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STUDENT UNION JUDICIAL COUNCIL

No. 2425–4

PROCEDURAL DISQUALIFICATION

an INTERPRETIVE QUESTION

ANNA TEERLINCK, HENRIQUE DELL’ORFANELLO RAPOSO,
PETITIONERS *v.*
WILL HANNON, KEVIN CARDENAS, CLARE CULLINAN

Decided November 15, 2024

PER CURIAM.

The Judicial Council has worked to prepare an opinion for release in the case of *Teerlink v. Hannon* by November 17th, thus allowing our judgement to hold before the Financial Management Board convenes on Tuesday, November 19th.

While we have observed this tight timeline, the resulting opinion and dissent do not fully represent the complete view of the Judicial Council, but instead stand to administer our judgement and offer moderate insight into our interpretive reasoning in several crucial areas. Both the majority and dissenting opinions avoid meaningful discussion of several important constitutional and statutory rules and do not address each other as clearly and in as much detail as would occur under a normal timeline.

* * *

A finalized opinion, including the comprehensive reasoning of the Judicial Council, will be released at a later date in accordance with a regular timeline. That opinion will further include several rules that shall provide guidance in resolving areas of constitutional and statutory confusion. In the interim, this draft opinion, although binding, will not be published and shall be subject to formal revision before circulation.

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PRESIDENT HUNTER BROOKE delivered the opinion of the Judicial Council.

We have never disposed of an easy case. The questions that appear before us are uniformly complex and nuanced—deliberate thought and consideration is required before the reasonable and constitutionally sound answer reveals itself.

Occasionally, a case will pass beyond the first boundary of complexity. Questions of this sort demand even more time and careful examination of history, logic, jurisprudence, and constitutional and statutory text. They are significant, weighty, and tug at the mind.

Rarely, a case will pose such a profound, sweeping, and philosophical question that we must, in deep introspective thought and conversation, truly turn over and over again in our minds—a question that demands the best from each of us and reasoned judgement from all of us. Questions of this sort stand alone in demanding lengthy intellectual voyages into complicated and intricate lands, before the answers may be fetched and retrieved. And, upon returning from such an intellectual journey, we emerge a bit wiser and a bit sager. We may resurface in disagreement regarding the ultimate answer to the fundamental question, but we uniformly agree on the tremendous enigmatic mystery of the question at hand.

Without any doubt, we today shoulder one such rare case. While the superficial obstacle addresses whether a procedural disqualification as administered by the Club Coordination Council constitutes a

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funding decision as enumerated in Art. X, §3(h) of the Constitution,¹ the fundamental question at the heart of this complexity is the distinction between what constitutes a ‘procedure,’ and what constitutes a ‘decision:’ are they separable? If so, how? It is only by firmly resolving to answer this elemental question that we may honestly and fully dispose of this case.

Ultimately, we are convinced by the arguments presented by the Petitioners: we draw a distinction between ‘decision’ and ‘procedure,’ finding that decisions necessarily include a conscious, moderated, and intentional choice; while rules and procedure automatically remove from an actor the ability to meaningfully chose an outcome, and are, in fact, often expressly made for the purpose of binding an actor from administering a decision. We find merit to Petitioner’s argument that procedure may be distinguished by the way in which it is enforced, and in the core argument that “the existence of procedure eliminates the need for decisions.”²

Considering these reasoned definitions, we place procedural disqualifications—disqualifications made on procedural grounds—firmly in the procedure camp. These procedural disqualifications therefore do not constitute funding decisions.

Given these findings, the procedural disqualification of the Folk Choir cannot be appealed to the Financial Management Board on the basis of Article X, Section 3(h) of the Constitution. Petitioners are affirmed, and the decision of the Club Coordination Council shall stand.

I

To meaningfully resolve this case, we must start with the most fundamental question, and only thereafter may work to dispense with those of a less elemental status. We shall, then, address the gap between ‘procedure’ and ‘decision,’ and how that difference may be conceived and understood.

