

SUPREME COURT OF STUDENT GOVERNMENT AT TEXAS STATE UNIVERSITY

No. 08-02

ADVISORY OPINION

Syllabus

PETITIONER: CODY DESALVO, SENATOR OF COLLEGE OF APPLIED ARTS

Heard December 4, 2019 – Decided December 4, 2019

An Advisory Opinion was filed with the Supreme Court by Senator Cody DeSalvo, concerning three different issues pertaining to the Student Government Code Title III- Election Code. The Supreme Court will address the concerns and the opinion will be binding.

The Primary questions before the Court was for as to whether the Supreme Court accepts the facts of the petitioner's interpretation of Title IV, Chapter 100 Section 5 and Title III Chapter 102, Section 1 of the S.G.C.. That the Student Body President may still submit for recess appointments, nominees to the Election Board while the Senate is in recess, and any such recess appointments would need to come before the Senate immediately on January 27, 2020 or else the Election Board members would lose their office. Additionally, relating to the filing period, the filing period should open on the last Monday of the fall semester which the applicant suggests is December 9th, 2019 as it is the last week of academic activity at the university.

Lastly, the Petitioner request the opinion of the Court as to whether or not the Supreme Court should be responsible for publishing and administering the election filing deadline, overseeing the election process and if the vacancy in the Election Board extends to the public campaigning period will it be responsible for hearing cases of reported election code violations and if the Student Body President does not issue recess appointments for the Election Board; or should the Election Board lose the required number of members to hear a case.

Justice Clarke delivered the opinion of the Court, with Chief Justice Frank-Cadoree, and Justices Figueroa and Alvarado Bustos concurring.

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In relation to the first concern by the Petitioner in whether the Supreme Court accepts his interpretation of Title IV, Chapter 100 Section 5; the Supreme Court does accept the interpretation to be true and binding

It is the opinion of the Court that; regarding Student Government Code Title IV, Chapter 100 §5, The President may make appointments to positions he/she are empowered by the Constitution or Statute to fill when the Senate is not in session. Currently, The Senate is in fall recess until January 27, 2020 making them not in session for the rest of Fall 2019. Furthermore, it is the constitutional duty of the Student Body President to make appointments to positions that are vacant for Student Government to function properly. Lastly, it is the constitutional duty for the Senate to vote on any nominees the Student Body President has appointed. Any nominees that are appointed during Senate recess must come before the Senate on January 27, 2020 for confirmation.

On the second question related to the filing period; regarding Election Code Chapter 102, Section 1, *“The filing period shall open at 9:00 a.m. on the last Monday of the Fall semester and shall remain open until 5:00 p.m. on the first Friday of the Spring Semester”*. The Supreme Court accepts these facts and finds them to be true and binding

On the third question relating to the duties of the Study Body President not being met and due to this will the Supreme Court take the role of the Election Board, by publishing and administering the election filing deadline, overseeing the election process and if the vacancy in the Election Board extends to the public campaigning period will it be responsible for hearing cases of reported election code violations.

It is the Opinion of the Court that; The Supreme Court does not believe they should assume the role and duties of the Election Board due to lack of board members.

It is the constitutional duty of the Student Body President and Senate to appoint and Confirm members of the Election Board. The lack of members has no bearing on the Supreme Court as this body does not have appointment nor confirming powers stipulated in the Student Government Constitution.

According to Election Code Chapter 101 Article I, §1, *“The Election Board shall have jurisdiction over the Student Government elections, special or general, and shall enforce and interpret the Election Code... The Board shall have the power to enforce the listed regulations before filing begins, during the election process, and until the completion of all related activity.”* This establishes that the Election Board has original jurisdiction over elections for Student Government. Election Code Chapter 100 Article IV §1 state, *“‘Appellate Court’ refers to the Supreme Court, as empowered by the Student Government Constitution to serve as the*

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court holding appellate jurisdiction over the Election Board". Title III of the Student Government Code sets out the duties of the Election Board and all the powers that come with it. The only mention of the Supreme Court throughout Title III is of an appellate nature to review constitutionality of decisions made by the Election Board.

Article IV §2 of the Student Government Constitution establishes that *"The Supreme Court shall be the superior court and only appellate court within the Student Government."* Section 2 also enumerates instances where the Supreme Court shall have original jurisdiction. Article IV section 2 (b) states *"In matters concerning other rules and regulations where the Senate has established other court, The Supreme Court shall have appellate jurisdiction."* The Election Board is a court established by the Senate and according to the Constitution, the Supreme Court can only have appellate jurisdiction.

