

Per Curiam, Judgement without Opinion

STUDENT UNION JUDICIAL COUNCIL

No. 2425–3

THE MEMBERSHIP OF THE CCC

an INTERPRETIVE QUESTION

ANNA TEERLINCK, ARDIAN BALAZHI, HENRIQUE DELL
'ORFANELLO RAPOSO, MICHELE ZHENG, PETITIONERS *v.*
NOTRE DAME STUDENT UNION

Decided October 30, 2024

PER CURIAM.

Given the unusual, extreme, and pressing time constraint currently faced by the Club Coordination Council (CCC), the Judicial Council has unanimously decided to immediately release the judgement without opinion. The full opinion and holding shall be announced at a later date in accordance with a regular timeline.

* * *

The majority finds unconstitutional, in this exclusive instance, the enforcement of Article III, Section 6 (a)(i) of the CCC bylaws. The membership of the CCC is reconstituted as it stood prior to this case.

The majority finds in this extraordinary and exclusive instance that forcing the CCC to adhere to its established statutory timelines is unworkable. Time-sensitive club-facing issues and appeals pending before the CCC may therefore be resolved in this exclusive instance in exactly the process requested by the petitioners.

The summary judgment of the Judicial Council President is reversed.

It is so ordered.

Opinion of the Council

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NOTRE DAME STUDENT UNION

Decided October 30, 2024

HISTORIAN ELIJAH JONES delivered the opinion of the Judicial Council.

The Judicial Council, per Article XII Section 3(a) of the Constitution of the Undergraduate Student Body of the University of Notre Dame du Lac (the Constitution), has the “conclusive and preclusive”¹ responsibility to decide the constitutionality of “all Student Union enactments.” Enactments include, but are not limited to, the statutory bylaws approved and promulgated by each Student Union Organization. In this case, the enactment under discussion is a specific provision (Article III Section 6(a)(i)) contained within the bylaws of the Club Coordination Council (CCC).

The petitioners in this case are Executive Officers of the CCC.² These officers submitted the CCC Bylaws to the Judicial Council for review, pursuant to Article I Section 2(b) of the Constitution.³ Relevant to the case, Article III Section 6(a)(i) of the CCC Bylaws mandates that “CCC Division Representatives shall be elected on a division-by-division basis by the undergraduate clubs represented by each Division at the spring Club Budget Meeting(s).”

¹ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

² In this case, President Anna Teerlinck, Vice President Ardian Balazhi, Controller Henrique Dell’Orfanello Raposo, and Secretary Michele Zheng.

³ Art. I, §2(b): “Each Student Union organization shall develop written bylaws by May 1 st to establish the operational procedures (including attendance) necessary for the organization to carry out its constitutional duties. These bylaws must be approved by the organization’s Student Activities advisor and presented to the Judicial Council for review.”

Opinion of the Council

However, Petitioners state in their brief that, “The last Spring Club Budget meeting was held in 2019.” Additionally, Petitioners state that, “The last election held at a Spring Club Budget meeting was in 2015.” For the last nine years, CCC members have been elected in a way contrary to what is prescribed by the CCC Bylaws. Consequently, JUDICIAL COUNCIL PRESIDENT HUNTER BROOKE found, summarily, that the CCC was devoid of membership. This decision was appealed by CCC President Anna Teerlinck to the officers of the Judicial Council, in accordance with Article XII Section 3(a) of the Constitution.⁴

Before ruling on this issue, the Judicial Council considered the constitutionality of enforcing Article III Section 6(a)(i) of the CCC Bylaws. Namely, the question at hand was concerning whether the enforcement of a constitutional Student Union enactment (i.e. a bylaw) could itself be unconstitutional. For the majority, the answer to that question was yes.

Having concluded that the Judicial Council may render unconstitutional the enforcement of an otherwise constitutional Student Union Enactment, we find that the enforcement of Article III Section 6(a)(i) of the CCC bylaws is unconstitutional in this instance. Accordingly, the membership of the CCC is reconstituted as it stood prior to this case. Concurrently, we find that, in this extraordinary case, forcing the CCC to adhere to its established statutory timelines is unworkable. Thus, the time-sensitive club-facing issues and appeals pending before the CCC may therefore be resolved in exactly the process requested by the petitioners.

I

We find that the implications of enforcing Article III Section 6(a)(i) of the CCC Bylaws lead to significant and unreasonable violations of the Constitution. In contrast, the dissent takes a textualist approach in arguing that the CCC has no “legitimate” members, citing that elections were not carried out as prescribed by the CCC Bylaws. We preface by stating that we are not the “Rules Reading Council,” but rather the Judicial Council. Our motto is “justice for all,”⁵ as we are tasked with administering justice within the Student Union.

⁴ Art. XII, §3(a): “The Judicial Council shall have the sole power to hear petitions to decide interpretive questions of all Student Union enactments, including their constitutionality; enjoin the enforcement of enactments found unconstitutional; and issue binding opinions regarding questions of interpretation.”

⁵ This motto is established by Section I (4) of the Judicial Council Bylaws.

Opinion of the Council

It would be negligence on our behalf if we forsook our exclusive and exhaustive responsibility of administering justice and diminished it into simply reading the rules. Ensuring that our ruling administers justice is a “weightier matter of the law”⁶ than simply reading the rules; fairness cannot be overlooked.

Concurrently, in its textualist approach, the dissent forgets to consider an important text: the Constitution in itself. The dissent’s holdings are fundamentally unconstitutional, creating a constitutional crisis that is unresolvable, and a scenario that is unworkable for the CCC.

A

Article VII of the Constitution lays out duties that must be fulfilled by the CCC. If the CCC has no members, the constitutional duties prescribed to them in Article VII of the Constitution cannot be carried out. If these duties cannot be carried out, the entirety of Article VII of the Constitution is violated. In this instance, the Constitution is likened to a person speaking in an empty room. The Constitution is still speaking, but there is no one there to heed the call, rendering what the Constitution says insignificant and devoid of impact. Clearly stated, to argue that there are no members of the CCC is to disregard an entire article of the Constitution.

Moreover, to rule that there are no members of the CCC violates the Judicial Council’s responsibility to uphold and respect the Constitution, per Article XII Section 1(a) of the Constitution.⁷ While one may question what the phrase “uphold and respect” constitutes, we can confidently state that a ruling that disregards an entire section of the Constitution is not a ruling that upholds and respects the Constitution. To render what the Constitution says devoid of impact is not a way to uphold and respect the Constitution. Stated concisely, it is not only unconstitutional to rule that there are no CCC members, but by extension, it contravenes our call to defend the Constitution.

B

Simultaneously, this ruling creates an unresolvable constitutional crisis. The respondents in the oral argument suggested making

⁶ Matthew 23:23, New International Version

⁷ Art. XII, §1(a): “The Judicial Council shall work to ensure that the Student Union operates ethically and within this Constitution, bylaws, and statutory codes. The judicial power of the Student Union shall be vested in the Judicial Council.”

