On November 4, 2015, Constitutional Council was posed with several questions regarding the most recent legislative election which resulted in a tied vote. At the closing of the ballots, the final, eleventh open treasury seat was tied between two candidates who both received exactly 393 votes. Seeing no rules or precedents dealing with tied election results, the Election Commissioner filed an official request with the Council. The questions the Commissioner posed are as follows: “If the governing documents do not outline steps to resolve this tie, whose authority is it to determine the next steps? What does the Council suggest as to the specifics of those next steps?”

Constitutional Council began its decision by looking at the language found in the Constitution and Statutes of the Student Union. From Article VI Section 1 Subsection (c 9) of the Constitution, the Council has jurisdiction over this matter as the document gives this body the right to “Hear all cases of discrepancy regarding elections and referenda, and the activities of the Election Commission.” The establishment of this jurisdiction stems from both the discrepancy clause as well as the activities of the Election commission clause. Starting with the first clause, the more straightforward of the two, the Council interprets it to mean the Constitution has given the Constitutional Council the right to make a ruling on any discrepancies pertaining to elections. The Council has decided that a tied election with an absence of rules by the Election Commissioner is a discrepancy

The second clause of interest, that of the activities of the Election Commission, brings into light the second question of the Council. Broadly speaking, this is a question regarding the powers, duties, and obligations of the Commission. The first issue the Council addressed was the actual existence of this body. Based off of the Statutes, Article IV, Sections 1 (b) and 3 (a), we have concluded that the Commission is created by the Statutes of Student Union, but filled by the Election Commissioner as he or she sees fit with the approval of the Legislative branch. This election cycle, the Election Commissioner chose to not establish a full Commission, but rather spearheaded the efforts of the election on his or her own. Because of this, the powers and duties of the Election Commission fall solely on the Election Commissioner. One of those powers is the creation of election rules with the approval of Senate and Treasury, based on the Statutes, Article IV, Section 2 (a) and (b).

After understanding the abilities and limits of the Commissioner, the Council shifted to the second question presented: does the Constitutional Council have the authority to determine
the next steps given the absence of rules and documentation in the event of a tie? Returning once more to Article VI of the Constitution, the Council has decided that it does have the authority to determine the next steps in this case because the Statutes have provided the Election Commissioner the ability to establish election rules, and the Constitution has provided the Council the ability to hear cases that involve “the activities of the Election Commission”. And according to Article IV, Section 5 (a) of the Statutes, “All election rules shall be established by the Election Commission prior to the distribution of petitions for the subsequent elections….” Furthermore, allowing the Election Commissioner to decide how to resolve this tie, in effect creating new election rules after an election, would violate the Statutes, Article IV, Section 5 (a), which only grant the Commissioner the power to create election rules before the election has occurred. Because of an absence of such rules before the election, it is the duty of the Constitutional Council to respond in appropriate measure and hear this case.

However, the definition of hearing in this matter leads to further discussion on whether the Council has the ability to make such a directive regarding the next steps in this election. The very nature of this body and the Constitution which it follows has led the Council to delve into its limits, responsibilities, and obligations reaching the final conclusion that yes, Constitutional Council has the power to make a directive regarding the next steps for this tie. The Council’s power both stems from the powers granted in the Constitution as well as the limitations it imposes. The power to issue such a directive comes from the absence of previous rules and the authors’ of our Constitution intent on the Council to step in when such discrepancies take place. We, as a body, are obligated to ensure that action is taken following this decision and as such will issue a directive to the Election Commissioner.

The ability to make a directive leads to perhaps the most pressing question within this case, the action itself. It is the decision of this court that the Election Commissioner shall hold a revote for the two tied candidates to be voted on by the constituency. Article IV Section 6 of the Statutes states that “all constituents in all divisions are eligible to vote for the Student Union Executive Officers, Treasury Representatives, Constitutional Amendments, and Referenda issues.” The power of the Treasury Representatives stems from the constituency, and as such, it is the constituency alone who shall have the final say on the tied Treasury seat. Therefore, the deciding factor in such a case where the determination of their representatives comes into question, the ability to make a choice must fall back to the constituency. Because the decision of Treasury representatives falls solely on the constituency, the only constitutional solution to this situation is a runoff election between the two tied candidates. An appointment, or other similar process, would unconstitutionally take the decision away from the constituency entirely. A complete reelection would have the potential to remove representatives already selected by the constituency, therefore unconstitutionally invalidating the constituency’s initial selection. Because the tie has fallen on the eleventh and final open seat, the discrepancy is with this seat specifically. Thus, the Constitution provides us with only one possible remedy: a runoff election
between the two tied candidates voted on by all constituents that were eligible to vote in the initial election.

It is the decision of this body that Constitutional Council has the ability to hear a case regarding ties in an election in the absence of rules dictating the outcome in the event of a tie, has the authority to determine the next steps given the absence of such rules, and has the power to make a directive regarding the next steps in such circumstances. It is the decision of the Constitutional Council that the position for the Treasury seat must be decided by the constituency of the Student Union in a runoff election between the two tied candidates.

There were no dissents.