SPRING TERM, 2015

Opinion of the Court

NOTICE: The following document represents the official Opinion of the Court, and constitutes a binding decision on all parties concerned within the jurisdiction of the Court[1]. This decision, and all concurring or dissenting opinions, will remain on the official record for seven (7) years in accordance with Article IV 3.5.A of the Student Body Constitution.

BAYLOR UNIVERSITY STUDENT COURT

McCAHILL-HARDY *v.* KINGHORN

Argued February 13th, 2015 – March 4th, 2015
Decided March 18th, 2015

By Unanimous Decision in all parts except the Conclusion
One Justice dissenting as to the Conclusion

CHIEF JUSTICE COLL delivered the Opinion, in which JUSTICE CONATSER, JUSTICE DAVIS, JUSTICE HALL, JUSTICE PELLEGRIN, and JUSTICE SPECIALE join.

JUSTICE STOVER joins this Opinion in all parts but the Conclusion in which he has filled a dissenting opinion.

BACKGROUND

(I)

The Baylor University Student Court (hereinafter, the Court) was first made aware of this case when Senator Gannon McCahill emailed us. Upon receipt of the email, Senator McCahill was instructed to submit to the Court an official Complaint. That Complaint was unanimously accepted for trial by the Justices of the Court pursuant to Article IV, Section 3, Paragraph 1 of the Baylor University Student Body Constitution (hereinafter, the Constitution).

The Plaintiffs, Senators Gannon McCahill and Chase Hardy, presented claims against Ms. Lawren Kinghorn, Student Body Internal Vice President and President of the Student Senate (hereinafter President Kinghorn or IVP Kinghorn). These claims were broad and presented events in which the plaintiffs believe that

President Kinghorn "violated the duties afforded to her" and "failed…her obligations" according to the Constitution and the Student Senate Bylaws (hereinafter, the Bylaws). The Complaint was divided into two primary sections, and the discussion section of this opinion below will follow the progression of sections and clauses found therein.

(II)

The first section of the Complaint pertains to the following: Senator McCahill was subject to a senatorial disciplinary proceeding in the first weeks of November 2014. This proceeding was in response to his number of unexcused absences from Senate meetings, committee meetings, and other mandatory events. Senator McCahill had accumulated 8 absences and was therefore called to appear before the Senate Executive Council (hereinafter, the SEC) on Monday, November 3rd, per Sections 1.3 and 6.3 of the Bylaws. Following the meeting, the SEC voted to remove Senator McCahill from his office, and he was informed of this decision by President Kinghorn. Upon asking Senator James Porter, a member of the SEC, about the reasoning for the removal, Senator McCahill discovered that the SEC had considered his case, and voted for his removal, on the belief that he had accumulated 10 absences (an incorrect number). Senator McCahill then emailed President Kinghorn on Wednesday, November 5th, to request a second meeting to further discuss the case and have a revote. President Kinghorn informed him that an emergency meeting of the SEC was already scheduled for that evening to discuss the matter but that his presence was not required, as she had not given him adequate notice (Plaintiff's exhibit (1)). Senator McCahill requested that per Section 1.3 of the Bylaws, a new meeting be scheduled and that he be given the required 48-hour notice of hearing. President Kinghorn replied that a revote would not take place, and that the decision of the SEC was final. Senator McCahill argued that the Bylaws do not prohibit a revote of an SEC decision, however President Kinghorn stood by her original statement.

On Thursday, November 6th, the Senate failed to achieve the required ¾ vote of members present (Article II, Section VI of the Constitution) to expel Senator

McCahill and he continued to serve in his role as Student Senator.

This first section of the Complaint contains ten (10) clauses which will each be discussed individually.

(III)

The second section of the Complaint makes a broad and sweeping allegation of misconduct and failure of duty on the part of President Kinghorn, and contains five (5) clauses which do not pertain to a particular series of events, and will be individually discussed.

(IV)

Following the discussion of the Court's findings on the Complaint and arguments in trial, the Court will present its formal ruling. After the ruling will be *obiter dicta* from the Court regarding topics and issues presented in trial that were not covered in the formal written Complaint. According to Article IV, Section 2, Paragraph 2, Clause A, Sub-clause viii of the Constitution, matters not presented in the written Complaint cannot become part of the ruling. Therefore, they have no bearing on the Court's decision, ruling, and action and thus, these topics are not a part of the formal discussion section. The conclusion to the case will follow these *obiter dicta*.