We will assume the starting premise that there is a difference between procedure and decision, because this fact becomes self-evident when the terms are characterized differently. We shall thus begin with explaining what is meant by these terms in a

¹ Art. X, §3(h): “The Financial Management Board may hear appeals of Club Coordination Council funding decisions and reverse such decisions by a two-thirds vote.”

² Petitioner’s Brief (internal quotations omitted).

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constitutional sense: namely, that a decision is that which is not procedure, just as that which is procedure is not a decision. Naturally.

II

A decision is an outcome rendered by an actor as a result of a selection between two or more meaningful alternatives. Some precipitating event must occur—for the Club Coordination Council, this event is often a club funding request—and a subsequent set of reasonable actions must be available from which the actor may meaningfully choose. At its most basic, a decision carries with it a necessary consideration and weighing of legitimate options before the ultimate selection of one alternative. Phrased another way, “from the definitions of decision, the defining words—consideration and choice—can be extracted.”³

Of course, the vigilant reader will note our careful requirement that, for a decision to occur, a ‘choice’ must be made; and that, without understanding what constitutes a choice, we have simply shifted the ambiguity and interpretive buck from ‘decision’ to ‘choice.’ Since we are in the business of resolving, not answering questions, let us address, then, what it means to make a ‘choice.’ There are two components: one that deals with conscious thought, and one that deals with human psychology.

A

We begin with the fair assertion that choosing is an act of conscious thought. The presentment of alternatives and ensuing selection from amongst those options cannot be unconscious because selection and choosing requires intentionality—one intends to choose. For example, this requirement that a choice be intentional (not necessarily well-reasoned, but intentional) is the difference between chosen and an accidental behavior: one does not choose to accidentally knock a glass from a table, to trip and fall, or to bump into someone. They accidental behaviors lack intentionality—one cannot unconsciously select an option from a list of alternatives because an unconscious selection would, by definition, not be a choice. How can one make a choice when they were not, to begin with, aware of the very choice itself, or of the available options?

³ Petitioner’s Brief (internal quotations omitted).

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Does the poor fellow who jams their finger in a door choose that accidental injury? Certainly not, because that finger-jamming lacks intentionality and is therefore not a choice. If, however, they went around intentionally letting smashing their finger in door hinges, then they would indeed be choosing.

B

The second component, which deals with the fundamental reality of human psychology, explains why a choice must be made from a set of narrowed, reasonable options. Humans do not choose from amongst an enormously large set of alternative outcomes, which may be tremendously broad, harmful, absurd, or preposterous. If mindful choices of this sort were made any time a set of alternatives were presented, we would become so tremendously weighted down by constantly and perpetually examining alternatives and making choices that the result would be complete and absolute paralysis, precisely because a set of choices unnarrowed by certain parameters is infinite. Imagine having to consciously think about every choice and intentionally choose from one alternative? Picture yourself in class: “should I take notes, or should I ignore the teacher? Should I stay here, or should I get up and leave? Should I sit respectfully, or stand up on my table and shout about model trains? Should I ask a question by raising my hand, or by jumping up and down, waving my arms wildly, and reciting the alphabet backwards?” Of course, we do not actually examine these alternatives, because the number of alternatives of infinite.

This nonsense can go significantly further. Imagine you intended to raise a simple enquiry—but, before you can even begin to ask this question, you must examine the various ways you might attract the professor’s attention, and the various ways in which the question might be posed. You would start: “should I shout out my question while doing a handstand? No, perhaps not. What about suddenly running up to the teacher and asking them? No, that might not be appropriate. What about ripping off my shirt and waiving it over my head to attract attention? I think I might refrain from that. What about removing the ruler from my backpack, and . . .”

