September 18, 2017

In re: Senate Seat Vacancies

ASSOCIATE JUSTICE BROITMAN AND ASSOCIATE JUSTICE STOLBERG, concurrence in judgment Associate Justice Kirley, and concurrence in thought Alternate Justice Tam.

On September 8th, 2017 Constitutional Council received an interpretation request from the Speaker of the Senate. The Council was asked to determine whether the Speaker is required to fill Senate seats when they fall vacant, what the Constitution mandates for procedure, and the timeframe for which any such decisions need to be implemented. Constitutional Council has decided that the Speaker is required to fill the vacant seats. The Council also decided that the Speaker has the power to fill such vacancies. However, neither the Constitution, nor this Council, mandate a required timeframe for filling the vacant Senate seats.

First, Based on the Student Union Constitution, Article VI, Section 1 (c) (9), the Constitutional Council has jurisdiction over this issue. Next, we consider whether the Speaker is required to fill the vacant senate seats. Article VII, Section 4 (f) grants the Speaker of the senate the power to fill vacant senate seats by appointment:

“If a Senate seat falls vacant, the Speaker of the Senate shall have the power to appoint a constituent of the Student Union to serve the unexpired term.”

The Speaker’s power of appointment goes unquestioned. The question for the Council to determine was whether the Speaker was required to fill the vacant seats. For this question, the Council turned to Article VII, Section 4 (d):

“Preceding the spring semester elections, the number of undergraduate constituents at the University shall be obtained by the Election Commissioner. There shall be one (1) Senator for every two hundred fifty (250) constituents. If the remaining number of constituents is greater than one hundred twenty-five (125), there shall be one additional Senator.”

The Constitution states that the number of Senators shall be fixed once a year, before the spring elections. The consistent ratio of “one (1) Senator for every two hundred fifty (250) constituents” is explicit: there must be an exact number of Senators for each year. Since the Constitution mandates a fixed number of Senators, and not just Senate seats, the Council holds that the Speaker is required to fill the vacancies in order to satisfy this requirement. The Senate must be
composed of the number of Senators mandated by the 1:250 ratio determined before spring elections each year.

Since the Council has determined that filling the vacant seats is a Constitutional mandate, we then consider the timeframe for implementation of this requirement. In the constitution, the term “vacant” is mentioned five times, only one of which specifies a time frame for filling a vacancy (See Class Councils, Article IV, Section 9 (g)). As a result, this Council shall not derive a Constitutional timeframe to enforce, nor can it create one to impose. As a result, the Council requires the Speaker of the Senate to fill the vacancies, yet has no authority to impose a timeframe on the decision.

*It is so ordered.*
Concurring in the Judgment of the Court,

On September 8th, 2017, Constitutional Council received an interpretation request from Varun Lahoti, the Speaker of the Senate, asking if he was “required to appoint people to open [Senate] seats” or whether he could “wait till the fall.”

The majority opinion is that neither the Constitution, nor this Council, mandate a required timeframe for filling the vacant Senate seats. However, based on the vision statement in the Student Union Constitution, which states the purpose of SU is to serve every undergraduate student, I believe vacant seats should be filled within two weeks.

The number of senate seats exists to fully represent the student body; one senator for every two-hundred and fifty students. If there is single vacant seat for a prolonged period of time, then there are two hundred and fifty potential student body voices that are lost. The vision statement in the Student Union Constitution is written as follows:

“It is the vision of Student Union to responsibly serve and empower every undergraduate student”

If a seat falls vacant and bills are introduced and voted on during this vacancy, this leaves a significant gap in the student body that is not represented as senators will have no say on this bill. While there is no explicit article of the Constitution that demands Senate seats be filled within a certain time, I believe it is implied that to adequately fulfill the duties of SU Senate, and to adequately represent the student body, there must not be a long period of time (say, the Speaker should not wait until spring elections to fill seats) where there are vacant senate seats.

Using the Class Council time frames for reference under Student Union Constitution, Article IV, Section 9, Point (g)

“If a position falls vacant, candidates will be nominated within two (2) weeks”

Senate seats should be filled within that timeframe. If the Speaker chooses to wait until SU elections in the spring to fill these vacancies, he/she is purposefully undermining the student body by limiting the number of constituents and opinions.
ASSOCIATE JUSTICE SCHER-ZAGIER dissenting, joined by Chief Justice Henzer.