JURISDICTION

(I)

The Court finds its jurisdiction for this case in the Constitution. We look to Article IV, Section 2, Paragraph 2, Clause A. We specifically refer to Sub-clauses (i) (Interpretation of the Constitution), (iv) (Student vs. Student disputes), and (v) (accusations of violations of the Constitution). Having sought and obtained the appropriate review and permission from the Vice President for Student Life, Dr. Kevin Jackson, required under sub-clause (iv), the Court holds that these three areas of our Constitutional jurisdiction are all met, and thus the appropriate authority to hear the case has been established.

(II)

Although the Court has established its jurisdiction for this case above, more discussion regarding why we accepted the case and where we find justification for

hearing it in trial is appropriate and necessary as there were several key elements of this case which brought concern and hesitation. Specifically, the original Complaint listed, as a demand for relief, President Kinghorn's removal or suspension from office. The Constitution grants the Senate the power of removal from office in Article II, Section VI. While this Section is non-exclusive (meaning that the language and construction of the Constitution does not restrict that power to the Senate alone or explicitly withhold it from the Court), the Court hesitated to accept the case. The Constitution, while not exclusive, is clear in its preference for where the power for removal from office lies. Thus, the Court believed that the most proper avenue for the plaintiff to pursue would have been action before the full Senate. However, we continued deliberating and seeking the counsel of advisors.

Ultimately, our apprehension was overcome and the case was accepted on four leading points. First, the Constitution very clearly provides the necessary jurisdiction outlined at the beginning of this section. Second, the Constitution does not limit the sanctions the Court may impose and does not eliminate removal from office as a recourse (though it clearly does grant that power to the senate). While we recognize the potentiality of removal from office by the Court, the Court has always viewed this action as a last resort and a very weighty proposition, and an action properly belonging to the Senate. We have always been, and continue to be, very resistant to taking such an action except in cases of extreme and egregious violation, and even in such instances would likely recommend the process in the Senate. Third, the Plaintiff's Complaint also requested that other, lesser sanctions be issued. These included examples of sanctions explicitly recommended by the Constitution in Article IV, Section 3, Paragraph 6.

Fourth, we find great flaws in the removal from office procedures that currently exist within the governing documents. In the current state, Article II, Section VI of the Constitution, which provides the power of removal from office to the Senate, makes reference to Article 6.3 of the Bylaws to guide the process and, further, the Constitution dictates that the process must follow that article of the Bylaws. However, the very nature of the

process contained therein allows for the direct influence and control of the Internal Vice President (IVP). Because the IVP is responsible for contacting the accused, setting the SEC agenda, administering the SEC meeting, setting the Senate agenda, and administering the Senate meeting, it is very feasible for the IVP to prevent charges being brought before the SEC or the Senate regarding a specific person, and particularly the IVP him or herself. Some have made the argument that the IVP has no real power or control. However, it is frivolous to claim that the President of the Senate and Chairperson of the SEC has no power over those bodies. The claim that the Legislative Secretary or the individual members of the SEC instruct the President upon how to act and how to administer, is contrary to the purpose and function of the role of President. Therefore, it is self evident to this Court that the IVP has the ability to exert direct control over all functions of the SEC and, to a lesser extent, the entire Senate. Furthermore, it is clear that it would be impossible for any individual to allow, administer, and facilitate their own impeachment and removal from office in a just and unbiased way. Lastly, the Court holds it to be self evident that the IVP could not feasibly preside over his or her own trial. Such a proposition would defeat the judicial process, is counterintuitive to jurisprudence, and is not a viable way to carry out any form of disciplinary proceeding. In the same way, the Court would never be expected to preside over the impeachment trial of one of its own members.

Thus, since we have made these observations and come to the above conclusions, it follows that the Plaintiff could not expect to find an appropriate and fair trial or outcome should they have chosen to pursue action under Article II, Section VI of the Constitution and Section 6.3 of the Bylaws. Their only remaining recourse being the Court via our jurisdiction outlined above, the Plaintiffs filed their Complaint and the case was accepted unanimously by the Justices of the Court.

In response to this tremendous oversight and gap in the governing documents, particularly the Constitution, the Court strongly recommends that the IVP, the Student Body President, the Chief Justice, the Deputy Chief Justice, the Chairperson of the Operations and Procedures Committee, and four non-SEC members

of the Senate (selected jointly by the IVP and the O&P Chair) form a committee to resolve this problem by expanding upon Article II, Section VI of the Constitution, revising Section 6.3 of the Bylaws, and presenting legislation to the Senate to amend these documents. Such legislation should be passed and enacted in a timely manner prior to Dia del Oso 2015 such that the constitutional amendments can be ratified by the student body during the 2015 general elections.