And so on, and so on, and so on—until the class ends. The result? The question is never asked because the questioner became so bogged down in trying to make a choice from an infinite set of alternatives not limited by reasonable confining criteria. If a choice is a selection among alternatives without any option-narrowing, the

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person becomes paralyzed by choice because the number of potential choices in every possible scenario is nearly infinite. This argument, that choices are made from unlimited options, misunderstands—forgot, actually—fundamental human psychology: when the reasonable person decides to go to class, do they consider, even for an instant, whether they will: (1) walk normally, or (2) cartwheel all the way to class, singing the ‘Little Einsteins’ theme for public pleasure while sporting a large yellow tube-sock as a hat, leather gloves for shoes, a purple herringbone shoestring for a bracelet, and a tablecloth for pants? We do not engage choosing between these unrestrained options because our minds cannot cope with such significant cognitive load required to handle such uncertainty.

Of course—if you have considered these and other options, and if you have subsequently made your selection, we stand corrected. If, while reading this opinion, you have actively considered whether you should instead be giving your roommate an uneven haircut with your nail-clippers, we withdraw. But we are fairly confident in asserting that you have not made these weighty and difficult choices, and that you have not thought of your nail-clippers until we ourselves raised the point.

This same logic applies to the actions of members of the Student Union. Just as our colleagues do not consider whether to cartwheel to class or give nail-clipper haircuts (though we concede they are likely more partial to these activities than the average student) they also do not consider whether to follow a rule or procedure absolutely every time a plainly-regulated situation presents itself—which, as it happens, is constantly. We engage in a rules-based order; this means that the actions we take and the choices we must make are governed by the rules—rules that narrow the previously infinite series of options down to a reasonable selection. But we do not question whether to follow a rule at every juncture one appears.

Let us remain in the real world. In reality, choices are not made from an infinite set of often absurd, potentially harmful, alternatives. This is what we mean when we describe a choice as rendered amongst ‘meaningful,’ ‘legitimate,’ and ‘reasonable’ options: we issue these stipulations to convey that a choice is simply not a selection between any number of alternatives—no matter how ridiculous—but rather is made from alternatives narrowed by sensibility. If our opposition would not concede this point, they would remove from themselves any ability whatsoever to explain the functioning of human society. Our view of narrow choice must be correct for people to manage to do anything; our view of narrow choice therefore is correct because

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people do manage to do some things. The evidence may be found in humanity.

The opposing view—that a choice is made anytime options are presented (no matter how ridiculous, silly, impractical, or risky)—misunderstands basic human psychology and the reality of conscious thought, because no rational person actually thinks in this way. Attempts to explain this away through logic forgoes the fact that humans are often emotional, even more so than they are logical.

If the opposition does not concede that a choice is conscious, they cannot explain any unintentional action, including an accident; and if they do not concede that a choice is between a set of restrained options, they cannot explain human society.

C

Two immediate consequences follow from these two conclusions. First: if a decision requires a choice, and if a choice must be intentional, that the decision must also be intentional. Second: a choice must be made among a set of options limited by sensibleness. A decision therefore must be made among options that are restrained by society and our rules-based order, as well. A decision, in summary, must be intentionally made by choosing from amongst a set of limited, reasonable options.

We thus finally return to the direct question at hand: does a procedural disqualification fall into this category?

Clearly not. A procedural disqualification lacks several components: first, the intentionality, in the sense that the Club Coordination Council did not intend to make a choice; and, second, reasonableness among outcomes, in the sense that stopping every procedure to ask whether to suspension one's governing document would be wholly unreasonable, no basis for logical governmental functioning, and, again, ignorant of the simple human reality that individuals within the Student Union plainly do not ask whether to follow a procedure question every time one appears.

For the time being, it is enough to show that a procedural disqualification is not a decision. We need not affirmatively demonstrate it to be a procedural act; though this shall come later.

III

Respondents argue, and the dissent agrees, that this procedural disqualification must be viewed as a funding decision. The

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implications of this holding are tremendous, and rather worrying. For instance, we would be rather concerned that failing to distinguish between ‘procedure’ and ‘decision’ would allow any internal procedure employed by the process of the Club Coordination Council to be considered a funding decision. Because the Club Coordination Council exists primarily to serve as a club funding and financing body, very nearly any decision they render can be construed to impact finances.

