to the conduct review, in accordance with the Judicial Code.
- (b) The deliberative proceedings to decide the cases verdict, will occur in closed session of the Supreme Court. No records will be taken of the deliberative proceedings.

- (c) Except in the case of Supreme Court members, Justices will not discuss details of the discussion in private or public outside of the deliberations.
- (d) The Supreme Court must decide each year if it shall be the Courts policy to keep the identity of complainants confidential or open to the public and shall establish any requisite rules which shall apply for one session. The Complainant may waive their right to confidentiality.
- (e) The Supreme Court must decided each year in what manner it will release the details of Standards Review investigations and hearings.
- (f) The Supreme Court Chief Justice will forward the Supreme Court decision to the President, Vice President, and House Leader, complainant and respondent.

§7 **DISCIPLINARY REMEDY.** The Supreme Court may remedy any complaint by making any combination of actions up to two (2) of the following:

- (a) Dismiss the complaint.
- (b) Require service to Student Government outside of the person's established commitments.
- (c) Require community service.
- (d) Place on probation in which case another complaint may result in impeachment.
- (e) Impeachment.
- (f) Other sanctions as provided for in the Student Government Code.

**CHAPTER 300 - ELECTION BOARD**

**ARTICLE I. ADMINISTRATIVE**

- §1 **AUTHORIZATION.** This Election Code is hereby enacted pursuant to Article III(10)(e),(g) of the Student Government Constitution.
- §2 **ENFORCEMENT.** The Election board shall be responsible for enforcing all provisions of Title III, Election Code.
- §3 **ADMINISTRATION OF ELECTIONS.** The Election Board shall be responsible for the administration of campus-wide elections.
- §4 **JURISDICTIONAL BOUNDARIES.** The jurisdiction of the Election Board applies both on-campus and off-campus.
- §5 **JURISDICTION.** The Election Board shall have jurisdiction over Student Government elections, special or general, and shall enforce and interpret the Election Code. The Board shall enforce all provision of the Constitution, the S.G.C., University policy and procedures, and other relevant regulations on candidates in the context of their campaign. The Board shall have the power to enforce the listed regulations before filing begins, during the election process, and until the completion of all election related activity.
- (a) The Election Board shall be given broad powers to interpret, enforce, and resolve any issues not otherwise dictated within this Election Code.
  - (b) All polling locations and stations must abide by the Election Code.
- §6 **ENFORCEMENT.** The Election board shall be responsible for enforcing all provisions of Title III, Election Code.
- §7 **ADMINISTRATION OF ELECTIONS.** The Election Board shall be responsible for the administration of campus-wide elections.
- §8 **JURISDICTIONAL BOUNDARIES.** The jurisdiction of the Election Board applies both on-campus and off-campus.
- §9 **ELECTION BOARD SELECTION PROCESS.** The Election Board shall be assembled through an application and interview process, to be completed by the first Monday in October. The most qualified candidates are to be nominated by the Student Body President and confirmed by the Senate.

- (a) Members of this Election Board are not allowed to serve Student Government in any other capacity, elected or appointed.
- (b) The application for the Election Board will be made available through the Dean of Students Office, Student Government website, sent to the pre-law program, and anywhere else it may be viewed by a large qualified applicant pool.

## **ARTICLE II. THE ELECTION BOARD**

§1 **ELECTION BOARD QUALIFICATIONS.** A total of seven (7) members will be selected to comprise the Election Board from the applications submitted. Each shall possess the following qualifications:

- (a) Shall not hold an elected position, endeavor to run, or be engaged in actively campaigning for an elected position; and,
- (b) Must either be a graduate student, or an undergraduate student who has completed one semester as a student; and,
- (c) Must not be on academic or disciplinary probation.
- (d) If the applicant pool does not yield at least seven (7) qualified members the Dean of Students may nominate candidates that meet the qualifications as outlined in this section.

§2 **ELECTION BOARD CHAIR SELECTION.** Interested applicants for Chair of the Election Board shall identify as such in the initial application and selection process.

- (a) To qualify to serve as the Election Board Chair the applicant must have served a full semester term as a member of any of the following: The Student Justice Board, the Supreme Court, the Election Board, the Organization Conduct Review Board or Student Organizations Council.
- (b) The Chair may not be a Supreme Court Justice or be in any other way currently affiliated with the Supreme Court.
- (c) If the applicant pool does not yield qualified members the Dean of Students may make nominations to the Student Body President who meet similar standards.