DISCUSSION

The discussion to follow will parallel the statements made in the Complaint submitted by the Plaintiff. The statement of facts in the Complaint contains the claims brought before the Court against the Defendant. In that portion of the Complaint, there are two sections, (I) and (II), which each contain lettered clauses. We will address each of these clauses in turn.

(I)

A, B

Clauses A and B outline statements of fact which were not disputed in trial and serve only to provide background for the claims made in Clauses C and D, therefore, we will move directly to Section C in this discussion.

C

Significant portions of the trial were spent discussing the definition of "an absence," the process for recording and punishing the accumulation of absences, and the way senators are notified of their absences due to the content of clause C. The Court found, through this lengthy discussion, that an overwhelming preponderance of the evidence demonstrated that a simple "clerical error" was made by President Kinghorn in reporting Senator McCahill's accumulation of 10 absences to the SEC rather than the accurate number (8) as demonstrated in Plaintiff's Exhibits (A) and (L), and Defendant's Exhibit (2). We do not find that the error itself was a violation of the Bylaws or the Constitution, provided that steps were taken to rectify the mistake and remedy any adverse effects thereof.

Therefore, the Court finds that President Kinghorn is not culpable of any wrongdoing under this clause of the Complaint.

D, E, F

Regarding Sections D, E, and F, of the Complaint, the Court heard testimony in trial that President Kinghorn did, in fact, call for a secondary meeting regarding the charges to be brought against Senator McCahill in order to rectify the aforementioned clerical error. We also heard a great deal of discussion regarding the clause in Section 1.3 of the Student Senate Bylaws which requires the President of the Senate to provide 48 hours notice to the accused regarding any meeting of the SEC which will be held regarding disciplinary action against him or her, particularly those in which absences play a role. The Plaintiff showed via Plaintiff's Exhibit (A), and in witness testimony, that President Kinghorn failed to provide Senator McCahill with proper notice for the SEC meeting which was held on Wednesday, November 5th. We also heard in witness testimony, specifically in the testimony of Senator Parnell (an active member of the SEC throughout the events in question), that the members of the SEC considered the content of that meeting to be a "reconsideration" of their original vote.

As there was a reconsideration of the actions to be taken against Senator McCahill at the meeting, and as there was to be new information relevant to Senator McCahill's violations presented to the members of the SEC at the meeting, the Court holds that this meeting effectively constituted a "retrial." The fundamental elements of retrial were both met: (1) a mistake was made in the original trial, and (2) a re-vote occurred after the mistake had been rectified. We further find that the nature of the meeting did, in fact, require the appropriate notice outlined above and found in Section 1.3 of the Bylaws. The meeting was convened to discuss the potentiality of bringing charges against Senator McCahill, and the members of the SEC were asked if they would change their vote. Senator McCahill should have been given adequate notice and been allowed to attend.

Several members of the SEC who testified reported that neither the new information, nor any new defense Senator McCahill could have provided, would have

impacted their vote. The Court has two points on this matter: firstly, that this demonstrates a closed-minded and poor attitude toward the new information and retrial regarding Senator McCahill's circumstances; secondly, that the preconceived notions of the members of the SEC regarding the "retrial" and their pre-established unwillingness to change their vote does not have any bearing on the necessity of holding the meeting. The attitudes of the participants does not eliminate the self-evident need for the second meeting.

Therefore, the Court finds President Kinghorn in direct violation of the Bylaws by not giving proper notice of the "retrial," and failing to provide Senator McCahill proper opportunity to attend and provide a new defense. The Court thus holds President Kinghorn culpable and guilty of violating the Constitution and Bylaws under these clauses of the Complaint. We make this finding fully aware that the Bylaws do not mandate such a retrial or secondary meeting. However, we hold that once the meeting was decided on and called, the necessity for the appropriate notice was created.

Furthermore, we hold that President Kinghorn misrepresented the nature of the meeting on Wednesday, November 5th, to Senator McCahill in email communication by informing him (after his request for the meeting to be postponed and the 48 hours notice given) that a revote or reconsideration would not and could not take place. Firstly, the Court finds no evidence that a reconsideration of charges or disciplinary action cannot take place, and we hold that it is a self-evident fact of jurisprudence that a vote taken based on inaccurate or incomplete information should result in a retrial or new meeting. Secondly, while the Court cannot find President Kinghorn in "violation" of jurisprudence or culpable of wrongdoing as a part of the misrepresentation, we do recognize the further inappropriate actions and unfortunate lack of due process in this situation. We believe that President Kinghorn's response to Senator McCahill's request that she follow the Bylaws constituted action not becoming of a member of Student Government. Therefore, due to President Kinghorn's culpability for these violations and in an attempt to remedy the severe lack of due process in the Senate's disciplinary procedures, we highly recommend and suggest that (1)

the affirmative rights of the accused, (2) the negative rights of the SEC, and (3) a more thorough outline of the due process in the Senate's disciplinary procedures all be established in the Bylaws, and we further suggest Article IV, Section 3 of the Constitution for guidance in establishing these rules and rights.