Opinion of the Council

the current CCC Officers “acting members,” and ordering that the CCC immediately hold elections in the manner prescribed by their bylaws. However, this “solution” is in itself unconstitutional. These elections would not be held at the Spring Club Budget meeting, which violates Article III Section 6(a)(i) of the CCC Bylaws. This “solution” is solving one unconstitutional act by replacing it with an even more egregious unconstitutional act. You cannot remedy unclean hands by going and playing in the mud; that makes the problem worse. For every wrong, there must be a remedy,⁸ but two wrongs don’t make a right.

Moreover, there are issues with the proposal of “acting members.” Article II Section 2(c) of the CCC Bylaws mandates that “All meetings of the CCC shall and must be closed to non-members of the CCC.” If there are no members of the CCC, and only “acting members” for the purpose of holding elections, how could this meeting take place? These de facto “acting members” are de jure non-members, meaning the meeting would be closed to them. Similarly, how could any candidate running for a position in the CCC legally appear at this meeting? These candidates would not be members, nor would they be “acting members,” who are only given the power to hold elections.

Allowing “acting members” and candidates in the meeting is a blatant and egregious violation of Article II Section 2(c) of the CCC Bylaws. You have “solved” the issue of one broken bylaw, but have broken a completely different bylaw in the process. This is adjacent to playing whack-a-mole with the CCC Bylaws in that you “resolve” one issue (you whack one mole), but another one pops up as a result.

C

Moreover, this “solution” is quite frankly unworkable. We find that it is not feasible to ask every club chair to convene on short notice at an in-person meeting. It cannot be forgotten that the CCC does important work in the area of club funding, which would be halted until this “solution” is enacted. The CCC would not be able to get anything done, placing a strenuous burden on both the CCC leadership and general membership. This is adjacent to asking someone to run a marathon blindfolded; it is not feasible.

⁸ References the legal principle *ubi jus ibi remedium*, translated as, “For every wrong, the law provides a remedy.”

Opinion of the Council

The dissent finds that the “solution” to an unconstitutional election is to hold another unconstitutional election; we find that to be ridiculous. It would be nonsensical to address one violation of a bylaw by proposing a “solution” that creates another violation of a bylaw. We find that striking that bylaw in this instance is the more palatable solution. To return to the marathon anecdote, our solution of striking the bylaw is equivalent to removing the blindfold from the runner. The “solution” of the dissent is equivalent to breaking both the runner’s legs (declaring that there are no members of the CCC), and still asking them to run the marathon blindfolded (asking them to hold elections on short notice with “acting members”).

Having found no constitutional way to enforce this bylaw, we decided to strike the enforcement of the bylaw in this instance. Article I Section 2(b) of the Constitution gives the Constitution supremacy over bylaws, and we extend the interpretation of this clause to mean that a bylaw cannot create a constitutional crisis. A bylaw itself cannot be unconstitutional, but neither can the enforcement of that bylaw.

II

Amidst the process of the Judicial Council hearing this case, the CCC had a pending club funding request that was unable to be heard, in accordance with the summary judgment of PRESIDENT BROOKE. PRESIDENT BROOKE judged, summarily, that the CCC had no members and could not hold a meeting to hear a club funding request. Having resolved the membership question, the Judicial Council subsequently moved to resolve this secondary clear issue.

In their brief, Petitioners requested that Petitioners request that “in light of an urgent request for CCC Collaboration funding, the CCC President should be given latitude to call a special meeting as described in Article II Section 2(b)(i) of the Bylaws of the Club Coordination Council. The portion of Article II Section 2(d) of the Bylaws of the Club Coordination Council that calls for an agenda to be sent “no less than 24 hours before consideration” should be temporarily suspended in this instance to allow for the timely consideration of the club’s request, as the club event will begin on November 1, 2024.”⁹ The CCC would thus be allowed to call an emergency meeting, bypassing the requirement to send out an agenda “no less than 24 hours before consideration”. Before ruling on this request, the Judicial

⁹ Petitioner’s Brief.

Opinion of the Council

Council considered if there were plausible reasons for this request to be granted. For the majority, the answer was yes; there were plausible reasons to grant this request, on the basis of workability.

We find that in this extraordinary case, forcing the CCC to adhere to its established statutory timelines is unworkable. Namely, we hold that the CCC would not be able to send out an agenda “no less than 24 hours before consideration” and still be able to hear this request before the club event starts on November 1, 2024.

Per Article XII Section 1(a) of the Constitution, the Judicial Council must uphold the Constitution. Enforcing Article II Section 2(d) of the CCC Bylaws would violate the constitutional principles of fairness and reasonableness. To be specific, holding a hearing on October 29, 2024, issuing a ruling on October 30, 2024, then giving the CCC until October 31, 2024 (as the club event starts on November 1, 2024) to call a special meeting, send out an agenda with “no less than 24 hours before consideration,” then hold said meeting is not feasible. We also considered the fact that club funding needs to be done in advance of the event, and even if the CCC managed to get the meeting called, one day is not enough time before the event.

We found it preferable to strike the enforcement of the *bylaw in this instance*, and to grant the relief requested by the petitioners. Administering justice takes precedence over simply reading the rules, and we hold that it would be just to strike the enforcement of the bylaw on the basis of workability. Thus, the time-sensitive club-facing issues and appeals pending before the CCC may therefore be resolved in exactly the process requested by the petitioners.

Having considered the exigent circumstances of this case, we fall handily and conclusively on the side of defending the Constitution. Declaring that there are no CCC members would violate the Constitution, contravening our responsibility to ensure the Constitution is sincerely upheld in all cases. Consequently, we fall definitively and decisively on the side of handing down justice for all. It would be an act of injustice if we did not strike the enforcement of Article II Section 2(d) of the CCC Bylaws, *in this instance*, as it is not workable, constitutional, or reasonable for that provision of the bylaws of the CCC to be enforced in this instance.

As a closing suggestion, we call on the CCC to take action to resolve this issue. We recommend that the CCC amend their bylaws or hold their Spring 2025 elections at the Spring Club Budget Meeting, in accordance with Article III Section 6(a)(i) of their bylaws.

* * *

Opinion of the Council

We accordingly reverse the summary judgment of the Judicial Council President.

It is so ordered.

President Hunter Brooke, concurring

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 NOTRE DAME STUDENT UNION

Decided October 30, 2024

PRESIDENT HUNTER BROOKE, with whom VICE PRESIDENT SERENA MELONIO joins, and with whom PARLIAMENTARIAN THOMAS MUSGRAVE joins as to part II, concurring.

The *Constitution of the Undergraduate Student Body of the University of Notre Dame du Lac* stands both implicitly¹⁰ and expressly¹¹ as a supreme and incontrovertible source of authority, built to simultaneously empower and bind the Student Union, to give voice to the voiceless, and to endow students to greatness.¹² This case presents a fundamental question that may only be suitably answered after grasping these elemental principles—only with this appreciation may a Constitution-reader engage in deeper examination and fashion increasingly meticulous conceptions of the detailed form and ability of that document. This is a theory of ‘constitutional virtue.’

