STUDENT UNION JUDICIAL COUNCIL

No. 2425–2

REMOVAL OF ELECTED OFFICIALS

an INTERPRETIVE QUESTION

ISABELLA DILLHOFF, CAROLINE SARNESO, MOLLY WILLSON,
PETITIONERS *v.*
STUDENT UNION ETHICS COMMISSION

Decided May 1, 2024

PRESIDENT HUNTER BROOKE delivered the opinion of the Judicial Council.

The Judicial Council has a definite responsibility to protect the Student Union from unjust actions committed by misguided individuals. It must be equally declared that the Judicial Council has a definite responsibility to protect individuals from unjust actions committed by a misguided Student Union. These interests vary from time to time; but, today, we fall decisively and deftly on the side of the individual.

The measured formation of powers within a government, necessary to establish and protect the rights and responsibilities of the people and their political representatives, is a foundational concern within modern democracy. Inherent in such a system is continuous friction and debate over varying authorities and powers given to each government organization, group, or committee—a reality for Student Governments worldwide, and for the Student Union at Notre Dame: indeed, the Senate and Constitution appear relatively silent on questions concerning immense fundamental powers. In the absence of such clear answers, it is with great prudence that the Judicial Council wades into this considerably murky debate.

The word 'murky' is particularly accurate. Not enough that the question at hand be merely complicated, the issue before us today lies at the foundation of *who*, exactly, may be removed from office; *if* such a removal can occur; and—if so—*how*. It deals with elemental questions of rights, responsibilities, and powers. We understand that the decision we reach today will be of great interest and concern to many

parties, and we do not proceed lightly: we act only after judicious thought and deliberation, trying to balance varying and often conflicting interests in light of the Constitution and relevant statutes.

Ultimately, we reason that the Ethics Commission does indeed enjoy subject matter jurisdiction over cases of electoral financial misconduct not discovered until the close of the election and release of results—cases that are therefore beyond the limited jurisdiction of the Election Committee. We find this holding to align with the intention of the separated jurisdiction of the Ethics Commission and Election Committee and further believe it to be crucial to upholding fiscally honest elections. We recognize the importance of preventing the Ethics Commission from establishing jurisdiction over election cases; but find a sole exception in questions of campaign finance.

Second, we find that the Ethics Commission (as is strongly suggested by the Constitution and several interlocking provisions within various Student Union bylaws) may remove a select class of enumerated Student Union Officials: those not ascended to office by way of student-facing election. Yet, by virtue of this finding, we subsequently assert that the Ethics Commission does not have the ability to unilaterally remove individuals placed into office by a democratic, student-facing vote and therefore find that the Ethics Commission does not have the authority to remove a sitting Hall President or Vice President.

Lastly, we find that the Hall President and Vice President petitioners in this specific case—and *only* in this specific case—may not be removed from office through means of impeachment, even if the Constitution is subsequently amended to include Hall Presidents on the list of impeachable positions. It is rare that the Judicial Council endeavors to speak with a loud, unanimous, and certain voice, such that we may be undoubtedly heard by future Judicial Council officers—but this is one such case. With this holding, we strongly affirm that statutes and constitutional provisions may only ever be applied to a case at hand if they were authored and put into effect by the Senate before the occurrence of the act in question: in this instance, the rules applicable to the petitioners are the exact rules placed into the Constitution at the precise moment the campaign material was purchased. In no uncertain terms, we strongly affirm the view that any such *ex post facto* regulations, which retroactively change consequences, processes, or relationships before their enactment, are against the natural, moral, and constitutional rights guaranteed to the student body and Student Union of the University Notre Dame.

Given these findings, we reverse the judgment of the Ethics Commission and remand the case for further proceedings consistent with this opinion. In addition, we bind the Ethics Commission against issuing a bill of impeachment to the petitioners in this case.

I

The questions in this case center around the Student Union Ethics Commission (SUEC), itself formed and further referenced by multiple constitutional provisions included within varying bylaws. The Ethics Commission is primarily established in Article XII, Section 6 of the Constitution, but relevant processes of removal are further outlined throughout article XIII, especially within Article XIII, Section 1. Further points of relevance include Section 7.02(a)[1] and 7.02(a)(1)[2] of the Student Union Board (SUB) bylaws, Section IV(b)[3] of the Club Coordination Council (CCC) Bylaws, and Article IV, Section 3[4] of the First Year Undergraduate Experience in Leadership (FUEL) Bylaws, which collectively and appear to give the Ethics Commission some theoretical ability to remove officers of the Student Union from their otherwise rightfully held offices.