§3 **ELECTION BOARD MEMBER REMOVAL.** Any member of the Election Board may be removed for just cause by a unanimous vote of the Election Board or impeachment by the Senate. Should a member of the Election Board be removed, the President shall select a

replacement by majority vote out of candidates who have previously applied, with confirmation by the Senate.

### **ARTICLE III. BOARD OFFICERS AND GENERAL RESPONSIBILITIES**

§1 **ELECTION BOARD CHAIR.** The Chair shall be the chief executor of the Election Code, and be vested with specific powers that when executed may be overridden by a majority vote of the Board. These powers include:

- (a) Issuing temporary injunctions,
- (b) Issuing verbal orders to candidates,
- (c) Barring disruptive members of the public from hearings,
- (d) Assigning candidates to Election Board members.

§2 **SECRETARY.** The Election Board shall or Chair appoint one of the members as the Secretary or can appoint a non-member volunteer; who shall be responsible for recording the minutes of Election Board meetings and hearings, and keeping records of all opinions, rulings, and filings required of candidates under this code.

- (a) The Secretary shall provide a written copy of all decisions concerning individual candidates to the candidates involved.
- (b) Failure to do so may result in revocation of secretarial duties by the Election Board Chair.
- (c) If no secretary is appointed these responsibilities fall to the Election Board Chair.

§3 **ASSIGNMENT OF CANDIDATES.** Members of the Election Board shall be assigned an equal group of candidates for whose questions, complaints, and financial statements they are responsible.

§4 **TERMS OF OFFICE.** The Election Board shall serve from the time appointed each year until the conclusion of all election related business in that same year.

§5 **CONFIDENTIALITY.** The Election Board members will sign a contract which will outline job responsibilities as established by the Election Board Chair in cooperation with the Dean of Students. This will include a confidentiality agreement and failure to adhere to this provision is just cause for removal and referral to Student Justice.

§6 **PUBLISHING POLLING STATIONS.** The locations of designated polling stations must be published online and publicized at least twenty-four (24) hours before the start of the voting period.

§7 **CALLING MEETINGS.** The Chair of the Election Board shall facilitate and organize the necessary meetings and hearings in order to accomplish tasks set forth by this Election Code.

**CHAPTER 400 - COURT ORDERS AND OPINIONS**

**ARTICLE I. CODIFICATION OF COURT ORDERS AND OPINIONS**

- §1 **CODIFICATION.** Codification of the Main Supreme Court Opinion and Order shall occur pursuant to S.G.C.: I. §100.5(1)(b). Each individual Opinion or Order, which for these purposes shall constitute the same, shall be codified as a new Article in ascending order from II and shall follow the same format as outlined in S.G.C. I. §001.3(1).
- §2 **JUDICIAL REVIEW.** As a power granted by the Constitution the Opinions and Orders codified within this and subsequent chapters shall be considered an extension of this Code or Constitution depending on the source document.
- §3 **AMENDMENTS.** Recantation or amendments to previous Court Orders and Opinions shall be recorded as such in the already established article for the order and opinion and shall not be recorded as a new article.
- §4 **CODING.** Court Orders shall be coded first with the number “No.” and the session of the Senate in which the order and opinion was issued followed by a number which represents the number in chronological order of issuance in that session. Example: Case No. 04-05 (“04”, represents the session the order was issued in, and “05” is the fifth order issued in the session.)

**ARTICLE II. DOMONIQUE GRAY-BERROA v. TIFFANY YOUNG**

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

No. 01-04

**Syllabus**

DOMONIQUE GRAY-BERROA  
v.  
TIFFANY YOUNG, Student Body President

Received March 5, 2015 – Decided March 9, 2015

A Notice of Complaint was filed with the Supreme Court by Mr. Domonique Gray-Berroa concerning an accused violation of the Scholarships Act found under Student

Government Code (S.G.C.) IX §103.4 which provides members of Student Government the right to apply for and be granted the scholarship, with specific restrictions. Mr. Gray-Berra claims an oversight by Tiffany Young, Student Body President by not enforcing the Scholarships Act, and therefore has unnecessarily and unlawfully denied rights to members of Student Government.