Necessarily, a sincere examination must subsequently then arrive at a terminal understanding of the Constitution as a supreme

¹⁰ Throughout the document, implicit claims of constitutional supremacy and authority are repeatedly made. A simple example is the repeated use of compulsory language, like the word ‘shall’—itself used roughly 600 times, including within every section of Article I.

¹¹ Express assertions of constitutional supremacy are made in Art. I, §2; including 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,” and Art. XI, §2(b), “Nothing in the by-laws shall come into conflict with this Constitution.” These provisions collectively form what is called the ‘Supremacy Clause.’

¹² This assessment may be substantiated by textual references throughout the Constitution; fortunately, one needn’t look beyond the preamble for fair evidence.

President Hunter Brooke, concurring

and incontrovertible source of authority, sweeping above any challenge from subsidiary regulation. It should be noted that this ultimate verdict is both implicitly affirmed throughout the text and explicitly affirmed by the textual doublet that forms the Article I Supremacy Clause. This is a theory of ‘constitutional supremacy.’

The results I reach after simultaneously scrutinizing these coupled theories—constitutional supremacy and constitutional virtue—orbit the central conclusion that understands virtue as implicitly supreme, and subsequently underpin my reasoning for joining the majority and for issuing this concurrence. In detail, I write to offer only slightly more insight regarding my agreement with that opinion; to explain my disagreement with the reasoning of my colleagues expressed in their own separate concurrence and dissent; and, lastly, much as I did in *Ex Parte Hanley and Coyne*, to offer the reasoning I employed in my initial summary judgement—and to similarly explain why I join with the majority, which reverses my judgement, rather than with the dissent, which would seek to affirm it.

I

I shall take the last question first and begin with an explanation of my initial instant interpretation. Upon becoming cognizant of the potential issue presented by the interaction between the inaction of the Club Coordination Council and Article III Section 6(a)(i) of their bylaws, I issued a summary interpretation of that provision, which held (more or less) that their bylaws required elections to occur on a certain time, day, and way;¹³ and that, because these elections did not suitably occur, the organization was devoid of membership. Why was this my judgement? Put simply, because I believe any proper and appropriate summary interpretation must necessarily be as conservatively restrained as possible.

The Judicial Council has the exclusive and “emphatic [...] duty”¹⁴ to interpret governing texts, an ability granted both by the implicit nature of the judicial function and the unequivocal language of the Constitution in Article XII, Section 1(a)¹⁵ and Section 3(a).¹⁶ While

¹³ Namely: Spring; the Club Budget Meeting; on an undergraduate club division-by-division basis.

¹⁴ *Marbury v. Madison*, 5 U.S. 137 (1803)

¹⁵ Art. XII, §1(a): “The judicial power of the Student Union shall be vested in the Judicial Council.”

¹⁶ Art. XII, §3(a): The Judicial Council shall have the sole power to hear petitions to decide interpretive questions of all Student Union enactments, including their

President Hunter Brooke, concurring

the Constitution—at least presently—is silent concerning the way in which these fundamental powers must be employed, the Bylaws of the Judicial Council clarify in Section I(2)¹⁷ a version of the process in which a complete, binding, and precedential opinion flows from the Judicial Council at the conclusion of a full hearing. This exhaustive process allows the Judicial Council Officers to collectively apply the binding interpretive ability only after the formal progression of a complete case involving multiple parties, a full record, conversation with colleagues, inspection of applicable precedent, examination of relevant facts, and contemplation of complete briefs and oral argument.

However, working in tandem with this thorough and stalwart interpretive process is a secondary mode of constitutional application: the issuance of summary interpretation by the President to expeditiously resolve an issue or question—often pressing, as was this the case—without placing essential governmental functions on hold, awaiting the conclusion of a full and comprehensive hearing. I agree with several other Officers who have also affirmed the importance of this secondary approach; and, as the ultimate father of our newly modernized and formalized interpretive system, I can say with certainty that the ‘authorial intent’ in this instance was certainly to imbue the Judicial Council President with the ability to issue summary interpretation in this way.

Nonetheless, I very sharply understand our governing rules as allocating the vast bulk of this interpretive ability to our Officers as a collective group. It is exclusively the province of that united body to administer any binding conclusion that travels beyond all but the strictest conservatism. To issue decisions that do indeed ‘interpret’ by reading into the text and reach reasoned conclusions using a

constitutionality; enjoin the enforcement of enactments found unconstitutional; and issue binding opinions regarding questions of interpretation.

¹⁷ §1(2): “The Judicial Council shall have the power to hear petitions to decide interpretive questions of all Student Union enactments, and issue binding opinions regarding questions of interpretation by a majority vote of the Officers of the Judicial Council, provided no more than one officer is absent. In the event of a tied opinion, the interpretation supported by the Judicial Council President shall stand. After the Judicial Council Officers have issued a decision, the Judicial Council President shall assign the task of writing the opinion of the Judicial Council to a concurring Officer and shall assign the task of writing the dissenting opinion to a dissenting Officer, if needed. Judicial Council Officers may additionally write concurring decisions. The Opinions of the Judicial Council, alongside all dissenting and concurring opinions, shall be made available to the public and shall stand as precedent.”

President Hunter Brooke, concurring

formalistic approach. Conclusions that answer questions that fail to present any immediate answer. And conclusions that take any degree of latitude with any text, or which invalidate any portion of any text (or which enjoin the enforcement of any portion of any text), must be administered by the Judicial Council Officers at the closing of a hearing, and by those officers alone. No reasoned democratic government can sustainably survive the rapid issuance of liberal and generous summary interpretations promulgated by one roving Officer, meandering through the Student Union to allow for frequent and serious deviation from governing texts.¹⁸ For essential judicial and democratic processes to be preserved, therefore, the summary interpretations presented by the President must necessarily be as plain and unadorned as possible.

As is often true, of course, this question is one of balancing differing needs and objectives: in this instance, balancing the need to issue robustly binding interpretations at the conclusion of a full case¹⁹ with the need to rapidly issue snap interpretive decisions that are essential to keep the Student Union from grinding to an absolute halt anytime a document must be understood (which, as it happens, is rather frequently). It simply would not do to hold a hearing for quickly arising questions²⁰ regarding what is meant by “one week;”²¹ or questions²² regarding who is counted as an “official.”²³ Summary interpretation is thus needed.

¹⁸ Ironically enough, if such an officer did exist, it appears as though large swaths of the public would think his name mine.

¹⁹ A prerequisite to wielding Article, XII, Section 3(a) powers.

²⁰ What is meant by a ‘week’? A calendar week? Academic week? Workweek? A period of five days? Of seven? Of five class days? What about an incomplete academic week? To go to a hearing every time this question arose would be truly disastrous.

²¹ To highlight the prevalence of even this small interpretive issue, I emphasise that phrases containing the word ‘week’ or ‘academic week’ may be found abundantly littered throughout the Constitution. For example, in Art. I, §3(b)(1); Art. I, §4(b)(2); Art. I, §5(b) (and that’s just Article I!); Art. III, §2(g)(1)(A); Art. III, §3(a); Art. III, §3(c); Art. III, §3(j); Art. III, §4(a)—and that’s just Article III! I could go on citing some thirty more instances.