G

Throughout the course of the proceeding, the Court heard much testimony as to clause G of the complaint regarding the removal from office procedures practiced by the SEC and their interpretation of Article 6.3.2 of the Bylaws and Article II Section VI of the Constitution. Numerous witnesses testified to the process which was undertaken by the SEC at the time of Senator Gannon McCahill's impeachment hearings. The process itself has not been called into question in respect to the Complaint filed by the Plaintiff. The Court, however, finds the SEC's current interpretation of Senate Bylaws 6.3.2 and the Constitution in regard to removal from office proceedings to be incorrect. The SEC's current procedures do not comport with the requirements set forth in the Constitution and Senate Bylaws.

On almost every day of trial, the Court heard testimony stating that the current removal from office procedures begin with an individual Senator being called before the SEC for infractions of the Senate Bylaws. This meeting is only conducted in the presence of the SEC members including the President of the Senate. President Kinghorn is responsible for contacting the Senator and requesting their presence at this SEC meeting. At this meeting, the Senator is provided with the charges against them and is given an opportunity to dispute or accept the allegations presented. At the conclusion of this meeting, the SEC then votes to either dismiss the charges, issue disciplinary measures, or remove the Senator from office. Under the current process, if the SEC votes to remove the Senator from office, the Senator is considered both not "in good standing" with the Senate and removed from office. The Senator then has the ability to appeal the decision of the SEC to the Senate body and must receive a vote of at least three fourths of quorum to be removed. During their appeal to the Senate body, the Senator will be disallowed from voting on any business conducted by the Senate body

as they are designated not "in good standing" as a result of their removal from office.

In the context of this proceeding, Senator McCahill was brought before the SEC on two occasions wherein he was provided with the charges before him and given an opportunity to dispute them. After this meeting, the SEC voted to remove Senator McCahill. As a result, President Kinghorn designated Senator McCahill not "in good standing" with the Senate, and Senator McCahill was disallowed from voting on any measures brought before the Senate including several bills and his own trial. The Court also heard testimony that this SEC procedure has been used for years, spanning over numerous Senate President administrations.

The applied procedure of the SEC is flawed in two aspects: (i) the determination that the SEC's decision to take action under Section 6.3.1(1) of the Bylaws constitutes a formal removal and (ii) the designation of senators as not "in good standing" and the removal of voting rights as a result of the SEC taking action under 6.3.1(1).

(i)

As to the first, the SEC's ability to issue removal of office charges is explicated in Section 6.3.1(1) of the Bylaws, which specifically states, "The SEC will consider bringing forth removal from office charges to Senate." Derived from this clause, the Court finds that the SEC does not have the power to remove a Senator or any other member of Student Government. The SEC's power is strictly confined to the bringing of removal from office charges to the Senate Body. The Court finds that the word "charges" as used in this clause as well as the Constitution and Senate Bylaws refers only to the bringing of allegations before the Senate body. The formal removal from office is the sole prerogative of the Senate Body after being presented with charges by the SEC and three-fourths majority vote of present Senators in accordance with Article II Section 6 of the Constitution.

The Court finds further that the current procedure of removal from office is flawed under Senate Bylaws 6.3.2(2) which state, "§6.3.2. Referral to Senate. If the SEC decides that removal from office charges are to be brought against a senator, the Senate shall move into executive session by a two-thirds vote, according to Article

II, Section 9, Paragraph 2 of the Constitution of the Baylor University Student Body." Nowhere in this clause do the Senate Bylaws provide the SEC with the ability to remove any member of Student Government from office. This clause, specifically titled "Referral to Senate," only directs the SEC to refer removal from office charges to the Senate for formal hearing. These two passages clearly indicate that the Senate Bylaws do not provide the SEC with the ability to remove any member of Student Government; it only allows the SEC to bring forth removal of office charges to the full Senate Body. The current practice of considering removal from office charges as equal to removal by the Senate Body is a violation of the Senate Bylaws under: Section 1.2.1, Section 1.3, Section 6.3.1, Section 6.3.1(1), Section 6.3.1(2), and Section 6.3.2.