The petitioners in this case are the incumbent Breen-Phillips Hall President and Vice Presidents. On March 4—while campaigning for the offices they currently occupy—the petitioners overspent the campaign finance limit outlined in Article XV, Section 1(h)(2)(D)[5] of the Constitution by $0.24, having purchased fresh fruit to use as

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[1] §7.02(a): *If it is determined that a member of the Executive Board can no longer faithfully execute his or her duties as outlined in these Bylaws, the remaining members of the Executive Board shall draft a Notice of Intent to Dismiss for submission to the Judicial Council for review by the Student Union Ethics Commission ('Ethics Commission' hereafter) to evaluate whether the Director in question has failed to execute his or her duties.*

[2] §7.02(a)(1): *If the Ethics Commission determines that the Executive Board member in question should be permanently dismissed, then the Executive Director will appoint someone to his or her vacant position. If the member in question is the Executive Director, then the Director of Operations shall assume the position of Executive Director and appoint someone to assume the position of the Director of Operations.*

[3] Art. IV, §1(b): *The removal of any CCC member is subject to the Ethics Commission appeal process.*

[4] Art. IV, §3: *Suspended members may be barred from further participation in student government departments and FUEL opportunities at the discretion of the Student Body Chief of Staff. The member will be referred to the Chief of Staff after an individual meeting between the FUEL Co-Directors and the member. If the Chief of Staff decides to bar the member from participation, they shall refer the case to the Student Union Ethics Commission for further review.*

[5] Art. XV, §1(h)(2)(D): *A campaign limit is set for all Senator, Hall President and Hall Vice-President(s) candidates at $50.00.*

election material. Despite the occurrence of this violation, the overspend would not be discovered until after the end of the election: results were released without incident on March 5 at 10:52pm, following the same day 8:00pm close of voting. When the finance issue was finally discovered, an allegation of unethical conduct was filed with the Ethics Commission on April 22 arguing that the individuals in question violated Article XV, Section 1(h)(2)(D) and Article I, Section 2(a)[6] of the Constitution; and that Ethics should accordingly submit a bill of impeachment.

The petitioners testified before the Commission on April 24, and their case was decided on April 25. Examining the relevant portions of the Constitution, the Ethics Commission reasoned that they had subject matter jurisdiction over the allegation, and further that they had the ability to remove the Hall President and Vice Presidents from office, absent the inclusion of those positions in Article XIII, Section 1(b)[7] of the Constitution, the list of officials enumerated as impeachable. The Ethics Commission therefore found the appropriate sanction to be "removal from office."[8]

After receiving this decision, the petitioners submitted a notice of intent to file a petition for review on April 25, at which point the judgement of the Ethics Commission was stayed by the Judicial Council President. A petition for review was filed on April 27, arguing that the Ethics Commission did not have jurisdiction to adjudicate the case, nor the ability to remove a Hall President or Vice President. Review was granted that same day by the Judicial Council President per Section I(3) of the Judicial Council Bylaws,[9] and the case was argued before the Judicial Council on April 28.

II

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[6] Art. I, §2(a): *The authority of this Constitution is the basis for all business of the Student Union. The Student Union or any members thereof shall not act in any way that is contrary to this Constitution.*

[7] Art. XIII, §1(b): *If the Student Union Ethics Commission finds that the Student Body President, the Student Body Vice-President, either of the Hall Presidents Council Co-Chairs, the Club Coordination Council President, the Class Officers, any Senator, the Off-Campus President, or any official appointed and approved by the Senate, should be removed from office due to their behavior or misconduct, a hearing to consider the Bill of Impeachment shall be conducted at the next regular meeting of the Senate or within one academic school week. In the event that a Senator disagrees with the recommendation of the Student Union Ethics Commission, they may then submit a Bill of Impeachment directly to the Senate.*

[8] Opinion of the Student Union Ethics Commission in allegation 2524-12, p. 4.

[9] §1.3: *After the petition is filed, the Judicial Council President or two consenting officers of the Judicial Council may grant review. If the Judicial Council does not grant review, the previous decision, if any, shall stand.*

We find that the Ethics Commission did have appropriate jurisdiction over the subject matter of this case. We determine that the Ethics Commission does have the ability to hear allegations of campaign finance in the rare event that the Election Committee loses jurisdiction as a result of the closure of the electoral window.