²² What is meant by an ‘official’? An elected member of the Student Union? An Officer of an organization? An enumerated member? Is an ‘official’ even a singular individual? Could it be an office? Again, to go to a hearing every time this question arose would be truly disastrous.

²³ To again highlight the prevalence of even this small interpretive issue, constitutional phrases containing the word ‘official’ are not infrequent. For example, in Art. I, §3(b); Art. XII, §6(a); Art. XIII, §1(a); Art. XIII, §1(b); Art. XIII, §2(g); Art.

President Hunter Brooke, concurring

However, it would similarly not do to issue a summary interpretation for such a profound question as the removal of elected officials;²⁴ who may hold certain elected offices;²⁵ or whether an organization has membership whatsoever.²⁶ Binding interpretation to resolve a case is thus also needed. I will add that this balance is also helped by the fact that summary interpretation may be appealed and subsequently overturned in hearing. Only a decision shaped by the Judicial Council after the complete hearing of a full case is binding, and therefore final.

I now return to this case. With this thought in mind I consequently reasoned that it would be improper and beyond my own ability to render any text unconstitutional or issue any interpretation that deviated from a plain, pinched reading. This is the bright-line standard I set: that any ad-hoc, summary interpretations issued by the judicial Council President be stripped of interpretation as far as possible, adhere closely to the text, and remain conservative as possible. Summary interpretations must be strict, narrow, and tremendously temperate. In issuing my membership interpretation in this case, I adopted the most conservative, textually bound stance that refrained from ruling unconstitutional any statutory provision. This is not the best way to issue strong interpretations of documents; but it is the best way to produce consistent summary judgements free of judicial and personal bias.

I have therefore voted to reverse this holding not necessarily because my mind has meaningfully changed, or because I have come to disagree with those arguments with which I previously agreed. To suspect otherwise would deeply misunderstand the functional mechanism of summary interpretation, which is not a process of positive interpretation, but of practical restraint.

II

With my second point, I seek to briefly address the argument made by the petitioners that deference should be paid to the consistent practice of the Club Coordination Council, which enjoys some precedential force. In short, I feel this argument carries weight—

XIII, §3(b)(2); and more—the list abounds. Section 2 of Article XIII even identifies a hitherto hardly mentioned class of “Elected Officials.”

²⁴ The question resolved in *Dillhoff*.

²⁵ The question resolved in *Ex Parte Hanley*.

²⁶ The question resolved in the case at hand.

President Hunter Brooke, concurring

though I shall leave questions regarding the level of deference for another case, in which this point may bear more central relevance.

These forms of conventions and customs, as is the case for governments around the world, do form to some degree a legitimate source of rule, and thus constitute historical, rather than judicial, precedent. Particularly if a practice may be shown to have stood since time immemorial, it should be given some weight. This is an important underpinning of modern governmental systems, derived from an understanding that consistency is beneficial, as we humans are ourselves, consistent pattern-seeking animals.

Respondents have argued that this is not a form of legal precedent as issued by the Judicial Council and is, therefore, not binding. Correct, indeed; these conventions certainly do not rise to the occasion of written rule. Is this precedential behavior strong enough to override plain statutory text? No, probably not. But should it be wholly ignored? Also, probably not.

In short, freedom within a rules-based order is found in the predictability and stability of those rules; this axiom holds true both for rules written into law and those that, over time and repeated, become undercurrents to behavior. Just because a rule is unwritten does not mean it loses its status as a rule.

III

With my third point I seek to address my disagreement with my colleagues relating to their desire to employ the absurdity doctrine in the case at hand. I will refrain from a discussion of the doctrine itself, having already expounded on that principle in *Dillhoff*, and will thus instead confine myself to explaining why I cannot here support its application.

At a basic level, Petitioners argue, and PARLIAMENTARIAN MUSGRAVE's concurrence agrees, that producing a finding which renders the Club Coordination Council without membership is woefully undesirable to the point of statutory absurdity. This point may perhaps be fair. But, given the opportunity to answer, Respondents contend that allowing the Club Coordination Council to operate in a way that deviates from the plain text of their bylaws for period stretching over nine-years is entirely destructive of our rules-based order and therefore equally absurd. Interesting—this point also does seem to have some meat on its bones.

The absurdity doctrine is important, and it is powerful. But with such great power must come great responsibility, and, by implication,

President Hunter Brooke, concurring

great prudence; for the rule which insists on avoiding absurd results must be used with excessive restraint, only when the results are unquestioningly and exclusively absurd, lest this rule inspire judicial overindulgence. Phrased another way, this doctrine must be brought to bear only when the Judicial Council Officers are certain that a finding—and that finding alone—is absurd. Yet, in this case, both Petitioners and Respondents raise what seem to be two similar claims of absurdity, both of which appear, at least somewhat, equally valid. As a result, I cannot be certain that one outcome is more or less absurd than the other; and because I cannot ascertain absolute absurdity, I am unable to pronounce only one result as truly absurd.

In light of competing and fairly reasoned claims of absurdity, I am not able to enjoy the “freedom from doubt”²⁷ seemingly embraced by my colleagues; I therefore chose the path of restraint and determine myself eminently unqualified to judge on what is or is not absurd in this case.

IV

This is not my only concern with that concurrence. Several of my colleagues appear to have formulated, construed, and applied a novel judicial framework I have named ‘accidentalism,’ a doctrinal approach to interpretation (perhaps homegrown and unique to the Notre Dame Student Union) in which certain provisions and textual references are determined to exist only accidentally and are therefore duly ignored, cast aside, and excised from an otherwise legitimate and binding text. I shall explain my discontent with the application of the ‘accidentalism’ approach by first addressing two more primeval questions: When must we interpret? And what is interpretation? Let us take these questions in order and subsequently examine them through the bylaws of the Club Coordinarion Council.

We as a reader first embark on the interpretive journey when we stumble upon a human-made text that is not, in our mind’s eye, immediately self-evident or plainly understood. The text must be somehow puzzling—it must not ‘make sense’ amongst the background beliefs and underlying convictions we, as the reader, assume to be true at the time of reading. It is in this very moment of uncertainty, of puzzlement, that the ‘interpretive occasion’ arises, and interpretation thereby becomes a self-conscious process,²⁸ beginning, almost

²⁷ *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. ____ (2022)

²⁸ Leo Strauss, *On the Interpretation of Genesis*.

President Hunter Brooke, concurring

instinctively—particularly to the uninitiated—by posing the natural question, “how do we make sense of this text?”