Furthermore, the Constitution states in Article II Sec. VI – "REMOVAL FROM OFFICE The Senate shall have the power to remove any member of the Student Government by a vote of three-fourths (3/4) of the senators present. Removal from office shall be in a manner pursuant to §6.3 of the Student Senate ByLaws." The Constitution provides the Senate with the power to remove any member of Student Government and requires the body to vote on the matter and obtain a (¾) majority. The Court finds that the word "Senate" refers to the full Elected Senate Body and is not meant to apply to one committee within the Legislative Branch. The word "Senate" in the context of the Constitution always refers to the full, elected Senate Body and has not been interpreted in the past to apply to a separate committee or any other group within the Legislative Branch. The Court finds that the current removal from office procedure conducted by the SEC does not comport with this Section of the Constitution. This Section of the Constitution provides the Senate with the full power to remove any Student Government member and establishes the Senate as the sole organ of Student Government removal from office proceedings. Based on this section, it is the expressed duty of the Senate to remove Student Government officials using the methods outlined in Article II Section VI of the Constitution, and no other body within Student Government has the authority to remove members, including the SEC. The SEC's authority

is found only within the Senate Bylaws, and that authority is limited to only delivering removal from office charges; any other expansion of this authority in regard to removal from office charges is unconstitutional.

Based on the text found within the Senate Bylaws and the Student Body Constitution, the current interpretation of the removal from office procedure by the SEC is a overstep of the Constitution and Bylaws. The SEC, in using the current interpretation of the removal from office procedure, is acting *ultra veres* and beyond the authority provided to it under the Senate Bylaws.

(ii)

As to the second count, Section 6.3.1(2) of the Student Senate Bylaws states "Disciplinary measures may include verbal warning, corrective action to remedy the situation, or any other measure, or combination thereof not including revocation of voting rights or removal from office." The Court finds that this clause clearly disallows the SEC from removing a Senator's voting rights as a disciplinary measure. Therefore, though removal from office charges had been brought against Senator McCahill by the SEC, the SEC did not have the authority to remove Senator McCahill's voting rights.

Thus: From the above discussion the Court finds that President Kinghorn improperly designated Senator McCahill not "in good standing" based on an incorrect assumption that he had been removed from office by the SEC and therefore had also lost his voting rights. However, the Court has established that this interpretation is a violation of the Constitution and the Student Senate Bylaws. As Senator McCahill had not been formally removed from office by the full Senate, his voting rights were still intact, and President Kinghorn could not designate him not "in good standing."

Therefore, the Court finds President Kinghorn culpable and guilty of violations of the Constitution and Bylaws under this clause of the Complaint.

H

The Plaintiff claimed that President Kinghorn in her capacity as chairperson of SEC brought Senator McCahill before SEC for violations of the Senate Bylaws. The SEC claimed that Senator McCahill incurred eight absences and proceeded to remove him from office; however, the Senate did not meet the three-fourths

majority vote to remove Senator McCahill. The SEC then attempted to remove Senator McCahill on another occasion, citing a deficit in office hours as a violation of the Senate Bylaws and once again proceeded to remove Senator McCahill from office. The Plaintiff alleges that President Kinghorn, acting as the Chair of SEC, specifically granted other members of Senate called before SEC under similar charges clemency for absences. The Plaintiff believed that President Kinghorn unfairly provided Senators with excused absences and that these excused absences were made on an arbitrary basis by the SEC and the Chairperson. The Plaintiff offered witnesses who had accumulated a similar number of absences and had not been removed by SEC. One Senator Valentine testified that he had accumulated 6 absences in the beginning of the Fall Term of the 62nd Legislative Session. Based on the testimony of Senator Valentine, the Plaintiff argued that President Kinghorn and the SEC's distinction of excused absences was inequitable in regard to Senator McCahill.

The Court heard much testimony regarding the Plaintiff's witness Senator Valentine, and the circumstances of the SEC's decision not to remove him from office. The Defense presented witnesses who testified as to the timeline of the action taken against Senator Valentine by the SEC and the action taken against Senator McCahill by the SEC. The Court heard testimony that stated, while Senator Valentine had not met his attendance requirement in the fall session of the 62nd Legislative Session, the SEC had agreed to allow clemency to new Senators who had not yet met their attendance requirements for the month of September only. Every member of SEC in the fall session testified to the presence of this clemency period and stated that Senator Valentine was not removed from office, but had instead been given disciplinary measures to be completed during the month of October. However, when asked about the removal of office hearing of Senator McCahill, every member of SEC testified that Senator McCahill's attendance deficiency occurred after the September grace period offered by the SEC. The SEC proceeded with removal from office charges against Senator McCahill based on the Senate deficiency report.