First, we are careful to note that the Constitutional language regarding Campaign finance is exceptionally explicit in detailing that such violations "shall be considered a highly serious breach of campaign rules, the penalty for which shall be forfeiture of candidacy."[10] We thus view campaign finance regulations as entirely distinct from other electoral rules for two material reasons: first, these are the only policies for which the Constitution plainly identifies forfeiture of candidacy as the appropriate sanction—nowhere else is forfeiture mentioned in a remedial context—as opposed to granting the Election Committee flexibility in sanctioning; and, second, the Constitution names forfeiture as the proper outcome not just once, but on three separate occasions (first in Article XV, Section 1(h);[11] subsequently in Article XV, Section 1(h)(3);[12] and again in Article XV, Section 1(h)(5)[13]). Taken together, we draw two primary conclusions from this uniquely strong Constitutional language.

As a first finding, we understand that campaign finance regulations are unique: they may be separated out, treated as distinct, and applied differently—ultimately because this inimitability is expressly contemplated by the Constitution. It is partly this distinctness that allows us to provide the Ethics Commission with jurisdiction to hear allegations of campaign finance rules without further granting them the ability to enforce other electoral regulations. Additionally, we find this language firmly indicates that the legislature has unambiguously and unmistakably affirmed the importance of enforcing and strictly observing campaign finance rules. These regulations are identified as abnormally important, seemingly to ensure the preservation of a balanced electoral playing field, secure from upheaval and inequity by the injection of unwanted and unregulated spending. In short, the people have spoken—and we would have to

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[10] Art. XV, §1(h) of the Constitution.
[11] Art. XV, §1(h): *Candidates are expected to adhere strictly to campaign finance regulations. Failure to adhere to these regulations shall be considered a highly serious breach of campaign rules, the penalty for which shall be forfeiture of candidacy.*
[12] Art. XV, §1(h)(3): *If tickets are formed amongst any of these positions the spending limit shall apply to the entire ticket and not to the individuals who make up the ticket. Combining campaigning funds of more than one ticket is not permitted and shall result in forfeiture.*
[13] Art. XV, §1(h)(5): *Failure to disclose the proper cost of any election materials is a highly serious breach of campaign rules. Penalty shall be forfeiture of candidacy.*

be blindfolded and knocked unconscious to ignore the Senate shouting with such unusual force.

We therefore understand the intent of the legislature to be that unregulated cash *cannot* be allowed into our elections. As per this clear intention, it follows that, if allegations relating to campaign finance cannot be heard by the Election Committee, to the Ethics Commission they shall go. To briefly conclude this point:

(a) Electoral rules are unique and distinct from other campaign regulations in severity and sanctioning.
(b) The distinctness means they may be treated differently to other campaign finance regulations.
(c) The severity indicates the weight and importance placed on these regulations by the Senate.
(d) The Senate clearly intending to sharply enforce these regulations grants the Ethics Commission jurisdiction.

The dissent in this opinion also looks to the language within the Constitution but comes to a different conclusion, finding instead that the Ethics Commission does not have jurisdiction over any cases of campaign finance, regardless of the Election Committee's jurisdiction. Although not entirely absurd when examining the Constitution through a narrow lens, we would like to take a moment to highlight why such a holding would likely allow for the creation of an enormous loophole, bias candidates toward violating constitutional rules, upend the balanced state of elections at Notre Dame, and thereby inherently and hugely subvert the intention of the Senate. Put simply: if the Ethics Commission does not have jurisdiction, than no group does—and this would allow candidates to spend significant funds on elections, wait until the close of the election and announcement of results to submit receipts (an additional violation of Article XV, Section 1(h)(4) in addition to the overspend), and receive an appropriate reimbursement from the Judicial Council without even the possibility of behind held to account for egregious violations of the most solemn rules. We feel this reading of the Constitution divorces itself from practicability, intention, and purpose of electoral rules; certainly, if asked, the average Notre Dame student (Joe Domer) would find issue with any holding that creates a structure void of accountability in which candidates are incentivized to further violate the rules. As a Council that operates under the motto, "justice for all," we feel compelled to ask, *would this be justice?* Concerns about affirming the jurisdiction of the Ethics Commission in these cases is almost a Looney-Tunes-esque sentiment—akin to urging we remove an unfortunate

and unsightly rope that, unbeknownst to us, holds an anvil suspended precariously over our heads.

