December 1, 2008
In re: School and Class Councils’ Relationship to the Executive Branch
Constitutional Council Majority Opinion

ASSOCIATE JUSTICE LAM, joined by Associate Justice COHEN and Associate Justice JONES, delivers the Opinion of the Court:

On October 21, 2008, a constituent submitted to the Constitutional Council a request for review regarding whether or not Class and School Council officers could also serve on the Legislative Branch. Accordingly, the Constitutional Council accepted the request for consideration.

To address the question, the Constitutional Council relied upon the Constitution of the Student Union and utilized as evidence the available summaries and purposes of the School and Class Councils, the Student Union General Budget, the School Council Budgets, and previous Constitutional Council rulings. The Constitutional Council additionally sought out the testimony of those who previously held offices in both bodies.

The question raised two issues: whether or not School and Class Councils were offices of Student Union; secondly, assuming School and Class Councils are offices of Student Union, how tightly or loosely Article III, Section 3 of the Constitution should be read. This Section states that “[n]o constituent may hold more than one Student Union office at the same time.”

In considering the first issue, the Constitution explicitly lists Class and School Councils under the Executive Branch in Article IV, Sections 8 and 9, respectively. Additionally, the previous Constitutional Council ruling “In re: Gargoyle Appeal to Treasury” addresses the constitutionality of Treasury funding School and Class Councils and rules that both Councils are part of the Executive Branch. However, questions were raised regarding the intent of the Constitution, which are addressed in the dissenting opinion.

In considering the second issue, there was debate regarding whether or not to read Article III, Section 3 explicitly or to look into the intended purpose of the Section when the Constitution was written. In examining the intent, the question would be whether or not the Section was intended to enforce a separation of powers, deter a conflict of interest, or both.

Taking into consideration the explicit nature of the language in the Constitution regarding Class and School Councils, as well as the previous Constitutional Council ruling, Constitutional Council follows an explicit reading of the Constitution and rules that School and Class Councils are part of the Executive Branch. Furthermore, Constitutional Council likewise explicitly reads the Constitution to declare that no constituent may hold more than one Student Union office at the same time (Constitution Art. III, Sec. 3). Accordingly, School and Class Council officers may not also service as officers of the Legislative Branch.

CHIEF JUSTICE ZAIA, joined by Associate Justice TAYLOR, filed a dissent.
December 1, 2008
In re: School and Class Councils' relationship to the Executive Branch
Constitutional Council Dissenting Opinion
Chief Justice Zaia

CHIEF JUSTICE ZAIA, joined by Associate Justice TAYLOR, dissents:

Although I acknowledge that the School Councils are listed under the Executive Branch, I believe that they were placed there erroneously. The argument resting upon the simple listing is outweighed by compelling evidence to the contrary—namely, that School Councils would be more appropriately placed outside of the Executive Branch given their Constitutional purpose. The descriptions of School Councils, their powers, and their duties indicate a divergence from both Class Councils and the Executive Branch as a whole.

It is seemingly logical to consider School and Class Councils as a unit, since they are both representative bodies that cater to a specialized group of constituents. Upon closer consideration, however, critical dissimilarities emerge. First, Class Council appointments must be confirmed by Senate and Treasury, something to which no non-Student Union body is subject: “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” (Constitution Article IV, Section 9, g.). Second, Class Councils are required to hold their elections in conjunction with Student Union elections and are subject to the Election Commissioner’s election rules (“Election of the Sophomore, Junior, and Senior Class Officers shall take place in conjunction with the Student Union Executive Officer elections in the Spring” (Constitution Article IV, Section 9, d.).) Lastly, changes to the Class Council constitutions must be approved by the Student Union constituency (as discussed below). None of these characteristics apply to School Councils. This evidence also situates Class Councils as officers of Student Union and substantiates their placement within the Executive Branch as consistent with their listing in the Constitution.

While School Councils are physically listed under the Executive Branch, they are given enough autonomy to suggest that the framers viewed the School Councils as under the supervision of the Executive Branch but not as literal bodies within that branch. School Councils are explicitly defined as “self-governing” (Constitution, Article IV, Section 8, a.) as opposed to the Class Councils, over which Student Union exerts a clear authority. School Councils, rather, are at liberty to create and determine their Constitutions and By-Laws without Student Union consent of any

1 Freshman Class Council elections are not included in this clause as they take place in the fall of the following year. They are still held, however, under the jurisdiction of the Election Commissioner (the Election Commissioner shall "coordinate and establish rules for Freshman Class Elections" Article IV, Section 1, d.) and the timeline is explicitly stated in the Constitution under Article IV, Section 9, e.
kind (Constitution, Article IV, Section 8, c. "each School Council shall write and amend its own Constitution"). This is a divergence from Class Councils, whose Constitutional amendments are subject to approval by the Student Union constituency (Constitution, Article IV, Section 9, c.). School Councils, in addition, are not explicitly defined as to their duties and powers in the Constitution, only that they "may" exist at the will of the appropriate undergraduate school (Constitution, Article IV, Section 8, a.).

Student Union, in fact, seems intended to be the supervising body for School Councils. School Councils are defined as "recognized by the Student Union," rather than as "a body of Student Union" or any similar designation (Constitution, Article IV, Section 8, b.). The Constitutional relationship here is analogous to that between Student Groups and the Student Group Activities Committee (SGAC): SGAC recognizes Student Groups but Student Groups are not considered to be part of the Treasury or the greater Legislative Branch. SGAC is merely the committee that acts as the administrative body for these groups. The Student Union Vice President of Administration's role as the chair of the School President's Council can also be interpreted as representative of Student Union's role as a managerial body.

School Councils are also given unique autonomy in their election process. While Class Council elections take place concurrently with Student Union elections, School Councils are given the power to set their own election dates and procedures: the Election Commissioner can "set the timetable for the elections of representatives of the Student Union, unless other dates are established by School Councils" (Statutes, Article IV, Section 1, c.). In fact, the Election Commissioner only helps to organize the election if School Councils purposefully cede their authority (the Election Commissioner shall "coordinate and conduct all elections . . . unless coordinated and conducted by individual School Councils" Statutes, Article IV, Section 2, b.) In addition, School Councils are the only group exempted from the "study abroad" clause of the Statutes, which reads, "constituents who are planning to study abroad or otherwise take leave from the university during their term may not run for office. This clause does not apply to School Councils" (Statutes, Article IV, Section 4, b.). Instead, School Councils have the discretion to determine their own policies concerning candidacy and leaves of absence.

The Student Union Executive Branch's allocation of funds to School Councils in a line item of the General Budget is insufficient evidence for defining the School Councils as part of the Executive Branch. For example, the Executive Branch likewise allocates funds to the Treasury in a line item of the General Budget, but the Treasury is clearly not a part of the Executive Branch. In regards to the previous Constitutional Council ruling "In re: Gargoyle Appeal to Treasury," that opinion was in regards to financial considerations alone and it was not intended to settle, or even address, the issue of Class and School Councils' relationship to the Executive Branch.

The evidence above supports School Councils falling outside of the Executive Branch. Moreover, the evidence, particularly concerning elections, suggests that the
School Council officers are not recognized officers of Student Union. With this reasoning, School Council officers may hold a position in the Student Union Legislature without violating the Constitution, Article III, Section 3 ("no constituent may hold more than one Student Union office at the same time").

If Legislative Representatives wish to change the status of School Councils so that they are no longer part of the Executive Branch, I would suggest that they move Article IV, Section 9 from Article IV and specify that School Council officers do not hold Student Union offices.