The Court finds that Senator Valentine was granted leniency for his absences because they occurred within a period set by the SEC, and leniency was uniformly applied to all Senators in the month of September. The Court finds that the SEC has the ability to establish such a clemency period under Section 1.3.1 and Section 1.3.2 of the Bylaws. The Court also finds that the removal of office charges presented to Senator McCahill were delivered by the SEC based only on the monthly deficiency report made by the Senate Legislative Secretary in the course of regularly conducted business. President Kinghorn and the SEC acted solely on the information presented in the deficiency report and there was no evidence presented in trial to suggest that President Kinghorn or members of the SEC used any other method when reaching their decision to bring removal from office charges against Senator McCahill on both occasions.

The Court does not find any violation of the Constitution or Bylaws by the SEC or President Kinghorn in regard to either of the removal from office proceedings against Senator McCahill with regards to bias and the claims made by the plaintiffs in this section of the Complaint. The Court does not find President Kinghorn culpable of any wrongdoing under this clause of the Complaint. However, the Court, as discussed in section (I)-G of this Opinion, rejects the current removal from office procedures adopted by the SEC and views these proceedings as a violation of both the Bylaws and the Constitution.

I

Throughout the course of this trial, no evidence was presented to support the claim that the Plaintiff was subject to unfavorable coverage or inquiry as a result of these removal from office proceedings. The Plaintiff made no effort to support this claim, and as a result, the Defendant made no effort to counter it. Therefore, the preponderance was not met.

The Court also finds that the reasoning for Senator McCahill's removal from office proceedings to be warranted under Senate Bylaws 1.4 and section (I)-H of this Opinion.

Therefore, the Court finds that President Kinghorn is not culpable of any wrongdoing under this clause of the Complaint.

J

The Court holds that President Kinghorn did not have a political vendetta against Senators McCahill and Hardy. The preponderance of the evidence shows and sufficiently proves that no specific legislation authored by or political views held by the Plaintiffs prompted the actions taken by President Kinghorn. The Court finds that the actions taken by President Kinghorn in the impeachment hearing of Senator McCahill were in accordance with procedure and did not show political bias against Senator McCahill.

The Court does recognize the importance of preventing bias and political agenda from entering into the duties of the President of the Senate, particularly where disciplinary proceedings are concerned. However, the Court also realizes that individual Senators, and even groups (or caucuses) of senators, will, by nature of their office, hold particular agendas and views, and have particular projects and goals. We cannot find fault with this, as we see it to be a basic principle in the operation of a legislative body.

Therefore, the Court finds that President Kinghorn is not culpable of any wrongdoing under this clause of the Complaint.

(II)

A

The Court holds that it is the prerogative of the Student Body Officers and other members of senior leadership (particularly the heads of branches), to institute programming and social opportunities for the members of Student Government to engage in. Of course, the Court maintains that these events cannot be mandatory except those outlined as mandatory in the governing documents. As long as these events do not detract from the purpose and goals of Student Government, do not interfere with the effective and efficient operation of the organization, and are budgeted and planned for with the utmost prudence and care, the Court finds no inappropriate action in promoting a friendly and engaging environment for colleagues and fellow servants of the university.

Therefore, the Court finds that President Kinghorn is not culpable of any wrongdoing under this clause of the Complaint.

B

The Court finds that the preponderance of evidence indicates no malpractice on the part of President Kinghorn concerning the use of hand-votes. Hand-votes are not disallowed by the Bylaws under Section 4.4 of the Bylaws, except with regard to allocations which are restricted to roll call votes under Section 5.1.9 of the Bylaws. A sound majority of testimony was given to show that hand votes were frequently used throughout the operation of the Senate and a nearly equal volume of testimony was given in support of the position that President Kinghorn did not utilize hand-votes on allocation bills. Since the usage of hand-votes does not, in this case, violate allowable procedure, it is the opinion of the Court that President Kinghorn acted within the bounds of her office in her use of hand votes.

Therefore, the Court finds that President Kinghorn is not culpable of any wrongdoing under this clause of the Complaint.