Student Government Constitution Article V, §5 (k), states *"The President shall: nominate Justices and the Chief Justice of the Supreme Court and nominate all members of lower courts."* Student Government Constitution Article III § 9 (c) states *"Through resolution, the Senate shall have the power to: review and, if so choosing, confirm nominations made by the Student Body President and Student Body Vice President."* Election Code Chapter 101, Article I §5 states *"'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."* The functionality of the Election Board is solely based on the President and Senate. These are constitutional duties they need to fulfill and cannot rely upon the Supreme Court to facilitate the election process where they lack original jurisdiction.

If the Supreme Court oversaw the election process, it would set a dangerous precedent and possibly dissolve the Election Board. The constitutional duties of the President and Senate will no longer be important as the Supreme Court will assume these duties to maintain functionality of Student Government. This will not occur.

Summary

In summary, the Court has declared under the above sections of the Student Government Constitution and the Student Government Code. That it is the constitutional job and obligation of the Student Body President to have the Election Board Member's Nominations sent to the Senate by the first Senate meeting of the Spring Semester so that they are read and voting on in the necessary timeframe before open campaigning starts. Additionally, it is to the opinion of the Court that the filling period for Elections must be opened on the last Monday of the Fall Semester no matter if the Election Board is filled. Furthermore, the Court declares that the Supreme Court cannot take the role of the Election Board, due to the Election Board having Jurisdiction on all things related to the Student Wide Elections. Lastly, the Supreme Court is established as an Appellate Court by the Student Government Constitution and Code and cannot legally overstep the bounds of its Jurisdiction.

It is so ordered.

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ADVISORY OPINION REQUEST

TO: The Supreme Court FROM: Cody DeSalvo, Senator – College of Applied Arts
DATE: 12/04/2019

QUESTION;

As of today, December 4, 2019, nominees for the Election Board have not been submitted by the Student Body President for confirmation. The Senate is in fall recess until January 27, 2020. According the S.G.C. Title IV, Chapter 100 Section 5 the Student Body President may still submit for recess appointments, nominees to the Election Board while the Senate is in recess. According to the chapter and section, any such recess appointments would need to come before the Senate immediately on January 27, 2020 or else the Election Board members would lose their office.

Question 1: Does the Supreme Court accept the facts and above interpretation to be true and binding?

According to The Election Code Chapter 102, Section 1 the filing period should open on the last Monday of the fall semester which the applicant suggests is December 9th, 2019 as it is the last week of academic activity at the university (finals week).

Question 2: Does the Supreme Court accept the facts and above interpretation to be true and binding?

Throughout the Election Code and Judicial Code, the Supreme Court is noted as the appeals court for Election Board decisions. The applicant believes that as a result of the Courts appellate jurisdiction and the Supreme Courts duty to ensure proper jurisprudence and judicial oversight that if at any time the Election Board is unable to exercise its powers due to lack of constitutionally confirmed members, that the Supreme Court should assume the responsibility of the Election Board until such time as the Election Board has been fully constituted.

Question 3: If the Student Body President does not issue recess appointments for the Election Board; or should the Election Board lose the required number of members to hear a case, will the Supreme Court be responsible for publishing and

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administering the election filing deadline, overseeing the election process and if the vacancy in the Election Board extends to the public campaigning period will it be responsible for hearing cases of reported election code violations?

Thank you,

Cody DeSalvo Senator, College of Applied Arts

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Advisory Request Form #04-842-888

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Cody <cp1329@txstate.edu>
Wed 12/4/2019 1:26 PM

- Frank-Cadoree, William I;
- Weiser, Kathryn A

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form.csv
1 KB

Advisory Request - Vacant Election Board.pdf
63 KB

2 attachments (64 KB) Download all Save all to OneDrive - Texas State University
which-document-do-you-want-an-advisory-opinion-about:

Something in the Title III, Election Code.

please-prepare-your-request-in-accordance-with-the-example-provided-and-upload-it-here:

Advisory Request - Vacant Election Board.pdf (Attached file)

sendername:

Cody

last-name:

DeSalvo

student-id-number-a0:

A00574112

senderemail:

cp1329@txstate.edu

unnamed-2:

It is my view that the interpretations I have provided prefacing questions 1, 2, 3 and three should be accepted and that if the Election Board is not properly constituted by December 9th the Supreme Court should assume the powers of the Election Board to ensure a proper administration of the Elections until such time as an election board is either appointed in recess or properly confirmed by the Senate.

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oath-of-affirmation-of-truth:

I, the filer of this Advisory Opinion Request, in accordance with Title VII §100.4(3) of the Student Government Code, do solemnly swear – the documents I have provided are truthful and that I will tell the truth, the whole truth, and nothing but the truth – as the laws of Student Government require.

submit:

Submit

gato-important:

Form location: <https://studentgovernment.dos.txstate.edu/courts/courtfilings/advisory.html>

[Advisory Opinion Request Form : Student Government : Texas State University](https://studentgovernment.dos.txstate.edu/courts/courtfilings/advisory.html)

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