March 21, 2009
In re: Legislative Protocol
Constitutional Council Majority Opinion

ASSOCIATE JUSTICE CÖHEN and ASSOCIATE JUSTICE TAYLOR, joined by Associate Justice JONES, Associate Justice LAM, and Chief Justice ZAILA; deliver the Opinion of the Court:

On February 23, 2009, a constituent submitted a pair of closely related grievances concerning the nature of legislation in Student Union and the means by which it is proposed. To address this issue, Constitutional Council examined four particular questions: 1) Who has the right to propose legislation? 2) Is the General Budget considered legislation? 3) Are Budget Appeals considered legislation? 4) Accordingly, are the General Budget and Budget Appeals subject to Presidential veto?

To begin, the Constitutional Council addressed the definition of ‘legislation.’ Since the term is not explicitly defined by the Constitution or the Statutes, we first looked at that which is unquestionably legislation: Senate Resolutions and Amendments to the Statutes and Constitution.

Senators may pass a resolution by majority vote (Const. Article V, Section 2a - 2) which then becomes the official stance of Student Union after three days, subject to presidential veto (Const. Art. V, Section 4a). Statute Amendments must pass each legislative body by a majority of two thirds. As with any legislation, these Amendments are enacted in three days, subject to presidential veto. Though amendments to the Statues must be passed by a two-thirds majority in both bodies, which is sufficient to override a presidential veto, in the event of a veto a second vote must still be held. Constitutional amendments must pass the body in which they are first proposed by a two-thirds majority, and then the other body by a one-half majority, before passing on to a general vote by the Student Body. Thus, we view the amendment as the joint proposal of the entire legislative branch, which is then enacted if the Student Body approves by a majority vote of two-thirds. Since this legislation is merely proposed by the legislative branch rather than passed by it, the legislation is therefore not subject to presidential veto (Const. Art. IV, Section 2f).

From this point of reference, we examined the question of the General Budget and Budget Appeals. Alongside, we examined Treasury Allocations as a naturally relevant question.

The General Budget is proposed to Treasury by the Vice President of Finance (Stat. Art. I, Section 3b). Treasury’s power in this instance is to approve the Budget or to deny it; they do not have the power to amend it. Once approved by Treasury, the General Budget must then be approved by Senate; again, the body cannot amend it. Thus, we view this as parallel to the confirmation process in which presidential appointees are approved by the bodies of the legislative branch. The legislative branch cannot suggest an alternative, but can only vote to pass or reject the General Budget. Thus, the General Budget is not legislation and is therefore not subject to presidential veto.
Budget allocations concern the movement of monies from the Treasury Allocations account to student groups' accounts; similarly, budget appeals concern the movement of monies from the Treasury Appeals account to that of student groups. In every instance in which this transfer is mentioned in the Constitution or Statutes, the active verb is "allocate" rather than "pass" or "enact." Thus, we view this allocation as different from routine legislation. Furthermore, the allocation of monies by the Treasury, both through budget allocations and appeals, parallels actions performed by the Vice President of Finance and the Executive Council. The Vice President of Finance allocates monies for appeals of under $1000 from Category I and Category II student groups (Stat. Art. I, Section 3f), and the Executive Council allocates monies for the appeals of non-category student groups (Const. Art. IV, Section 7b-1-iv). Furthermore, the Vice President of Finance allocates operating funds to non-category student groups (Stat. Art. I Section 6h-4). Therefore, neither budget allocations nor Treasury appeals constitute as legislation, for they are activities not specific to the legislative branch.

To be clear, Treasury has the power to pass legislation "concerning Student Union monies and resources" (Const. Art. IV, Section 3a-2). These resolutions are then subject to veto by the President.

Lastly, to determine who possesses the right to propose legislation, we looked at those powers specifically allocated to representatives of the legislative branch. In the Constitution, Senators and Treasurers have the reserve power to make a motion in their respective bodies (Const. Art. IV, Sections 2a-9 and 3a-8). Without the motion to vote, no piece of legislation can pass. How it came to be the subject of discussion is irrelevant. The Speaker of each body determines the agenda of his body’s meeting (Const. Art. IV, Sections 2b-4 and 3b-4), and if a constituent who is not a member of the body is put on the agenda, the constituent can propose whatever he likes during his allotted time. Furthermore, even if the constituent is not on the body’s agenda, he may speak in open forum. If he does so, and if a motion to discuss his proposal carries, it is no longer relevant who initially proposed the legislation. Therefore, it is the right of any constituent of Student Union to propose legislation.

Article II, Section 1b-1 of the Statutes states that: “Any Senator may author and propose to the Senate a resolution, either internal or external, which shall be read into the minutes.” However, we do not view this as granting an exclusive power as it is done in other parts of the Constitution, such as in Article V Section 2a-2: “The Senators of Student Union ‘shall’...” Senators may author and propose legislation, but this does not say that only Senators may do so; furthermore, this is not located in the “Duties and Powers” section of Article IV, Section 2 of the Constitution, suggesting that it is neither the exclusive duty nor power of Senators alone to propose legislation. Otherwise, this Statute would conflict with the Constitutional power of Treasury to propose and pass legislation in its own body.

In summary: 1) It is the right of any Student Union constituent to propose legislation. 2) The General Budget is not legislation. 3) Neither Budget Allocations nor Budget Appeals are legislation. 4) As such, none of the above is subject to Presidential veto.

There was no dissent in this case