C

Some testimony and argument was presented in trial to show that President Kinghorn has entertained inappropriate motions to suspend the rules in order to allow non-senators to speak during questions, debate, and presentation of legislation. While the fact that these motions occurred, were entertained, and at times carried by the body has been overwhelmingly proven, the Court does not find this to be inappropriate or violate action. The Bylaws do provide for the suspension of the rules in Section 6.1, and the procedure found therein has been followed according to the evidence and testimony. The Court finds that the restriction of the privilege to speak and engage in debate to members of the body is a basic requirement for the appropriate and effective operation of a legislative and deliberative body. However, this restriction of speaking privilege is not explicitly found in either the Constitution, the Bylaws, or Robert's Rules of Order.

Assuming this to be a valid and prudent restriction, it is necessary to define and understand the definition of a member of the Senate. It is obvious to the Court that

individuals who are not members of Student Government are also not members of the Senate. The question of members of other branches is slightly more complex. The nature of executive session as outlined in the Bylaws and in Robert's Rules of Order does shed some light and lend some support to this concept by allowing for the removal of non-members of the assembly for the purpose of dealing with sensitive or confidential business. When the Senate is in executive session, all other members of other Branches are removed from the chamber, thus marking them as non-members of the deliberative body. This way in which members and non-members of the assembly are delineated, provides to the Court sufficient evidence to say that the only members of Student Government who are considered members of the Senate are elected senators, and the President of the Senate. Thus, only those members are allowed to speak under the understood standing rules.

Therefore, we do not find President Kinghorn culpable of wrongdoing under this clause of the Complaint. However, we highly suggest that this standing rule be formally established by a clause or subclause in the Bylaws for the sake of clarity and completeness.

D, E

The Plaintiff argues that the practices outlined in this second section of the Complaint had "immeasurable effect" on legislation passed through the Senate and that they have no support in the Bylaws or Robert's Rules of Order. The Court, however, finds this to be an inaccurate claim. As to section A, the Court heard very little, if any, testimony regarding the "social community" the Plaintiffs claim President Kinghorn has wrongfully imposed upon Student Government and particularly the Senate. The Court, however, does not find this to be an alarming claim according to the above discussion in section (II)-A of this Opinion. We further find that this is a prerogative of leadership and an appropriate action according to section (II)-A of this Opinion.

As to section B, an overwhelming preponderance of the evidence shows the difference between hand-votes and roll call votes made no impact on the result of the votes. Witness after witness testified that they had no concern over hand-votes being taken for non-allocation bills and that there would have been no effect at all on the outcome

of bills passed by a hand-vote. Further, testimony showed that hand-votes were not taken for allocation bills as established in section (II)-B of this Opinion. The Court finds no reason to believe that this practice had any impact on legislation passed, and the preponderance of the evidence goes to show that fact.

As to section C, we further find no evidence of the impact on legislation passed. The prerogative of the legislative body to restrict debate and questioning is clearly established in section (II)-C of this Opinion. Further, we heard no testimony or evidence that the occasional input from non-senate members of Student Government, or from campus and community representatives made any inappropriate impact on the actions of the legislative body. In fact, we heard almost no argument as to this point at all. Thus, the preponderance of the evidence has not been met.

Therefore, we do not find President Kinghorn culpable of any wrongdoing under this clause of the Complaint.

RULING

(I)

The Court hereby rules in favor of the Plaintiff in Section (I) of the Complaint as outlined above.

We find that the preponderance of the evidence shows and sufficiently proves that President Kinghorn has violated Section 1.3 of the Student Senate Bylaws according to the claims in clause D, E, and F.

Furthermore, we find that the preponderance of the evidence shows and sufficiently proves that President Kinghorn has violated Article II, Section VI of the Student Body Constitution, and Sections 6.3.1 and 6.3.2 of the Student Senate Bylaws according to the claim in Clause G.

Therefore, we hold President Kinghorn fully responsible and rule her guilty of committing these violations.

(II)

The Court hereby rules in favor of the Defendant in Section 2 of the Complaint. We find no basis to hold President Kinghorn culpable or guilty of any wrongdoing

presented in this section as outlined in the discussion above.

Therefore, we rule President Kinghorn innocent of all charges in section (II) of the Complaint and hold her fully acquitted of them.

OBITER DICTA

(I)

The Court heard testimony that on the night of Senator McCahill's November 6th hearing, a new Legislative Secretary was confirmed by the Senate. The testimony also revealed that, before the Legislative Secretary was confirmed that night, the Senate had been conducting business under an interim Legislative Secretary appointed by President Kinghorn. This brought forth concerns about the ability of the President of the Senate to make such an appointment, and the ability of that interim to actually carry out the duties of the office of the Legislative Secretary. The Bylaws make no provision for an interim Legislative Secretary; however, they do explain the procedure for appointing an interim Pro Tempore. Further, the Bylaws state in Section 2.1 that the President of the Senate "shall perform other duties to ensure the efficient and effective operation of the Legislative Branch."