The dissent in this case further argues that a candidate/ticket is not enumerated—where is the basis for this finding? Perhaps the dissent would argue that 'candidate' is only enumerated in Article XV (the elections Article) and nowhere else; but this is also case for a Hall Vice-President, a position enumerated only in Article XV of the Constitution.[14] Using this reasoning, to find that a candidate/ticket is not enumerated may be to similarly find that a Hall Vice President is not enumerated. The dissent may argue that a 'candidate' is inherently different to the position of Hall Vice-President, but we could easily see a strong argument made to equate these positions as equally enumerated: both are found within the same Article of the Constitution; both have goals and objectives; both are burdened by rules and responsibilities; both have privileges and rights; both even have established funding. Where is the line drawn? To be clear, we do not mean to suggest that candidates/tickets *are* enumerated—unnecessary answers to unasked questions are unnecessary—or to address this question whatsoever; only to highlight the potential logical consequences of affirmatively establishing the finding outlined in the dissent.

The dissent finally argues that this is a case of judicial over-interpretation, and that we read into the Constitution in a way similar to interpreting an expanded list in Article XIII, Section 1(b). We respectfully disagree with this contention. In these cases, the language of the Constitution, the intention of the legislature, and the presence of pending legislation[15] are substantially different. We also argue the 'avoiding absurdity' rule, which indicates that rules should be sensibly constructed and "not to lead to injustice, oppression, or an absurd consequence."[16] Barring the Ethics Commission from jurisdiction in this case would lead to the total evaporation of several electoral rules—an absurd result that should be avoided.

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[14] Specifically, Article XV, §1(h)(2)(D), *A campaign limit is set for all Senator, Hall President and Hall Vice-President(s) candidates at $50.00;* Article XV, §3(b), *Hall Senator, President, and Vice-President(s);* Article XV, §3(b)(1), *[…] The election for President and Vice-President(s) shall be held before April 1st each year […];* and Article XV, §3(b)(3), *Each hall may have up to two Vice-Presidents. If a hall has two Vice-Presidents, they shall serve in different semesters. The Vice-President must reside in the residence hall during the semester in which that Vice-President is serving. Vice-Presidents who split up their terms must run on a ticket together.*

[15] Namely, SO2425-10, which seeks to expand the list in Article XIII, Section 1(b).

[16] Glen Staszewski, "Avoiding Absurdity," Indiana Law Journal 81, no. 3 (2006): 1007.

Lastly, we note that Section III(8)[17] of the Bylaws of the Judicial Council may be interpreted to grant the Ethics Commission jurisdiction over cases of this type, stating, "Such allegations […] must be lodged against a member of the Student Union for a violation of an explicitly referenced constitutional, bylaw, or statutory provision not within the jurisdiction of the Election Committee." Because this allegation (and similar others) tumble beyond the jurisdictional realm of the Election Committee, they necessarily fall into the lap of the Ethics Commission as per the express language outlined in the Judicial Council bylaws. We would further highlight the fact that precedent dictates that the Ethics Commission *can* hear such cases, as the Commission has now been presented with three allegations of electoral misconduct.[18] Even if the dissent disagrees with the jurisdiction of these cases, we understand the value of precedent in asserting that it is sometimes more important to have a question "settled than it be settled right."[19]

II

We find that the Ethics Commission may remove certain enumerated student leaders from office, but that the Ethics Commission may not remove any student that has assumed office through the means of a student-facing election.

A

In accordance with the argument presented by the petitioners, we begin by establishing a distinction between two forms of enumerated student leaders: those who are placed into office by way of 'student-facing election,' and those placed into office by some other means (appointment, internal election, etc.) Importantly, we do not define 'student-facing elections' as elections in which all students are eligible to vote—this characterization would be far too restrictive to use—but rather as elections in which a subset of Notre Dame students, determined by demographics or residency, form a voting

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[17] §III(8): *Student Union organizations, individuals therein, their Student Activities advisor(s), and undergraduate students may submit allegations of misconduct to the Chairperson or any Commissioner for official review by the Commission. Such allegations, to be valid, must be lodged against a member of the Student Union for a violation of an explicitly referenced constitutional, bylaw, or statutory provision not within the jurisdiction of the Election Committee. The Chairperson shall call a hearing to consider any valid allegation within two academic weeks.*

[18] This includes allegations 2324-01, 2324-11, and 2324-12.

