In re: Chief of Staff Confirmation

CHIEF JUSTICE CAI writing for the Council, joined by Associate Justice HERNDON, Associate Justice MUELLER, Associate Justice WANG, and Associate Justice WILLIAMS.

On August 28th, 2019, Constitutional Council received an interpretation request regarding the confirmation process for the Chief of Staff position. The Chief of Staff is not an executive position explicitly outlined in the Constitution or the Statutes – rather, it was proposed by the President of the Student Union under Article V§2(d) of the Constitution. When a nominee for this position was brought before Senate and Treasury for confirmation, the two legislative branches discussed not only the nominee’s qualifications for the position, but the necessity of creating the Chief of Staff position itself, and the confirmation was ultimately tabled.

Constitutional Council has been tasked with determining if doing so was in violation of Article V§2(d) of the Constitution, and specifically what Senate and Treasury are meant to confirm in the context of this clause.

According to Constitution Article VII§1(c), Constitutional Council shall decide “all cases in which an officer of the Legislative or Executive branches of Student Union is involved.” Clearly this interpretation request involves both (the former in the confirmation process and the latter in the position itself) – as such, the Council has decided to take this case under its jurisdiction.

The Council has unanimously ruled that Senate and Treasury are well within their power to consider both the nominee’s qualifications, and the necessity of the position itself, in the confirmation of any individual appointed under Article V§2(d) of the Constitution.

Article V§2(d) of the Constitution states:

The President of the Student Union shall appoint such executive personnel as they deem necessary for the proper execution of their duties with consent of the Senate and the Treasury, and have the power to remove such persons from their positions, with the consent of the Senate and Treasury.

Before examining exactly what Senate and Treasury are and are not meant to confirm, it’s important to establish what procedure this clause outlines with respect to the appointment of “executive personnel.” Clearly, this clause does not refer to positions that have already been defined in the Constitution and Statutes. It follows, then, that appointing “executive personnel” in the context of Article V§2(d) of the Constitution requires two distinct actions: the creation of a new position, and the nomination of a candidate for such a position. While Article V§2(d) does not explicitly use the term “position” in its description of the appointment process, it does give the President of the Student Union “the power to remove such persons from their positions” in the latter half of the clause. The use of the word “positions” here can only be taken to refer to the duties and responsibilities that the nominated “executive personnel” would be taking on, and affirms that Article V§2(d) of the Constitution does indeed allow for the creation of such positions.
This introduces the central question of this case: what are Senate and Treasury confirming when they give consent to the appointment of “executive personnel” under Article V§2(d) of the Constitution? It has already been established that such an appointment requires two distinct steps, yet the language of Article V§2(d) ostensibly calls for only one confirmation. In all other instances throughout the Constitution where an appointment must be confirmed with the consent of Senate and Treasury, the language clearly indicates that the legislative bodies are meant to confirm only the nominee’s qualifications for the position they are nominated for. Given how Article V§2(d) mimics this language, Senate and Treasury must at the very least make the same confirmation, and since Article V§2(d) does not delineate separate confirmations for the creation of a position and the nomination of a candidate for that position, it is clear that Senate and Treasury are meant to consent to the nomination of an individual for the newly created position.

This does not fully answer the question, however. Namely, it does not explicitly prevent Senate and Treasury from considering the necessity of the newly created position in their confirmation of the nominated candidate – it simply requires that, if Senate and Treasury are permitted such a consideration, it be done concurrently in the confirmation process of a nominated candidate. Here, the Council finds it important to read into the symmetry of Article V§2(d) of the Constitution. This clause also mandates consent from Senate and Treasury in the event that the President of the Student Union wishes to remove an appointed “executive personnel” from their position. Obviously, the removal of an appointed “executive personnel” from their position is meant as the corresponding counterpart to the appointment itself. And since the appointment itself, as examined earlier, yields two distinct actions, so too should the removal of “executive personnel”: the removal from the position, and the dissolution of the position itself.

An interpretation of Article V§2(d) of the Constitution that only requires Senate and Treasury to confirm the former and not the latter does not make sense. Surely the latter must include the former – after all, destroying a position entirely cannot be done without technically removing the individual in that position (and if an exclusive distinction between the two could be made, the resulting interpretation would allow the President of the Student Union to circumvent the required consent from Senate and Treasury). But an interpretation of Article V§2(d) that requires Senate and Treasury to confirm cases of the former and the latter, yet only the qualifications of a candidate during the initial appointment, also does not make sense. In particular, the result here would require Senate and Treasury confirmation in the destruction of a newly created position, but would not allow them to even consider its necessity in its initial creation. The only remaining interpretation of Article V§2(d) then, and the one that the Council takes, must allow Senate and Treasury to consider the necessity of such a newly created position when a candidate is brought for confirmation.

This is admittedly an extremely – even overly – technical approach that is dependent entirely on defining the appointment and removal of “executive personnel” in concrete steps. Indeed, allowing Senate and Treasury to consider the necessity of a newly created position in their confirmation of a nominated candidate is functionally no different than delegating Senate and Treasury two separate confirmations. But perhaps this is ultimately the point. Article V§2(d) of the Constitution does not make an effort to distinguish between or outline separate procedures for the different moving parts of appointing "executive personnel" – it is counterintuitive, then,
to pursue such an interpretation, and the Council finds no reason to treat these parts differently by allowing Senate and Treasury to give consent for only one of them.

As a final note, the Council acknowledges the temptation to delegate the creation of new positions entirely to the President of the Student Union. The language of Article V§2(d) of the Constitution at least partially suggests this with the phrase “as they deem necessary”. Even so, setting aside any discussion of the symmetry of this clause and the fact that this specification is not made in describing the removal of such “executive personnel” from their positions, the Council unanimously found it irresponsible in the context of the Constitution and Statutes as a whole to relinquish unilateral authority to create (or destroy) positions not explicitly defined in these governing documents, even if only temporarily, to the President of the Student Union. Such a power comes dangerously close to that of a Constitutional amendment in effect, which is an excessive amount of power to place unchecked within a single branch of Student Union in this Council’s view.

Thus, on the grounds listed above, Constitutional Council finds that Senate and Treasury, in their confirmation of an “executive personnel” appointed under Article V§2(d) of the Constitution, may consider the necessity of the position for which such an individual is being nominated.

*The Council voted 5-0. There was no dissent.*