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

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

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

### **I. Judicial Criteria**

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

## II. Order of Precedent

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

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

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

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

## III. A Test of Constitutionality

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

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

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

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

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

#### **IV. A Test of Ethics**

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

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

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

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

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

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

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

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

This keeps intact the segment prior to its which reads:

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

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

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

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

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

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

## **V. Test of Functionality**

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

By striking down the segment of text in the Act as unconstitutional without any further judicial examination, the commission could be ethically impeded from preforming its responsibilities. As a result, the Court applies the Test of

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

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

Functionality and incorporates it into the Order of Precedence. Student Government, by its very nature, must function as a practical matter. The Court therefore will use both the Code of Ethics and the Functionality Test to ensure that scholarships can still be awarded, granting some members of Student Government access to the scholarship while reducing the ethical ambiguity as much as possible by restricting those with direct authority over the scholarship as ineligible to receive an award.

### **Court Order**

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

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

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

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

To completely remedy the issues presented in this case and to be fair to all students in the Texas State community the Court also orders President Young to email the student body and inform them of the extension with information about the new deadline (*using proper university channels*). In addition,

President Young is hereby ordered to send a separate email informing all members of Student Government (*except those expressly excluded as stated above*) of their right to apply to the scholarship including the extension period and deadline.

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

## CHAPTER 500 - IMPEACHMENT PROCEDURE

### ARTICLE I. ADMINISTRATIVE

- §1 **AUTHORIZATION.** This chapter and all of its regulations are authorized pursuant to the Student Government Constitution Article III, 10(d).
- §2 **DEFINITION.** Articles of Impeachment shall be defined under this code as a special kind of Simple Resolution and shall only cite one respondent and shall be formatted similarly as found in [Appendix XVI](#). Articles of Impeachment will list the following information:
- (a) Name of complainant(s), which are the filers and authors of the Articles of Impeachment.
  - (b) Name and position of the respondent.
  - (c) Charges with specific citation of rules or instances of violations. Each violation listed will constitute a new Article.
  - (d) Facts related to each charge under each Article.

### ARTICLE II. PROCESS

- §1 **RESPONSIBLE PARTIES.** In the context of this chapter there are two parties to any impeachment whose roles are defined in this section. The complainants are defined as those who sign on to Articles of Impeachment. The respondent is defined as the person charged under the Articles of Impeachment. The roles of these two parties are as follows:
- (a) The complainants are responsible for managing the Articles of Impeachment as authors and providing testimony and evidence in favor of the Articles of Impeachment, primarily seeking a verdict of guilty from the legislative body.
  - (b) The respondent is responsible for providing evidence and testimony which counters the argument of the complainants and primarily seeks a verdict of not guilty from the legislative body with jurisdiction.
- §2 **FILING.** Articles of Impeachment must first be filed with the Supreme Court Chief Justice. The complainants must submit the Articles of Impeachment to the Chair of the legislative body with jurisdiction prior to the meeting at which the Articles are to be read. The Articles of Impeachment must be placed on the agenda 72 hours prior to the meeting and must be placed under the New Business section of the agenda. At this time the Chair of the legislative

body, with the advice and consent of the Chief Justice, will certify that the Articles of Impeachment meet all constitutional and regulatory requirements to be placed on the agenda.

§3 **READING.** After being certified as properly filed the Articles of Impeachment will be read to the legislative body with jurisdiction. There will be no time for comment by the complainants, they will not take questions or attempt justification of the Articles after reading.

§4 **SUPREME COURT REVIEW.** The Supreme Court shall convene for an Impeachment Review within five (5) days of the Article of Impeachment being read and shall decide which, if any, of the Articles listed have sufficient evidence and information to proceed to trial. The Articles of Impeachment may be amended by the Supreme Court to reflect those charges they believe warrant trial and forward what is accepted to the Chair of the legislative body with jurisdiction. If they do not find sufficient evidence on any of the Articles they shall return to the legislative body with jurisdiction a written report as to their findings.

§5 **DEBATE AND DISCUSSION.** If the Supreme Court impeaches the respondent a trial will occur at a regularly scheduled meeting or in the case when a Joint Session is required within ten (10) business days of the Supreme Court announcement. During the trial the legislative body with jurisdiction will be governed by the rules found in Chapter 20 of Roberts Rules of Order and all related trial rules. After the presentation of opening statements, evidence, witnesses, testimony, cross examination and closing statements the legislative body with jurisdiction will proceed with debate and discussion on the Articles of Impeachment. Each charge listed under the Articles of Impeachment shall be voted on as distinct motions with the members present having one of two options for each vote; guilty or not guilty. Such votes will be done by roll call vote and shall be reflected in the official voting records for the legislative body with jurisdiction. Those articles which the respondent is found not guilty will be struck from the Articles of Impeachment. If the legislative body with jurisdiction finds the respondent guilty on any one of the Articles it shall constitute conviction and removal.