[19] Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405–06 (1932) (Brandeis, J., dissenting).

constituency. As the petitioners assert, these elections currently include "the Student Body President and Vice President election, the Class Council election, the Hall Senator election, the Hall President and Vice President election, and the Off-Campus Council election."[20]

Undoubtedly, students placed into their respective roles through these student-facing elections occupy a distinct category of leader: they are unlike student leaders appointed by another officeholder, who consequently serve as the pleasure and direction of that officeholder. Instead, they have managed to gain public support from their electorate and are accordingly directly accountable to the people; their actions are at least theoretically driven by the popular will, rather than personal desire; and their removal must accordingly involve, to some degree, the people. Speaking especially of removal, the clear and inherent difference imposed by an election necessitates the granting of more weight, deference, and protection to elected leaders because they act for the people—offering these leaders deference or protection is giving deference and protection to the people. This is a core tenant of the democratic principle, and one to which we passionately subscribe: *vox populi, vox Dei.*

To be clear: because we recognize that we are not ourselves elected, we know that this perspective and a stick of bubblegum wouldn't be worth much more than something to chew—if not for the fact that the Constitution does, in fact, corroborate this view. Most notably, Article XIII, Section 1(b) of the Constitution explicitly lists several leaders (Class Council Officers, the Student Body President and Vice President, Senators, and the Off-Campus President) as internally removable only through the impeachment process in an apparent attempt to designate a special class of individual protected by the impeachment process. Naturally, nearly[21] every elected student is on this list, thus suggesting that elected leaders form a unique class of individuals to be shielded by the impeachment process. This apparent constitutional intention is further strengthened by the inclusion of the language "appointed and approved by the Senate," as another group of officials that fall into the impeachment-only category. Because these 'appointed and approved' officeholders are placed into office with the consent of the body best equipped and designed to speak for the students, they can be regarded as 'elected by the elected,' and thereby receive the same democratic protection afforded to other elected students. If the Constitution had no intention of

[20] Isabella Dillhoff, Koryn Isa, et al., Brief for Petitioners in Case 2425-02, p. 7.
[21] Notable exceptions will be momentarily discussed.

painting elected leaders with a different brush, this language would draw a nonsensical line that cannot be understood through any other metric. Ultimately, the establishment of special protections for elected leaders not only seems to appeal to common sense but is surely supported by the Constitution.

Given these facts, the distinction for elected leaders is relevant insofar as we understand that the mere fact of ascending to office through student-facing election is adequate to securely protect a student leader from dismissal by the Ethics Commission. We find merit to the simple aphorism: 'if the people put you in, the people take you out;' and applying this aphorism to this cases of elected hall leaders yields the result that hall officers can only be removed through the lengthy impeachment process, which grants the people—who initially selected the hall leaders—a say in the ultimate outcome through their elected representatives in the Senate.

B

Naturally, this holding runs opposite for leaders not placed into office by student-facing elections, or 'confirmed and appointed by the Senate.' For these officers, the Constitution and relevant bylaws provide the Ethics Commission with removal ability.

This ability is strongly implied in Article XII, Section 6(a) of the Constitution, which states, in part, that if "the Ethics Commission be notified that any Student Union official is […] neglecting his or her duties as set forth in this Constitution and/or any applicable bylaws, the Ethics Commission may take appropriate action outlined in this Section." The last four words of this provision are unfortunately misleading and are likely a holdover of bygone regulation because no further mention is made of appropriate actions, remedies, or outcomes; and a list of appropriate actions is *not* outlined in this section of the Constitution. In the absence of clarifying qualifiers and clear examples, we view the language of 'appropriate action' to be broad, interpretive in nature, and varying in applicability depending on the case at hand. We find harmoniously with our previous holding in that, if the intention of the Constitution was to outline an exhaustive series of remedies that constituted 'appropriate action,' a list of practical outcomes would have been provided in much the same way as the list of impeachable figures is provided in Article XIII, Section 1(b). The absence of any such list necessarily means many remedies may fall under the umbrella of 'appropriate action.' Without having a clearer picture of the intent of the legislature, we have no basis to restrict this ability.