The Court does not hold that this empowers the President of the Senate to perform the duties of the Legislative Secretary. The Bylaws explicitly provide four specific positions that must be filled for the Senate to conduct business, under Section 2 of the Bylaws those positions are President, President Pro Tempore, Legislative Secretary, and Chaplain. Based upon the canons of construction within the Bylaws the Court finds that these positions are excluded from the aforementioned clause found in Section 2.1. The President of the Senate may not exercise the rights found in Section 2.1. to act as a replacement for the positions found in Section 2. The President of the Senate must fill the position of Legislative Secretary in order to allow the Senate to conduct business by calling the roll. Therefore, we find that a Legislative Secretary may be appointed by the President of the Senate in order to conduct business prior to approval by the Senate, assuming no objection is made

as to the appointment and the approval process commence in an expeditious manner.

The Court finds that under the efficient and effective operation clause President Kinghorn acted correctly in not acting as Legislative Secretary, and President Kinghorn was acting within her authority to appoint an interim Legislative Secretary. The Court finds that President Kinghorn did not in this instance act outside of the Bylaws. Nevertheless, the Court strongly recommends that Senate revise the Bylaws to more explicitly explain that the President of the Senate may act in this way, and we recommend section 2.2.1.1 of the Bylaws as an example.

(II)

The Court heard testimony in trial from several witnesses that Student Senate takes no type of formal minutes or record of meeting proceedings. This information was somewhat shocking to the members of the Court. The fact that no notes, records, or minutes are taken and kept is highly imprudent on the part of the entire Legislative branch. Quality minutes and records of motions made, votes taken, speakers present, and the times that these affairs took place is essential to the effective operation of a deliberative body and is an essential service performed on behalf of any who wish to look back on the work the body has accomplished. The Court finds this to be a systematic failure and violation of Robert's Rules of Order and, on the part of the current and past Internal Vice Presidents, Section 2.4 of the Executive Branch Bylaws.

The Court orders that the Legislative Secretary shall be held responsible henceforth for the taking of minutes on behalf of the President of the Senate at all Senate meetings for the legislative session for which they serve unless an position is created by the Senate to fulfill this responsibility, pursuant to Section 2.4 of the Executive Branch Bylaws, Section 2.3.3 of the Student Senate Bylaws, Robert's Rules of Order, and this Opinion.

* * *

CONCLUSION

THEREFORE, the Baylor University Student Court, finding Ms. Lawren Kinghorn, Student Body Internal Vice President and the President of the Student Senate, GUILTY as to one (1) count of violating the Baylor University Student Body Constitution, three (3) counts of violating the Student Senate Bylaws, and thus one (1) count of violating her oath of office, does hereby ORDER THE FOLLOWING:

(I)

President Kinghorn will be called before the Court to receive oral reprimand for her actions.

We find authority to administer this sanction under Article IV, Section 3, Paragraph 6 of the Baylor University Student Body Constitution.

(II)

Furthermore, President Kinghorn shall compose a written apology addressed to Senator Gannon McCahill and the entire membership of the Student Senate. This apology shall be read aloud by President Kinghorn at the regular Senate meeting to be held on Thursday, March 26th.

We find authority to administer this sanction under Article IV, Section 3, Paragraph 6 of the Baylor University Student Body Constitution.

It is so ordered.

SPRING TERM, 2015

Justice Stover dissenting as to the Conclusion

BAYLOR UNIVERSITY STUDENT COURT

McCAHILL-HARDY *v.* KINGHORN

Argued February 13th, 2015 – March 4th, 2015
Decided March 18th, 2015

JUSTICE STOVER joining in all parts of the Opinion of the Court but the Conclusion, dissenting.

I feel compelled to dissent in regard to the Conclusion in the Opinion of the Court. In light of the very public nature of this case, in combination with it's relevance to the day to day operation of Student Government, it would seem appropriate that all aspects of this matter be issued in writing. It is my opinion that a written reprimand ought to be preferred to an oral reprimand for the following reasons:

(I)

The aforementioned gravity and publicity of the case make such a written record of statement suitable.

(II)

The permanence of a written reprimand is preferable for the sake of record and future reference by future members of Student Government, the administration of the university, and President Kinghorn herself.

(III)

A written reprimand lends itself to greater accountability on the part of both the receiver and the issuer in the event of future dispute or appeal.

For all of these reasons, I respectfully dissent as to the Conclusion of the Opinion of the Court.