Of course, this ‘natural question’ is, really, the ‘interpretive question.’²⁹ “How do we understand a text, and make it understood? From what point of view does this puzzling statement make sense? What would have to be true for this puzzling statement to make sense?” The very instant thoughts of this sort appear in the mind, we become transformed from reader to interpreter; and accordingly rapidly begin to cut, using our available and known interpretive tools, a path through the deep trees, tall brush, and long vines that obscure that essential trail which terminates in the appropriate resolution of textual uncertainty. In short, interpretation is ‘making sense’ of a text—resolving inconsistencies within the statement, or inconsistencies between the statement and what the interpreter thinks they know about the world.³⁰

Let us return momentarily to the case at hand and examine the Club Coordination Council with this understanding in mind. The application of Article III, Section 6(a)(ii) of their bylaws failed to make immediate sense; the interpretive occasion thus arose, prompted by the interpretive question, “how can they be made to make sense?” The interpreter thus moved to the second step of working to appropriately and interpretively resolve the uncertainty. Naturally, there stand several methods of ‘making sense’ of the text; the approach I favored was understanding that the debated provision of the bylaws conflicted with the broad duties and powers imposed on the Club Coordination Council by the Constitution, a document which must be understood as aspiring to certain ends; ends which must be understood as absolute; and ends which therefore must be understood as standing incontrovertible and immune to any bylaw conflict. This approach makes sense of the text through an ends-oriented interpretive methodology and through the lens of constitutional supremacy.

Accidentalism is another way to resolve the interpretive question; and, as it happens, accidentalism is an immensely attractive approach because it allows the interpreter to make sense of an otherwise confusing text—to resolve the interpretive question—in an uncomplicated, quick, comfortable, and remarkably easy way. Rather than pouring over the text (and indeed over other texts), examining the legislative history, or engaging in a process of critical self-examination to recognize how one conceives of the textual concepts at

²⁹ Leo Strauss, *On the Interpretation of Genesis*.

³⁰ Leo Strauss, *On the Interpretation of Genesis*.

President Hunter Brooke, concurring

hand, the accidentalist simply declares the provision accidental and happily cuts it out, like a doctor excising a tumor. The accidentalist asks the question, “What would have to be true for this puzzling statement to make sense?” and after a few moments, they exclaim that, yes, of course, they have the answer: “If the bylaw was accidental, everything makes perfect sense!”

True, and simple—my, how tempting. And the temptation runs deeper still, for the accidentalist reading a Student Union text operates amidst a fundamentally accurate understanding of our governing documents as relentlessly entangled in a state of turbulent change and amendment. Accidentalism correctly recognizes that our rules are the mutated, variegated product of constant amendment by different authors with different goals, positions, and understandings: perhaps a confusing text is only so because it contains leftovers of a bygone regulation whose removal was not entirely completed or overlooked; perhaps a confusing text is only so because a provision was unknowingly ignored or forgotten by another amendment. I have personally known and seen mistakes of this sort occur over time. So, is accidentalism sound?

Not quite. I disagree with this accidentalist approach in that I do not believe that we few, we Officers of the Judicial Council, have the necessary tools, knowledge, equipment, or ability, now or in the foreseeable future, to know what is what—to separate the intentional from the accidental. Attempts to draw lines around accidental provisions will result in the Judicial Council seeking to increasingly justify the exercise of a gradually expanding and untapped power of judicial review, without any strong textual bases for the employment of that review, to the point of over-exertion of judicial authority and invalidation of democratic process amongst other governmental institutions and organizations. In attempting to draw exclusionary boundaries around supposedly accidental statutory provisions, it seems likely we may even fall into the very trap we seek to avoid by accidentally invalidating a legitimate and intentional text.

In fairness, I certainly grasp the charming allure of applying this technique. I even accept the accidentalist worldview as an imperfect but nonetheless relatively faithful depiction of reality: I understand our complex regulatory web and byzantine provisions contained within interlocking texts are often unintentionally flawed. And I must necessarily concede, therefore, that, in certain rare and unusual cases, there may be legitimate and suitable cause to apply the accidentalist doctrine. But I put forth that the bar to accidentalism must be tremendously high, met only if a party to a case is able to provide

President Hunter Brooke, concurring

a compelling, rational, and—importantly—historically persuasive explanation to justify and overcome the dutiful application of a type of strict scrutiny to the accidentalist argument at hand. If accidentalism were to be used without this standard of strict scrutiny, I would be tremendously concerned about the erosion of a rules-based order and the subordination of textual regulations to the untethered guesswork of the Judicial Council, a body not equipped to say what fragments of a text, if any, are accidental. In short, I believe accidentalism may have a use, but that it must certainly fail if unable to meet the high bar of strict scrutiny, which must dictate that the doctrine be left regularly untouched.

In this case, I firmly believe the accidentalist argument is unable to survive even basic review, much less strict scrutiny; and, therefore, that it rightly has no place in the majority opinion.

V

With my last point, I hope to explain why it is most appropriate to construe Student Union texts through an ends-oriented interpretive approach built on a fundamental and understanding of cardinal aspirational outcomes expressed by the Constitution (and other documents)—‘constitutional virtues’—to which the Organizations of the Student Union aspire to meet. These ‘ends’ are meant to be understood as ultimate outcomes; final goals; and sanguine results.

If an interpreter is to take the text seriously as written, they must necessarily foster a comprehension of the Student Union and its varying sets of rules first through this fundamental ends-oriented lens, and only thereafter may subsequently shuffling on further layers of peripheral interpretation. When I say this approach takes the text “seriously as written,” I mean to say that an ends-oriented approach is fundamentally textual in nature and derived principally from the Constitution itself—not from some judicial act of normative lawmaking—but also that it is the fairest way to approach that venerated document.

This is a fair treatment of the Constitution because that document is, at essence, an ends-oriented text. It clearly seeks to achieve certain ultimate outcomes, and accordingly enshrines rules that may assist in achieving those results. And while these varying detailed provisions contained therein may change from time to time, the ends remain remarkably consistent. That the Constitution endeavours in

President Hunter Brooke, concurring

Article XV³¹ to achieve the ‘end’ of a balanced electoral playing field has remained for decades an unyielding constant, while the minutiae of electoral timelines and administrative processes generally change yearly.³² That the Constitution endeavours in Article XVI³³ to achieve the ‘end’ of reasoned financial disbursement has remained for decades an unyielding constant, though the minutiae of funding percentages and rules had not infrequently changed from time to time.³⁴ As a matter of fact, no governing text, aside from the Legislative Formatting Code—an unfair example, since I wrote that document—has one single, distinguishable author; or even an identifiable group of authors. As I stated in my discussion regarding accidentalism, the reality is that these texts are written, shaped, and changed often over time.

As a result, we must understand the Constitution as a compact that first sets out to achieve ends of this sort—balanced elections, honest representation, fair finances, *et cetera*—and subsequently evaluate secondary or tertiary regulatory provisions from this angle. Just because a text offers a small electoral instruction that expounds on minute operational processes, should we uncritically accept that rule and blindly forget the ultimate end of electoral equity? Just because a text mandates the implementation of a small financial procedure, should we uncritically accept that rule and impetuously neglect the ultimate end of fair and reasoned financial disbursement? Reasonable people may disagree on interpreting the Constitution—but to most thoughtful people, the answer to these questions is hopefully a most self-evident “no.”