Petitioners present the example of appealing club activity status on the—a power over which the Constitution clearly seems to indicate the Financial Management Board does not enjoy appellate jurisdiction—on the grounds that rendering a club inactive impacts club funding. From the dissenting perspective, appeals of these decisions would have to be allowed.

We can think of other procedures, still: the Club Coordination Council has in their bylaws processes outlined for the internal election of the President and Vice President. We can envision a scenario in which a newly elected President quickly applied increasingly stringent funding rules—could the election of the President therefore be considered a funding decision? And subsequently be appealable to the Financial Management Board? Could the FMB intervene to overturn the results of that election, if club finances are reasonably impacted? If ‘procedure’ is nothing more than a series of decisions and ‘funding’ is a decision that impacts club finances—the dissenting perspective—this certainly seems like a reasonable conclusion.

What about an appeal that bases itself on the argument that the divisions of the Club Coordination Council disadvantageously impact the finances of certain clubs? Can the Financial Management Board move clubs from one division to another? Eliminate certain divisions? The divisions are enumerated in the Bylaws of the Club Coordination Council⁴—but if procedure and rules are nothing more than complex decisions, why should the foundational organizational structure of the Club Coordination Council be special? These ‘divisions’ are nothing more than elaborate decisions, and because they certainly impact club funding, they are, after all, funding decisions. Because there is no such thing as ‘procedure,’ The Financial Management Board—the dissent would argue—can overturn nearly any statutory rule that can be at least somewhat connected to club finances.

This frightening conclusion subverts the concept of rules-based order, and the judicial function of our own branch of government. It

⁴ Art. II, §1(b) of the Bylaws of the Club Coordination Council.

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is sweeping, pays little thought to the idea of judicial temperance and restraint, and certainly ignores the fact that the Constitution grants to one branch, and one branch alone, the ability to “enjoin the enforcement of enactments found unconstitutional.”⁵

We recognize the basis upon which the dissent builds its argument that the Club Coordination Council recommends, and does not actually allocate, funding; and therefore that the Financial Management Board has jurisdiction over the Club Coordination Council. Of course, this argument assumes that the Club Coordination Council is issuing these funding recommendations to the Financial Management board, and, not, for example, any of the other dozen bodies on campus—including our university’s administration, who are actually responsible for moving the cash itself. But the dissent does not get bogged down in questions of who recommends what to whom.

Similarly, we believe conclusions regarding Financial Management Board superiority are totally beyond the scope of the question at hand. “If it is not necessary to decide more to dispose of a case, then it is necessary *not* to decide more.”⁶ Even putting aside the fact that it is not necessary to decide superiority questions, we recognize holdings of this sort to be entirely beyond the scope of the Judicial Council—even when lobbied for an answer. We are inclined to view all branches of government (the Student Union organization enumerated in Article I, Section 2 of the Constitution) as co-equal and co-dependent, none superior or inferior to any other. We believe questions concerning the superiority and inferiority of certain branches are highly political, and, thus, not justiciable. If ever there were a large question we should refrain from answering, and exercise restraint, it is this one. Even if these superiority questions have answers—and that, itself, is an assumption—those answers should not come from us. Not in any case; and certainly not in this case.

IV

As a final point, we believe our ruling aligns fairly with the original legislative intention underlying the modern language expressed in Art. X, §3(h) of the Constitution.

Until the very end of the 2022-2023 term, the Constitution read, “The Financial Management Board may hear appeals of Club

⁵ Art. XII, §3(a).

⁶ *Dobbs v. Jackson Women's Health Organization*, 597 U.S. ____ (2022), Roberts J., concurring.

