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

HARDY *v*. ELECTORAL COMMISION

Argued and Decided April 13th, 2015

Justice joining in the majority (5) – Justices dissenting (1)

ON PETITION FOR WRIT OF CERTIRORI FROM THE ELECTORAL COMMISION

JUSTICE DAVIS delivered the Opinion of the Court in which JUSTICE COURTWRIGHT, JUSTICE CONATSER, JUSTICE SPECIALE, and JUSTICE STOVER join.

Background

On April 9th, 2015, Senate Enactment 62-12, titled, "Constitutional Amendment for Addition of Appellate Procedure," (hereinafter, SE 62-12) was passed by a two-thirds majority vote in the Baylor University Student Senate (hereinafter, the Senate). On April 10th, 2015, the Electoral Commissioner, Ms. Sarah Park (hereinafter, Commissioner Park) received in email from Internal Vice President Lawren Kinghorn in which Ms. Kinghorn attached the constitutional changes passed by the Senate through SE 62-12 in order for Commissioner Park to include these changes on the election ballots. Student Body President Dominic Edwards replied to the email informing Ms. Kinghorn and thereafter Commissioner Park that the constitutional amendments should not be placed on the ballot as the Student Body President had not yet approved them. Ms. Kinghorn then replied by giving a directive to Commissioner Park to disregard her previous email. From this email exchange, Commissioner

Park decided that the constitutional changes established in SE 62-12 would not be placed on the spring election ballots.

On Monday, April 13th, 2015, Senator Chase Hardy, emailed a petition for certiorari to the Baylor University Student Court (hereinafter, the Court), which was unanimously granted by the Court for proceedings, and the Court found it necessary to expedite the proceedings due to the subject matter of the appeal.

Discussion

The Court considered five questions in this case. The following questions are listed and discussed in respective order in the remainder of this section.

(I) *Are amendments bills?*
(II) *Are amendments subject to approval by the Student Body President?*
(III) *Is SE 62-12 an amendment?*
(IV) *Should SE 62-12 have been place on the ballot for the Spring 2015 election cycle?*
(V) *Did the EC err in its decision to not put SE 62-12 on ballots?*

I

The Constitution makes a distinction between two types of legislation: bills and amendments. Article III, Sec. III, Par. I, heading Q states that "bills passed by Senate" are subject to approval by the Student Body President, who may either sign or veto a bill. This section establishes bills as one type of legislation. Article VII, titled "Amendments," specifies a different type of legislation that is not subject to the same procedure as the one outlined in Article III, Sec. III, Par. I, heading Q. Article VII Section 1 states, "Any proposed amendment passed by a two-thirds (2/3) majority in the Student Senate shall, by default, be voted on by the Student Body during the spring Student Government elections established in Article V, Section 1, Paragraph 2 of this Constitution." In that this is not the procedure outlined for bills in Article III, Sec. III, Par. I, heading Q., the Court finds that there is not sufficient parity between a

bill and an amendment to allow for the interpretation offered by the Electoral Commission.

II

As stated before, Article VII states that amendments passed by the Senate "shall, by default, be voted on by the Student Body during the spring Student Government elections…" Furthermore, Sec. 1 of Article VII states that "A proposed amendment will take effect immediately upon certification by the Electoral Commission that the proposed amendment has been approved by two-thirds (2/3) of the ballots cast by the student body in an election." Article VII, which thoroughly outlines the process by which constitutional amendments will take effect, makes no mention of the Student Body President. As previously stated, Article VII establishes a procedure for amendments that is entirely distinct from the procedure found in Article III, Sec. III, Par. I, heading Q which specifically demands that bills be subject to approval by the Student Body President.

Therefore, the Court finds that Article VII does not require that constitutional amendments be approved by the Student Body President. The Student Body President has the authority to approve or veto bills. However, the Court holds that amendments are not subject to approval or veto from the Student Body President.

III

SE 62-12 consists of proposed constitutional changes and is therefore considered an amendment to the constitution. Furthermore, SE 62-12 was titled, "Constitutional Amendment for Addition of Appellate Procedure." Had SE 62-12 been titled differently or contained any content other than constitutional amendments, SE 62-12 might have been considered a bill and therefore would have warranted prior approval by the Student Body President. However, it is clear to the Court that SE 62-12 is an amendment, and was intentionally specified as such, and therefore must be treated as an amendment under Article VII.

IV

Pursuant to Section 1 of Article VII of the Constitution, which states that "by default" the Student Body shall vote upon any constitutional changes passed by the two-thirds (⅔) majority in Senate, SE 62-12 should have been included on the spring 2015 election ballots. The Court holds that SE 62-12 should have been placed on the ballot immediately following the vote in the Senate.

V

In addressing the previous questions, the Court has established that SE 62-12 is a constitutional amendment and that constitutional amendments should be placed on the spring election ballots pursuant to Article VII Section I. As a result, the Court concludes that EC did err in its decision to not place SE 62-12 on the ballots.