Elections are one area in which I specialize, so I can most readily envisage a hypothetical relating to that governmental function: imagine a scenario in which a rule mandating that the Judicial Council hold the next presidential election on November 11 (today being November 8) was rather suddenly but nonetheless properly enacted. A most plain evaluation of this novel textual regulation finds the rule without issue; but a wise reading, with an understanding of constitutional electoral balance in mind—and perhaps with a dash of common sense—must cause one’s conviction must change. Can an election

³¹ Art. XV: Elections.

³² For the most recent change to Article XV, and electoral rules more generally, see SO2425-16.

³³ Art. XVI: Student Union Fiscal Policy.

³⁴ The most recent change was made this past Tuesday, the 5th of November, in the form of an amendment to the Bylaws of the Financial Management Board.

President Hunter Brooke, concurring

along this three-day timeline be fair? Balanced? Transparent? Speaking from experience, both as a frequent candidate and election administrator, I unequivocally answer in the negative. The rule, while not plainly conflicting with the Constitution, must nonetheless be stricken because it definitively conflicts with the constitutional end of electoral even-handedness.

In short: the means may change, but the ends endure. If we forget or forgo the ultimate ends to which democracy aspires, as expressed in our Constitution, we shall become swept up in the passions of the day and forgetful of our and the Constitution's ultimate purpose.

A primary end in this case is clearly expressed in the Constitution—most explicitly through Article VII, Section 1(a),³⁵ but also referentially and implicitly in other places³⁶—as the effective representation of undergraduate club interests, and the reasonable disbursement of funds among those clubs, by the Club Coordination Council. We must keep this end in mind.

Of course, Officers of Judicial Council adopting an interpretive framework that might be called more classical textualism³⁷ may perhaps shrug off this argument and argue that an ends-oriented interpretive approach takes unfair and unfaithful leave of the text. And yet the approach I posit is deeply grounded in taking the text 'seriously as written'—reading and applying what the text says. What does the Constitution mean by such words as 'representation' 'recommendation' and 'coordination'? what statutory outcomes must be fairly realized to mind these rules? If the text is read seriously, one must attain a conceptual awareness of what is meant by these concepts,³⁸ and then apply that conception to the prepared question. The Constitution mandates that the Club Coordination Council represent undergraduate clubs:³⁹ taking this provision seriously, as written,

³⁵ Art. VII, §1(a): "The Club Coordination Council (CCC) shall disseminate information concerning undergraduate club issues and activities, recommend funding allocations for all undergraduate clubs, serve as a representative of all undergraduate clubs, and coordinate cohesive club programming."

³⁶ Including, for example, much of Art. VII, §3, which deals with the powers and duties of the CCC; Section VIII(5)(h) of the Bylaws of the Judicial Council, which includes the oath of office administered to the CCC President; or, indeed, with the preamble to the Constitution, which does further express relevant ends, albeit in a more indirect fashion.

³⁷ The interpretation expressed in this dissent stands as a clear example.

³⁸ Ronald Dworkin, *Taking Rights Seriously*, *Constitutional Cases*.

³⁹ Art. VII, §1(a): "...serve as a representative of all undergraduate clubs..."

President Hunter Brooke, concurring

results in a necessary enjoinder of the bylaw in question because a Club Coordination Council without members cannot, in any sense of the word, represent clubs. In reality, the ends-oriented approach is fundamentally textual.

Even if the textual argument is conceded, however, further claims may be made that this approach deviates from the democratic will. But, if democracy has affirmed through the Constitution a desire to achieve a certain outcome—harmonious club financing, organization, and representation—it is the dissent that so thoroughly buries itself in small snippets of text that it falls prey to statutory quagmire and thereby loses sight of the democratic will. I will add that this finding upholds our most recent ruling, for this interpretive reasoning is what seems to have principally guided the majority in *Dillhoff*—though the majority may not yet be certain that this is actually what occurred.

“In a democracy, the power to make the law rests with those chosen by the people. Our role is more confined—to say what the law is. That is easier in some cases than in others. But in every case we must respect the role of the Legislature, and take care not to undo what it has done. A fair reading of legislation demands a fair understanding of the legislative plan.”⁴⁰ The Senate enshrined the Club Coordination Council within the Constitution to represent “all undergraduate clubs,”⁴¹ not to be rendered abandoned and infirm. “If at all possible, we must interpret”⁴² the Bylaws “in a way that is consistent with the former, and avoids the latter.”⁴³ Article III of the Club Coordination Council Bylaws can fairly be applied “consistent with what we see as” the Senatorial, democratic, and constitutional “plan, and that is the reading we adopt.”⁴⁴

This rapidly concluding term shall stand as my fourth and last year of service to the Student Union. Over that colorful tenure, I have slowly grown to develop a learned understanding of the principle that an interpretation of our governing documents cannot be so blind to constitutional aspiration and simultaneously expect to produce just results. We must examine the end—the purposes, goals, of the documents. In this case, I have come to understand the Constitution as a

⁴⁰ King v. Burwell, 576 U.S. 473 (2015), Opinion of the Court. Internal quotations omitted.

⁴¹ Art. VII, §1(a).

⁴² King v. Burwell, 576 U.S. 473 (2015), Opinion of the Court

⁴³ King v. Burwell, 576 U.S. 473 (2015), Opinion of the Court

⁴⁴ King v. Burwell, 576 U.S. 473 (2015), Opinion of the Court

President Hunter Brooke, concurring

hope that the collegiate experience of younger students will be better than our own; and as a means for unifying students to speak together, in one voice. If stripped of its membership, the Club Coordination Council cannot fulfil the constitutional aspirations it strives to reach, for “the worth of a State, in the long run, is the worth of the individuals composing it.”⁴⁵ And if the Club Coordination Council is emptied of members, so too is it emptied of worth.

* * *

As the sun just begins to simultaneously shine upon a new group of Judicial Council Officers and set on my own concluding career, I raise these earnest contentions in the hope that they shall extend beyond my departure and find purchase in the minds of my successors, much as I have heeded admonitions issued by my predecessors. Observe the classic judicial virtue of temperance. Apply powerful tools in a way restrained by perpetual reason and moderation. Interpret the Constitution, but do not forget that we are not in the business of reading small, isolated snippets—we are in the business of understanding full texts. As the name implies, we are in the honorable business of Justice.

Indeed, “Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.”⁴⁶ And to be just, “Let us be keen, and rather cut a little than fall and bruise to death.”⁴⁷

In my eye, justice has been considered and administered. The majority opinion is a just opinion. I am thus pleased to concur

⁴⁵ John Stuart Mill, *The Collected Works of John Stuart Mill*, Volume XVIII, *Essays on Politics and Society* Part I

⁴⁶ Alexander Hamilton et al., *Federalist* 51.

⁴⁷ William Shakespeare, *Measure for Measure*.

Parliamentarian Thomas Musgrave, concurring

STUDENT UNION JUDICIAL COUNCIL

No. 2425–3

THE MEMBERSHIP OF THE CCC

an INTERPRETIVE QUESTION

ANNA TEERLINCK, ARDIAN BALAZHI, HENRIQUE DELL
'ORFANELLO RAPOSO, MICHELE ZHENG, PETITIONERS *v.*
NOTRE DAME STUDENT UNION

Decided October 30, 2024

PARLIAMENTARIAN THOMAS MUSGRAVE, with whom PRESIDENT HUNTER BROOKE joins as to part II–A, concurring.