Overall, it would be absurd to find that the Ethics Commission imposing the sanction of removal from office is not 'appropriate' in cases of unelected enumerated officeholders embezzling thousands of dollars of Student Union funding; working to subvert the legitimacy of their organization or of the greater Student Union; or engaging another Student Union officer in a physically violent brawl. If we were to restrict the authority of the Ethics Commission beyond what is contained in the Constitution and prevent removal for such actions, we would be fundamentally impeding the ability of the Commission to take necessary "appropriate action." Just as we cannot add to the Constitution (in the case of allowing Hall Presidents and Vice Presidents to be subject to the impeachment process), we cannot artificially subtract; and, with the plain meaning of "appropriate action" as an outcome merited by inappropriate behavior, we would be subtracting if we were to draw an arbitrary line at the remedy of removal.

As a last point, this removal power is further cited in varying degrees and with varying language by multiple Student Union Bylaws, including Section 7.02(a) and 7.02(a)(1) of the SUB Bylaws, Section IV(a) and (b) of the CCC Bylaws, and Article IV, Section 3 of the FUEL Bylaws. Taking these last two statutory provisions as examples: in stating that "The removal of any CCC member is subject to the Ethics Commission appeal process,"[22] CCC suggests the existence of an appeal to the Ethics Commission, but considering that the Commission does not hear appeals—only allegations—we find that the wording of this section broadly provides the Ethics Commission with jurisdiction over the removal process. Similarly, while the FUEL Bylaws do not explicitly cite removal from office, they describe the process by which a member of FUEL may be barred from participating in FUEL—a measure that we very much interpret to read as removal in all but name—as subject to the ultimate review of the Ethics Commission.

C

Placing aside the removal ability of the Ethics Commission, the holding that neither a Hall President nor Vice President may be removed from office by the Ethics Commission is somewhat complicated for the reason that Hall Presidents and Vice Presidents are not actually included in the list of impeachable figures outlined in Article

[22] §IV.01(b): *The removal of any CCC member is subject to the Ethics Commission appeal process.*

XIII, Section 1(b).[23] As a matter of fact, this list also excludes at least one other elected officer—namely, the Off-Campus Vice President. We therefore find that, at least while the Constitution retains its current language, yet a third, unique class of student leaders is borne: those enumerated and elected officials who may not be removed from office by any means: not by the Ethics Commission, and not by the process of impeachment. In essence, the individuals occupying these positions are internally irremovable.

To be sure, we do not believe that the Constitution intended to establish this third, relatively invincible group of leaders—but the question of whether or not they exist boils essentially down to a reading of the Article XIII, §1(b) impeachment list. Should the list be read as exhaustive? Or as non-exclusive? Looking to a practical understanding of the way in which statutory texts are most often read, we find it reasonable to assume that a regulatory list is exhaustive unless explicitly indicated otherwise; it is concurrently our view that this specific list is indeed fully exhaustive, and we struggle to see any other way by which it should be read. Especially in light of the fact the Constitution produces a clear difference in the list of individuals who may be sent to the Ethics Commission and those who may be subjected to the impeachment process, we have difficulty finding any merit to the argument that the list is un-intentional—and therefore that exclusions to that list may be ignored.

We understand that this finding, which produces a unique class of irremovable, unaccountable officeholders, is almost certainly an absurd result and is likely contrary to the spirit of the Constitution; but we do not find these arguments nearly convincing enough to wholly overcome the clear language found in Section 1(b). A Hall President could engage in the most heinous behavior imaginable (wearing white after Labor Day; briefly nodding off in a calculus class; treading upon the steps of the Main Building before graduation) and yet, under this holding, they would nonetheless be insulated from calls for removal from every single member of this campus acting in perfect unity. Even the Student Body President, the chief executive of the Student Union, may be stripped of his office by not just one, but two entirely different processes: impeachment and recall. And yet, the Hall President (and Off-Campus Council Vice

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[23] Article XIII, §1(b): *If the Student Union Ethics Commission finds that the Student Body President, the Student Body Vice-President, either of the Hall Presidents Council Co-Chairs, the Club Coordination Council President, the Class Officers, any Senator, the Off-Campus President, or any official appointed and approved by the Senate […]*

President) stand above the Student Body President as totally shielded from the democratic will of the people and the political will of the government. This finding of ultimate job security may be ridiculous. Yet we are not asked in this case to say whether this finding is unwise, or even silly. We are asked if the Constitution establishes a procedure or allows for the excision of such leaders—either by the process of impeachment or by removal through the Ethics Commission. We find no such allowance. To the point made in the dissent, this outcome may not be justice; but in this case, we surrender a tree to save the forest. By adhering to the list outlined in the Constitution—even if it sacrifices justice in individual cases—we affirm the ultimate justice of rule by the people.