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Coordination Council decisions and reverse such decisions by a two-thirds vote.” This language was amended by the March 29, 2023, passage of SO2223-28, which inserted the word “funding” and thus changed the language to what stands today. While SO2223-28 contains only one sentence of description regarding this particular amendment, that single explicatory clause is itself informative enough to determine original legislative intent: “Art. X, §3(h) of the Constitution] currently reads as FMB having the power to hear appeals of ANY CCC, decision, which is clearly not its intent, and so the funding aspect was added to clarify the intent.”⁷

At least ostensibly, the constitutional language before March 29, 2023, may have allowed appeals of Club Coordination Council elections. Appeals of procedural disqualifications may, too, have been valid, on the grounds that the very decision to implement the procedure was itself the basis for the appeal. This interpretation appears to have been clearly understood as reasonable and possible, and the constitutional amendment accordingly clearly appears to have been a reaction to insuring against such interpretive eventualities. We agree that there is no reasonable way to view SO2223-18 other than as an attempt to limit the appellate jurisdiction reserved to the Financial Management Board precisely to prevent the very scenario which today presents itself.

We therefore believe our ruling keeps with the historical narrowing of appellate jurisdiction for appeals in alignment with the reasonably clear intention of the Senate in passing SO2223-28.

* * *

The application of procedure and the rendering of a decision are inherently different: “by definition, procedure cannot be a decision.”⁸ The Club Coordination Council applied preexisting procedure, and did not execute a decision. The procedural disqualification of the Folk Choir is not appealable to the Financial Management Board on the basis of Art. X, §3(h). The petitioners are affirmed, and the decision of the Club Coordination Council shall stand.

It is so ordered.

⁷ SO2223-18, An Order to Amend the Constitution of the Student Union to Better Reflect the True Operation of the Student Union. Jared Schlachet, *Student Union Parliamentarian* (original capitalization and underline).

⁸ Petitioner’s Brief

Historian Elijah Jones, dissenting

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Decided November 15, 2024

HISTORIAN ELIJAH JONES, with whom VICE PRESIDENT SERENA
MELONIO joins, dissenting.

My dissent concerning the majority opinion hinges on two critical points that the majority overlooks, in an attempt to uphold an ends-oriented approach to interpreting the Constitution of the Undergraduate Student Body of the University of Notre Dame du Lac (the Constitution). The first point is that procedure and decisions are inherently adjacent and inseparable. The second is that Article VII Section 1(a) of the Constitution makes it clear that the CCC “recommends” funding allocations, meaning these recommendations are not final and can be appealed, per Article X Section 3(h) of the Constitution.

I

To be blunt, a procedural decision is a decision. No matter what word salad or mental gymnastics you come up with to “prove” otherwise, procedure cannot be separated from decision-making. In this case, the majority’s first attempt at mental gymnastics is strategically avoiding calling this scenario a procedural decision. By opting to call it a “procedural disqualification”, they attempt to remove the connection to this being a decision. This is similar to saying that you “parted ways” with someone instead of saying you fired them. This does not change the action being done, but rather the connotation it is associated with. Similarly, using the term “procedural disqualification” does not change the fact that the CCC made a decision to

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disqualify a club from funding, based on established procedure. The connection between procedure and decision-making cannot be erased.

A

The majority also argues that you don't decide to follow procedure, you just do it. In other words, the argument is made that it flows naturally to follow the rules/procedure, but it is a decision to stop and decide not to follow the rules/procedure. This sounds reasonable at face value, but does not survive the test of logical scrutiny. The majority agrees that not following the rules is a decision, so I will represent it as the statement, "I decided not to follow the rules." If you negate this statement, which means to take the opposite, you get the statement "I decided to follow the rules." Following and not following the rules are both decisions.

Thus, the majority incorrectly paints one side as being a decision and the other as being something that happens automatically. Even if it sounds plausible, it is not possible within the laws of logic to "automatically" do something without making a decision. It is also not logically possible to assert that someone can decide to do something, then to also assert that its negation is not a decision. To be clear, if something is considered a decision, its negation must also be a decision; they are two sides of the same coin. By misapplying the negation, the majority has turned this into a question of "deciding vs automatically". In reality, it is a question of "deciding vs deciding not to."