I concur with the majority in its portrayal of the Judicial Council President’s summary judgment as unworkable and having unconstitutional implications, and agree that striking Article III Section 6(a)(i) of the CCC Bylaws in this instance is thus the correct decision. I write to address two additional points not covered in the Majority; first, that the absurdity of the implications of enforcing Article III Section 6(a)(i) is enough to warrant its striking, and second, that the dissent’s assertion that the CCC may have knowingly violated their bylaws, and thus should be held accountable, is both unfair and ultimately the duty of the Student Union Ethics Commission to answer and enforce, not ours.

I

In the case of *Dilhoff, Sarneso, Willson v. Student Union Ethics Commission*,⁴⁸ JUDICIAL COUNCIL PRESIDENT HUNTER BROOKE, writing for the majority, used the ‘avoiding absurdity’ rule to argue that the Student Union Ethics Commission has jurisdiction over violations of election rules if discovered after they assumed office. The avoiding absurdity rule indicates that rules should not lead to injustice, oppression, or absurd consequence. Despite the fact that Article XII, Section 6(a) of the Constitution clearly limits the Ethics

⁴⁸ 2 J.C. 1–5–2425, page 7

Parliamentarian Thomas Musgrave, concurring

Commission's jurisdiction to Student Union officials,⁴⁹ he argued that this interpretation was absurd and unenforceable given that it would lead to the 'essential evaporation of several electoral rules'—a debatable interpretation,⁵⁰ but nonetheless, the primary basis for the argument that restricting the Ethics Commission's jurisdiction over election matters violated the 'avoiding absurdity' rule.

In no uncertain terms, it is well and truly beyond me how PRESIDENT BROOKE could possibly reason that this was absurd, but that the CCC having no members is not. The implications of the CCC having no members are far more outrageous, unjust, and unworkable than the Ethics Commission losing jurisdiction of election rules; and yet, PRESIDENT BROOKE argues in his concurrence that he is "unable to pronounce"⁵¹ whether this interpretation violates the 'avoiding absurdity' rule.

Assume that the Judicial Council were to affirm the Judicial Council President's summary judgment and find that, because the CCC failed to elect its members in the way prescribed by its bylaws, the CCC had no members whatsoever. This would mean that since 2015, the last time elections were held at a Spring Club Budget Meeting, the CCC has had no members, thus making every funding decision, election, and public-facing action the CCC made in the past 9 years invalid and unenforceable.

The implications of such an interpretation are far-reaching. If the CCC has not had valid membership since 2015, this would mean that their 2015 bylaws should be considered their 'active' bylaws—these may have entirely different language than what we are arguing over, thus making our arguments moot. In addition, every club funding decision, despite already being made and distributed, would be rendered invalid; every Senate vote from the CCC President would be invalid; every FMB vote from the CCC Controller would be invalid; and, in practice, any decision the CCC has made in the past nine years would have been done in error, and thus, should not be followed.

⁴⁹ The language of the referenced section is: "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."

⁵⁰ See my dissent.

⁵¹ *Teerlinck v. Student Union*, President Brooke, Concurring.

Parliamentarian Thomas Musgrave, concurring

So, what are we, the Judicial Council, to do? Would we need to revoke funding from clubs who received allocations from the CCC this year? Would we need to go back and remove the CCC President's Senate votes to ensure all relevant legislation truly passed? I would argue that, if we decided the CCC had no members since 2015, these would be necessary remedies. But these are obviously absurd—far beyond the 'absurdity' of not following one section of your bylaws.

It is my view that if we are to say the CCC's elections were invalid, and that they have no members, we must also say that every club funding decision, Senate vote of the CCC President, FMB vote of the CCC Controller, and bylaw revision from the CCC are void and moot. This is an obviously absurd conclusion—the fact is that the CCC *has* made those decisions, with its leaders elected in a democratic fashion slightly different from the procedure its bylaws mandate.

It would be incredibly irresponsible for the Judicial Council to apply this absurd conclusion. Not only is it unjust in that it unfairly affects clubs that did not make any mistake in the matter, but it unreasonably extends this seemingly small error to loudly disrupt the Student Union in its entirety. If this is not absurd, I truly do not know what is.

A

It is surprising that the Judicial Council President and I fell on the opposite views of 'absurdity' in this case in comparison to *Dilhoff*, *Sarneso*, *Willson v. Student Union Ethics Commission*. To be clear—PRESIDENT BROOKE is, in practice, arguing that Student Union officials not being retroactively accountable for violations during their elections is absurd, but that he is 'unable to pronounce' the CCC having no members since 2015 as absurd, despite its far-reaching implications.

I believe that this argument comes from a 'law-and-order' reading of the Constitution that unreasonably extends the Judicial Council's power as an essential agent of law enforcement. PRESIDENT BROOKE's concurrence in this case explains that he could not distinguish the relative absurdity between the CCC having no members for 9 years and the CCC deviating from its bylaws for 9 years.⁵² In

⁵² It's quite simple, in my view – one case of 'absurdity' is likely an act of simple negligence with little to no impact on student life that even past Judicial Councils failed to notice, and the other is a far-reaching interpretation that would radically change student life on our campus. Saying these are 'equally valid' is like

Parliamentarian Thomas Musgrave, concurring

essence, he argues that the CCC acted similarly absurdly to interpreting the CCC as having no members in failing to hold elections at the Spring Club Budget Meeting. An end to this argument, as well as his argument in the *Dilhoff* case, is for the Judicial Council to retain the ability to somehow hold Student Union officials ‘accountable’ for violating Student Union enactments.

Holding Student Union officials accountable for violating bylaws is the enumerated responsibility of the Student Union Ethics Commission.⁵³ As the Judicial Council officers, we are solely responsible for ‘deciding interpretive questions,’ which necessitates a further analysis of the textual evidence and potential repercussions of our interpretations rather than an analysis of whether somebody should have been responsible for preventing a bylaw from being broken.

For these reasons, it is my assertion that this ‘accountability’ should not be taken into consideration at all in deciding interpretive questions and should be left to the Ethics Commission. This hopefully explains the unlikely and confusing flip-flop made by the Judicial Council President and I regarding the application of the ‘avoiding absurdity’ rule.

II

In the final line of the dissenting opinion, VICE PRESIDENT OF OPERATIONS MADELINE HUTSON argued that it is more absurd that the CCC would “knowingly violate their own bylaws”⁵⁴ than interpreting that the branch has no members. I must emphatically disagree with this notion—both that a violation of one’s bylaws is ‘absurd,’ and that the CCC knowingly violated theirs.

It is important to consider the relevant facts of this case in order to make such a claim. The CCC has not held a ‘Spring Club Budget Meeting’ since 2019, and elections have not been held at such a meeting since 2015. In addition, there is no other mention of a ‘Spring Club Budget Meeting’ anywhere else in the CCC bylaws; it has seemingly been eliminated from CCC practice. With this in mind, it is far more reasonable to assume that the CCC simply failed to remove this reference to an outdated practice rather than knowingly subverting

saying President Brooke’s hair is equally blonde and ginger. I suppose both are valid if you’re looking at it from different angles (or are color-blind), but one is certainly more correct than the other.