Undoubtedly, we agree with the dissent that legislative action is needed to fix this enormously concerning loophole.

III

We find that *ex post facto* regulations are barred in all circumstances, and that the petitioners in this case are protected from the potential sanction of impeachment by virtue of this judgment. The decision against *ex post facto* rules is supported by natural, fundamental elements of multiple systems of law across the world, including Article 1, Section 9 of the American Constitution, and is essential to ensuring free and fair democracy. Allowing the establishment of *ex post facto* rules would allow student leaders to change legislation in an attempt to retroactively target and criminalize opponents and would be almost certainly always detrimental to the enduring health of the Student Union.

* * *

In light of the points made above, the decision of the Ethics Commission to remove a sitting Hall President and Vice Presidents cannot survive. While the Commission did have jurisdiction to hear the allegation of misconduct, it stepped beyond the confines of its established authority by applying the sanction of removal. As we have explained, the Commission may only remove certain enumerated unelected leaders, and may not apply this remedy to a Hall President, Vice President, or any other position secured by the will of the people. We further find that the Ethics Commission may not issue bills of impeachment against individuals not included on the list established

in Article XIII, Section 1(b) of the Constitution. We understand that finding a Hall president and Vice President as totally exempt from removal may be peculiar; but the constitutional language is peculiar. We happily leave such matters to the Senate and other elected representatives. For the time being, and until the language of the Constitution is appropriately amended, this holding shall stand.

We accordingly reverse the judgment of the Ethics Commission and remand the case for further proceedings consistent with this opinion. We bind the Ethics Commission against issuing a bill of impeachment to the petitioners in this case.

It is so ordered.

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Decided May 1, 2024

PARLIAMENTARIAN THOMAS MUSGRAVE, concurring in part and dissenting in part.

I concur with the majority in that Hall Presidents and Vice Presidents may not be unilaterally removed from office by the Student Union Ethics Commission—the interpretation used by the Commission in justifying this action was based on a faulty application of the "appropriate action" clause in Article XII, Section 6(a) of the Constitution, which states, "Should the Ethics Commission be notified that any Student Union official is in violation of attendance policies and/or neglecting his or her duties as set forth in this Constitution and/or any applicable bylaws, the Ethics Commission *may take appropriate action* outlined in this Section." As described by the majority, it is inappropriate for a non-elected body to unilaterally remove an elected public official—the current limitation of the Commission from submitting a Bill of Impeachment for a Hall President is, in my view, a major loophole, but not one that may be addressed by extending the power of the Ethics Commission past its written authority.

My dissent is in regards to the jurisdictional issue; it is my interpretation that this case should have never been sent to the Ethics Commission in the first place. I ultimately agree with the petitioners' argument that the Ethics Commission does not have jurisdiction over allegations of misconduct that occurred during the election process, given that the Ethics Commission only retains listed jurisdiction over Student Union officials, according to the previously referenced Article XII, Section 6(a). The provision clearly states that the Ethics Commission may only take appropriate action against any "Student

Union official" for violations of attendance policies or neglect of duties set forth in the Constitution. A candidate/ticket, as described by the petitioners, is not an enumerated Student Union official, nor can they be found in neglect of any duties or attendance policies—a candidate has no duties outside of following elections rules, which are enforced by the Election Committee. Hence, the Student Union Ethics Commission overstepped its authority in hearing this case, as at the time of the alleged offense, the petitioners were candidates, not officials. The majority's extension of the Ethics Commission's jurisdiction to campaign finance violations unreasonably extends the text of the Constitution to fit a normative agenda; one that is more fit for the legislature to address.

I

I find an immense number of interpretive issues and contradictions within the majority's opinion regarding jurisdiction. In essence, the majority reasons that the uniquely strong language within campaign finance provisions provides justification for them to be treated as distinct from other election violations and, thus, be enforced by the Ethics Commission. They further reason that the Senate "clearly intended" to sharply enforce these regulations, granting Ethics Commission jurisdiction. While the majority characterizes my position as looking at the Constitution through a "narrow lens," the justification for their position requires a lens broad enough to see a tropical beach from South Bend, Indiana.[24]

Our role as the Judicial Council is not to ponder over the motives of legislators, extending their written word to match their personal or moral interests. How important past Senators have felt campaign finance is for fair elections is of little importance to this interpretive decision—the majority fails to provide any true constitutional justification that provides the Ethics Commission with any jurisdiction over candidates or electoral provisions. They instead resolve what they see as an unintended loophole through normative arguments unfit for a judicial body.

