In re: Arts & Sciences Council Constitution

ASSOCIATE JUSTICE TERSCHLUSE joined by Chief Justice Buchbinder, Associate Justice Henzer, Associate Justice Adamakos, and Associate Justice Oliff.

On October 20th, 2015, Constitutional Council received an interpretation request concerning the Arts & Sciences School Council. Article IV, Section 8, Subsection (a) of the Constitution states that each school may have a “self-governing School Council.” For the past several years, each academic division has had such an entity with one exception: Arts & Sciences (“School Council”), which has operated inconsistently for the past several years. Testimony from Student Union officials indicates that the School Council was irregularly staffed by students in some years but not all, while it was practically rendered nonexistent because of no programming efforts.

Last year, the previous Student Union President, wishing to recreate the School Council, appointed several students who then created a draft constitution. Those individuals have since graduated. Due to lost information, miscommunication and significant confusion about the School Council’s existence, the current Student Union Vice President of Administration proposed to hold an election to re-establish the School Council. An exact procedure regarding the creation of this body could not be located and thus Constitutional Council was asked to look into the issue.

The Constitutional Council was faced with two questions: (1) is it necessary to follow the old School Council’s draft constitution, and (2) in the absence of said constitution, is it permissible for Student Union to initiate elections for the School Council?

Based on the Student Union Constitution, Article VI, Section 1 (c) (9), the Constitutional Council has jurisdiction. Subsection (c) (9) further asserts that the Council shall “Hear all cases of discrepancy regarding elections and referenda, and activities of the Election Commission.” Because this case involves actions of the Executive Board to recreate the School Council and elections organized by the Election Commission, this case falls under the jurisdiction of the Constitutional Council.

Constitutional Council considered whether it is necessary for the new School Council to follow the old draft constitution made by the unelected School Council. Article IV, Section 8, Subsection (b) of the Student Union constitution states that “The School Council recognized by the Student Union shall be the School Council recognized by a majority of the constituents in that undergraduate division.” A School Council’s legitimacy depends upon the constituency and the democratic process. The lack of elections in the 2014-2015 academic year left the body as an unrepresentative organization of the Arts and Sciences constituency. Thus, the Constitutional
Council holds that the old draft constitution holds no power because it was created by individuals not recognized by the Arts and Sciences student constituency.

Second, the Constitutional Council considered whether, in the absence of a School Council constitution, it is permissible for Student Union Executives to initiate elections for the School Council.

The question remains as to how to reestablish the School Council in the absence of a constitution. Article IV, Section 8, Subsection (c) states that, “Each School Council shall write and amend its own Constitution…” This clause requires that the creation of the School Council comes first, and its constitution come second. Normally a constitution outlines the roles and powers of an organization’s officers. However, because there is no constitution, the Student Union Executive Board, by appointing specific positions or putting them up for election, would de facto create portions of a constitution before the School Council could write its own. It logically follows, then, that an election of general body members rather than one of specific positions was constitutional. In writing a constitution, these general body members, as a “self-governing School Council,” (Article IV, Section 8, Subsection (a) of the Constitution) will then decide specific roles and responsibilities.

This then brings into question the election of a president to the School Council. The Constitutional Council finds that this position is constitutional. Without a constitution, the president can only serve as an organizer, or procedural chairperson, during the constitution writing process until the new constitution specifies otherwise. The president will thus serve their constituency as the organizer of this group until such a time that the new constitution has been drafted and implemented, with the leadership positions enumerated within it.

In summary, the Constitutional Council holds that because the draft constitution has no legal basis, there currently exists no constitution for the Arts and Sciences School Council. In instances like this, when no School Council constitution exists, the Student Union Constitution stipulates that the School Council can write its own. In order to create this School Council, an election of general delegates and president occurred. This election, organized by the Election Commissioner this past fall, is constitutional.

There was no dissent.