⁵³ See Article XII, Section 6(a) of the Constitution.

⁵⁴ *Teerlinck v. Student Union*, Vice President of Operations Huston, Dissenting.

Parliamentarian Thomas Musgrave, concurring

their bylaws. In addition, the use of the term ‘knowingly’ assumes some level of bad-faith on the part of the CCC – given that Division Representatives were still elected by club presidents in a democratic fashion, I similarly find it unlikely that the CCC’s failure to follow their bylaws was out of bad faith.

A

No matter whether this was accidental or out of bad faith, I am troubled with the dissent’s assertion that the CCC should somehow be held accountable for violating their bylaws. In this case, the Judicial Council is not a jury—we are not tasked with deciding guilt or innocence on a constitutional violation, as would a body like the Student Union Ethics Commission. We are solely responsible with addressing interpretive questions regarding the constitutionality of a Student Union enactment, which in this case, as the majority describes, is unconstitutional and unenforceable in practice. To ignore the fact that the enforcement of an enactment is unconstitutional out of desire to hold relevant actors accountable makes the Judicial Council more of a law enforcement agency than an interpretive body.

B

PRESIDENT BROOKE’s concurrence’s discussion of this argument as ‘accidental’ in my view, stretches my words far out of proportion. My assertion that the CCC’s failure to hold elections in alignment with their bylaws was likely accidental is one of many factors that supported my decision to align with the majority in this case—in fact, I would have likely sided with the majority without considering this at all. I solely use this point to illuminate my issue with the dissent’s emphasis on holding the CCC accountable despite essentially eliminating the CCC in the process.

* * *

Given these points, I concur with the majority’s decision.

Vice President Madeline Hutson, dissenting

STUDENT UNION JUDICIAL COUNCIL

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an INTERPRETIVE QUESTION

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NOTRE DAME STUDENT UNION

Decided October 30, 2024

VICE PRESIDENT OF OPERATIONS MADELINE HUTSON, dissenting.

My dissent regards the entirety of the majority opinion, which may be broken down into two major questions: I. Does plainly interpreting Article III, Section 6 (a)(i) of the Bylaws of the Club Coordination Council (CCC) become unconstitutional when enforced? And II. Are there members in the CCC? The majority answered yes to both questions. It is my interpretation that the enforcement of CCC bylaws as plainly read is not unconstitutional, and that, no, there are no legitimate members of the CCC.

Article III, Section 6(a)(i) of the Bylaws of the CCC clearly states that elections should be held “at the spring Club Budget Meeting(s).” The last election held at a Spring Club Budget meeting was in 2015. The last Spring Club Budget meeting was held in 2019. According to Article I, Section 2 (b) of the Constitution, “Each Student Union organization shall develop written bylaws by May 1st to establish the operational procedures (including attendance) necessary for the organization to carry out its constitutional duties.” The Bylaws of the CCC were created by the CCC itself, and could at any time be amended by the CCC as outlined in Article I, Section 2(b). Based on Article XII, Section 1, “The Judicial Council shall work to ensure that the Student Union operates ethically and within this Constitution, bylaws, and statutory codes. The judicial power of the Student Union shall be vested in the Judicial Council,” it is my interpretation that the enforcement of Student Union Organization Bylaws is the responsibility of the Judicial Council. I will also add that Article I, Section 2 (b) of the Constitution states that “Nothing in the bylaws shall

Vice President Madeline Hutson, dissenting

come into conflict with this Constitution,” and these bylaws must be approved by two-thirds of the organization’s voting membership and the Student Activities advisor of the organization as well as submitted to Judicial Council for review. These constitutionally-ensured levels of scrutiny and approval exist in part to ensure that the bylaws of Student Union Organizations are constitutional. I disagree that the enforcement of the CCC’s Bylaws outlining the setting of important elections violates the preamble of the Constitution stating, “In order to achieve the greatest possible contribution to our community, we endeavor to make efficient and effective use of the resources available.” In fact, I would argue that failure to enforce the Bylaws of the CCC be unconstitutional. Refusing to enforce the Bylaws of the CCC undermines the legitimacy of both the Constitution and the Student Union by disrespecting the importance of adhering to procedures that have been established via a democratic process. It also sets a dangerous precedent that failing to adhere to one’s own bylaws ultimately goes without consequence. I harbor concern that future violators of organization bylaws will point to this case and argue that because we did not hold the CCC accountable for their blatant disregard for the procedures outlined in their bylaws; procedures that were written and approved democratically by the organization itself as well as reviewed by SAO and the Judicial Council, they should also not be held accountable. Failing to enforce the procedures outlined in the Student Union Constitution would have major repercussions as this decision undercuts the validity of the Constitution and Student Union organization bylaws as a whole.

The majority decision to strike down the Bylaw “in this instance”⁵⁵ opens the door to picking and choosing when bylaws should be enforced and when they should not be enforced. I loathe the notion of inconsistent enforcement as it can only have negative future consequences such as erosion of credibility, perception of bias, and difficulty implementing future rules. The majority went on to decide to grant the CCC special permission to further violate their bylaws in order to suspend the clause of their bylaws stating that a meeting agenda must be made available to CCC members “no less than 24 hours before consideration” because the hearing of this case prevented the CCC from holding a meeting regarding a pending club funding request. I argue that granting permission to the CCC to violate their bylaws as a result of a case literally about their violation of

⁵⁵ *Teerlinck v. Student Union*.

Vice President Madeline Hutson, dissenting

bylaws is ludicrous. The reason for the existence of this section of the CCC Bylaws, to ensure that members have a fair amount of time to consider items that are to be brought to a vote, is a legitimate protection of democracy, and suspending it because the CCC finds it inconvenient that they violated their own bylaws and consequently faced a Judicial Council review and consequent appeal only further harms the legitimacy of CCC procedure. Perhaps the CCC needs to slow down and more properly approach proceeding rather than rushing into yet another bylaw violation. I am not ignorant to the fact that not hearing this club funding proposal would likely be an unfortunate consequence, but it is not the responsibility of the Judicial Council to remedy consequences of any organization's failure to adhere to their bylaws, especially if it means permitting said Student Union organizations to violate their bylaws.

Because the CCC did not conduct their elections according to their bylaws, the elections were illegitimate, and therefore I conclude that there are no legitimate members of the CCC. The majority cited the absurdity doctrine as a reason to defend the existence of the members of the CCC. They argued that invalidating the existence of members in the past nine years would require rescinding the senatorial votes and decisions of the illegitimate members, and that process would be “absurd.” While I agree that it would be difficult, it would be the legitimate, constitutional way to proceed. Just because it is difficult does not mean it is not right. I would sympathize with the concept raised by the Respondents that the real absurdity is not that the members of the CCC are illegitimate, but that the members of the CCC would knowingly violate their own bylaws.

* * *

With this, I respectfully dissent on the issue.