To return to the aforementioned example, you either decide to follow the rules, or you decide not to follow the rules. One may believe that they are following the rules "automatically", but the act of following the rules is inherently a subconscious decision being made. If you can decide to not follow the rules, you must then be able to decide to follow the rules; every statement and action can be negated. Thus, CCC procedure boils down to a decision to give a club funding, or a decision not to give a club funding. In this case, a decision was made not to give a club funding, based on procedural requirements.

B

Moreover, I want to take time to address the concern of the majority over the classifications of a decision. The majority argues that not everything can be classified as a decision, and we agree.

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Something that happens by accident, such as a person stubbing their toe, cannot be considered a decision. However, the majority is comparing apples and oranges, as we are discussing decisions, not accidents. An action is classified as a decision if performed intentionally, and an accident if performed unintentionally. These are two separate logical premises, and only one is at play here. The CCC intentionally followed procedure, which makes it a decision. No negation can turn an accident into a decision, nor can it turn a decision into an accident. Similarly, no negation can turn something happening automatically into a decision; negations work within established logical premises.

Additionally, the majority discusses the interworkings of the human mind, and how certain decisions are never considered by the human mind. While the majority is correct in assuming that people don't generally "cartwheel all the way to class, singing the 'Little Einsteins' theme for public pleasure while sporting a large yellow tube-sock as a hat, leather gloves for shoes, a purple her-ringbone shoe-string for a bracelet, and a tablecloth for pants", they still have the choice to do so. Because they have the choice to do so, by the laws of logic, you can negate their choice to say that they have the choice not to act in such a silly manner. It may be "automatically" determined by some to not act in a silly manner, but the choice to do otherwise is fundamentally present, meaning their "automatic" determination is a decision. Regardless of what scenario you come up with, as long as it involves an action or statement, it can be negated, thus making it a decision.

Concerning CCC funding decisions, Article VII Section 1(a) of the Constitution makes it clear that one of the purposes of the CCC is to, "recommend funding allocations for all undergraduate clubs." There is no way to read the word "recommend" and to interpret it to mean "decides" or "is the final authority on." It would take a most egregious form of eisegesis for one to hold that the Constitution enables the CCC to make unappealable decisions regarding club funding. Even if one argues that the CCC Bylaws allow for procedural disqualifications, the Constitution has supremacy over bylaws, according to Article I Section 2 (b) of the Constitution. This means that procedural disqualifications are fundamentally funding recommendations, which make them appealable to the FMB, per Article X Section 3(h) of the Constitution.

Moreover, I understand the importance of an ends-oriented approach in interpreting the Constitution. However, the majority's attempt at ends-oriented interpretation is a form of wishful thinking

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that borders too much on eisegesis. At the end of the day, the text says what the text says, and our job is to interpret what the text says. We are given leeway through end-oriented interpretation, but the standard is to still interpret what the text says, not what we think it should say. Furthermore, while I do not agree with the slippery slope fallacy that the majority uses to argue against ruling in favor of Respondents, I do understand the concerns of the majority about the ramifications of our ruling. This case has huge implications concerning how much power is granted to certain branches of the Student Union, and that fact cannot be understated. I wish it were possible to allow the club to appeal in this instance, then work to close the door on this issue once and for all. However, that is not the case, as we are deciding this issue for all clubs, lest we have to go to a hearing for this issue every time it arises.

So all things considered, the facts are simply on the side of the club here. I would like to see sections of the Constitution, CCC Bylaws and FMB Bylaws clarified, but when reviewing what is written, clubs should undoubtedly be able to appeal the CCC's "recommendation" of a "procedural disqualification", which is inherently a procedural decision, which is inherently a decision.

With this, I respectfully dissent.