Conclusion

The Court finds that SE 62-12 is a constitutional amendment and therefore is subject to Article VII Section 1 of the Constitution, warranting no prior approval by the Student Body President. As a result, the Court holds that the EC erred in not placing SE 62-12 on the ballot to be voted on by the Student Body and must do so in a manner to be determined by the EC with all deliberate speed.

The Court hereby vacates the original decision by the EC and remands the case back to the EC for further proceedings, noting the aforementioned stipulations.

It is so ordered.

BAYLOR UNIVERSITY STUDENT COURT

HARDY *v.* ELECTORAL COMMISION

Argued and Decided April 13th, 2015

ON PETITION FOR WRIT OF CERTIRORI FROM THE ELECTORAL COMMISION

JUSTICE PELLEGRIN, dissenting.

The Constitution provides that the Student Government be constructed of three independent branches, and that these branches should only interact when exercising a check upon the other. The Legislative Branch is subject to the checks of the Executive Branch, specifically the use of the veto. Article III Section III Paragraph 1 Sub-Section Q states "[The Student Body President shall] Be presented with all bills passed by Senate for approval." It is in this Section of the Constitution that I raise my dissent with the decision of the Court. The Court assertion that Amendments presented as bills in the Senate are not subject to this check of legislative authority taxes the credulity of the credulous. And the Courts finding that Section VII of the Constitution usurps the ability of the President's approval can seem apt only to those who do not view Article II Section X as a defining procedure and an expressed establishment of a universal check upon Executive authority.

I

The Court holds today that amendments to the Constitution brought before the Senate chamber to be voted upon in the ordinary processes conducted by the Senate ought to be considered disjoined from bills passed

though identical processes. Textually the Constitution provides no support for this premise. Article VII of the Constitution makes no expressed differentiation between amendments and bills, the Article only provides that, "Any proposed amendment passed by a two-thirds majority in the Senate" the word "passed" is of particular value in this matter. The word "passed" is used multiple times within the Constitution, but it is primarily found in Article III. Specifically, Article III Section III Paragraph 1 Sub-Section B states "With the Student Senate see that all *passed* legislation is faithfully executed" and Article III Section III Paragraph 1 Sub-Section Q states "[The President shall] Be presented with all bills *passed* by Senate for approval." Another mention of *passed* legislation is within Article VII which states, "Any proposed amendment *passed* by two-thirds of Senate." The word passed would mean the same thing in one section of the Constitution that it means in the other and from this it is derived that any passed legislation would be therefore subject to approval by the President in the same process outlined throughout the document.

I would also apply this understanding directly to the Senate Legislation that is being questioned today SE 62-12. The bill SE 62-12 was introduced to the Senate chamber titled LEGISLATIVE PROPOSAL; from this title it is apparent that the Senate considers SE 62-12 legislation passed. And as we see in Article III Section III Paragraph 1 Sub-Section B the President is given duties regarding Legislation passed by the Senate in the same fashion that under Article III Section III Paragraph 1 Sub-Section Q the President is given approval over business passed within the Senate.

Based upon the text of the Constitution and the specific designations provided to items passed by the Senate the Student Body President has approval power over SE 62-12 as outlined in Article III Section III Paragraph 1 Sub-Section Q and was required to approve its passage before the EC could place it upon the ballot.

II

In a brief reading of the Constitution one would find only one instance of a restriction of the Student Body President's ability to approve legislation passed in the

Senate and that is found in Article II Section X. Section X states "Any legislation designed to enact, repeal, or modify the rules of the procedure and organization of the Student Senate as defined in this Constitution shall be the sole concern of the Legislative branch and shall not require the approval of the Student Body President." Section X is the only expressed removal of the approval authority of the Student Body President. It logically stands that because this is the only section that holds such a limitation, this limitation is provided only to instances falling under Article II Section X. Any application of this provision to other portions of the Constitution without explicating this would be contradictory to the construction of the Constitution and the statutory principle of interpretation *expression unius*. Because the Constitution only limits the Presidents authority in this single instance, all other instances in which the Constitution is silent holds that this interpretation cannot be applied. The Court mistakenly holds that the principle in Article II Section X applies to Constitutional amendments in this case however, absence a provision explicitly removing the check of approval, all legislation passed by the Senate is subject to Article III Section III Paragraph 1 Sub-Section Q.

* * *

Because of the Court's holding, the ability of the Executive to check the Legislative Branch has been reduced. The chipping away of the checks and balance presents a possibility for these types of issues to escalate, and under the current text of the Constitution the checks and balances have been threatened by the Court's ruling. A future remedy must be to clarify the language in the Constitution to reflect the view of the Court, however without such an amendment the current Constitution provides no procedure to be conducted in the manor in which the Court recommends in it's opinion today.

It is for these and the above reasons that I respectfully dissent from the ruling of the Court.