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Article VII, Section 4 (f) of the Student Union Constitution states:

If a Senate seat falls vacant, the Speaker of the Senate shall have the power to appoint a constituent of the Student Union to serve the unexpired term.

It is important to note the key wording here. In the case where a Senate seat is vacant, this clause says “the Speaker of the Senate shall have the power to appoint” a replacement (emphasis added).

That having the power to carry an action does not imply an obligation is clear from common sense, logical necessity, and the Constitution itself. A power implies the ability and the authority to carry out an action, not a requirement to do so. Take Article IV, Section 2 (e), which states that the president shall “have the power to remove such persons [executive personnel] from their positions.” The suggestion that this means the president must remove these appointees would clearly be incorrect. Similarly, the president shall “[h]ave the power to veto...legislation” and shall “[p]ossess the power to call emergency meetings of the Legislative Branch.” There are dozens of examples in the Constitution, but one final one in Article V, Section 2 (b), plainly shows the logical fallacy of the Majority. It says the Speaker of the Senate “shall...[h]ave the power to remove a Senator from office after two (2) unexcused absences.” In this case, it is the same officer of Student Union and the same wording (“shall have the power to”), yet the Majority does not claim that the Speaker must remove any Senators after two unexcused absences—not would it make any sense to do so.

The Majority, of course, points to Article VII, Section 4 (d):

Preceding the spring semester elections, the number of undergraduate constituents at the University shall be obtained by the Election Commissioner. There shall be one (1) Senator for every two hundred fifty (250) constituents. If the remaining number of

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1 Article IV, Section 2 (f).
2 Article IV, Section 2 (i).
3 This is certainly tangential, but if the Constitution wanted Senators removed after two unexcused absences, it would merely command the removal of Senators after such absences, rather than granting the Speaker the power to remove them.
constituents is greater than one hundred twenty-five (125), there shall be one additional Senator.

Importantly, this entire clause is one unit in the Constitution. It is not broken down into different subclauses, but rather is one clause within “Section 4. Election and Appointment of Senators.” *A priori*, then, a reasonable reader would assume that the sentences would describe a specific qualification regarding Senators’ election and appointment. Indeed, the purpose of this clause quickly becomes clear: It is to outline the process of determining the number of Senate seats. The very first words, “[p]receding the spring semester elections,” situates this clause at a point in time—before the spring elections. At that time, the Election Commissioner will obtain the number of constituents, demanding one Senator per 250 constituents. In this, there is no disagreement with the Majority.

The Majority, however, seizes on the statement, “There shall be one (1) Senator for every two hundred fifty (250) constituents,” and rips it from the surrounding language and structure. Aha, they claim, this demands a certain number of Senators, and since there must be a certain number of a Senators, someone must appoint those Senators. Clause 2 (f) gives that power to the Speaker of the Senate, so they impute that the Speaker must never allow the ratio to waver.

We can imagine the Speaker, valiantly watching every student’s movements—as they go abroad, become ill and must leave, lose their vias after falling below course requirements, or suddenly switch from part time to full time—and constantly removing and adding Senators to fulfill this Constitutional demand.

Such inanity surely was never imagined by the writers of the Constitution. We need not and should not attempt to discern their motives, as they anticipate the very confusion about this sentence. The Constitution sets the clause off, showing it as part of a specific requirement regarding initial determination of Senate seats, outlines when this obligation applies (“[p]receding the spring semester”), and specifically adds a qualification two clauses later. Instead of requiring appointment to vacant positions, as it does repeatedly with class councils⁴, the president⁵, and executive officers⁶, the Constitution shifts language from “shall” or “will” to “shall have the power to” with Senate and Treasury seats. The Constitution repeatedly makes

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⁴ Article IV, Section 9 (g): “If a position falls vacant, candidates will be nominated within two (2) weeks by the Class Councils and confirmed by majority votes in both the Senate and Treasury.” (emphasis added)

⁵ Article VII, Section 3 (c): “If the office of President falls vacant, the Vice President of Administration shall be installed as President for the unexpired term.” (emphasis added)

⁶ Article VII, Section 3 (d): “If the offices of Vice President of Administration, Vice President of Finances, Vice President of Programming or Vice President of Public Relations fall vacant, a successor shall be appointed to fill the unexpired term by a majority vote of the Senate and the Treasury.” (emphasis added)
clear the Speaker’s discretion in appointing Senators to fill vacant seats. Whatever the merits of filling Senate seats, that decision is not the prerogative of Constitutional Council but of the Speaker.

*We respectfully dissent.*