In addition, the same line of argument they use to provide the Ethics Commission with jurisdiction over campaign finance violations could be used to justify the removal or impeachment of Hall Presidents, which they rightfully see as incompatible with Constitutional text. If campaign finance is truly as big of a concern to

[24] Writing this on May 1 pre-final exams, I recognize that I may already be in summer-mode.

legislators as the majority claims, why doesn't another exception exist allowing for removal by the Ethics Commission?

As stated by the majority, the average Joe Domer would find issue with "any holding that creates a structure void of accountability in which candidates are incentivized to further violate the rules." But by not allowing for the removal of Hall Presidents, these incentives still exist—placing late campaign finance violation discoveries in the jurisdiction of the Ethics Commission does little to solve them. If I were running for Stanford Hall President and was determined to win at all costs, I would simply submit my $1,000 receipt[25] late on purpose, avoiding Election Committee jurisdiction and facing instead the far more relaxed Ethics Commission, who has no power to remove or impeach me, no matter the magnitude of my violation. To the majority, I ask—would *this* be justice?

Simply put, the majority's opinion is internally inconsistent. In not allowing for the removal of Hall Presidents, they maintain a largely textual argument while keeping a loophole open, while in allowing the Ethics Commission jurisdiction over campaign finance, they take a largely activist position to close a loophole in the name of "justice." In my view, this type of activism without bearing in constitutional text should have no weight in this matter—closing apparent loopholes in the Constitution is always the job of the legislature.

II

The majority also posits that Section III(8) of the Bylaws of the Judicial Council can be interpreted to grant the Ethics Commission jurisdiction of campaign finance violations discovered after the election period; this provision states that allegations sent to the Ethics Commission must be lodged against a Student Union member "for a violation of an explicitly referenced constitutional, bylaw, or statutory provision not within the jurisdiction of the Election Committee." Since these violations missed the statute of limitations for the Election Committee, the majority claims they "necessarily" fall to the Ethics Commission.

I find several issues with this claim—first, it is still true that candidates are not yet Student Union members, and even if they do hold another position while campaigning, they are acting as a *candidate*, not in their role as a Student Union member. Second, the constitutional provisions the petitioners in this case are alleged to have

[25] Free donuts for everyone!

violated in this case are in Article XV, which describes the rules and procedures of elections. As described in Article XII Section 3(d)(1), the Election Committee "shall review all allegations of potential elections misconduct and all potential violations of elections regulations." Given this language, it is clear that all cases of misconduct by candidates, as listed in Article XV, are within the jurisdiction of the Election Committee—thus, it cannot be stated that Section III(8) necessarily places late-discovered campaign finance violations in the jurisdiction of the Ethics Commission. Importantly, this clause refers to the fact that the Ethics Commission maintains jurisdiction over *provisions* not within the jurisdiction of the Elections Committee, not individual cases. Since campaign finance provisions are within the jurisdiction of the Election Committee, this clause does not apply.

III

This case brings forth several major constitutional issues in regard to removal procedures and jurisdiction. Ultimately, however, the majority attempts to solve a jurisdictional loophole through judicial activism—solving such an issue is the responsibility of the legislature, not the Judicial Council.

It is clear the majority feels that it is the intent of the legislature to allow for the prosecution of campaign finance violations even if they are discovered after their election has concluded. In order for this to truly be the case, a constitutional amendment would be required to either extend the jurisdiction of the Election Committee until after all campaign receipts have been collected and approved, or specifically allow the Ethics Commission to review campaign finance allegations after elections have concluded. If the legislature truly believes this, they should make these necessary amendments rather than relying on faulty judicial interpretation of current constitutional text.

In addition, there remains a major loophole, as described, that prevents Hall Presidents, Hall Vice-Presidents, and even the Off-Campus Council Vice President from being removed from office under any circumstances. Even if the Stanford Hall President fails to host Pirate Dance, the Fisher Hall President cancels the Regatta, or the Pasquerilla East President files a frivolous copyright lawsuit against PEMCo, there is no way for their elected constituents, nor the Senate, nor the Ethics Commission to remove them. The majority takes the correct stance in pointing out these loopholes without extending constitutional text to fix them, allowing the legislature to

make the necessary changes to our governing documents to ensure "justice for all."

* * *

With this, I respectfully dissent on the jurisdictional issue.