STUDENT GOVERNMENT ASSOCIATION SUPERIOR COURT

MONLUX V. SGA
(*MONLUX 2)*
(IN RE GC 2017-006)

NOVEMBER, 2017

Bourland, CHIEF JUSTICE, delivered the unanimous opinion of the Court. Kimani, JUSTICE, took no part in the consideration of this appeal.

Petitioner David Monlux challenges General Counsel's October 15th opinion, GC 2017-006. The General Counsel reasoned that (1) the original language of Congressional Bill No. 980131 did not violate article III, section 6 of the SGA Constitution; and (2) the University of Oklahoma Presidential Search Committee was an "external committee" as the term was used in 980131.[1] We have jurisdiction over this matter as a Constitutional question and as a question arising under an act of the Legislature.[2] We find that Petitioner's challenge to Part II of GC 2017-006 is moot because of the amendment to the Bill on the floor of Congress.[3] We DISMISS petitioner's appeal to Part II. As to Part I, we are tempted to dismiss Petitioner's appeal for want of ripeness because his question to General Counsel and his appeal arose *before* the Legislature passed the Bill.[4] However, because the amended Bill has passed both houses and because the constitutional question still arises, we do not dismiss Petitioner's appeal of Part I. We AFFIRM Part I of GC 2017-006 and the constitutionality of 980131.

I

[1] GC 2017-006; Official Record, 1–3
[2] SGACA tit. IV, ch. 2, § 4.
[3] Official Record, 8.
[4] Official Record, 13.

We held in *Monlux v. SGA* that the language of SGACA title I, chapter 2, section 7 prohibited a person serving in the Executive or Legislative branches from simultaneously serving in a high office of any other branch.[5] Conversely, we reasoned that section 7 prohibited a high officer of any branch from simultaneously serving in the Legislative or Executive branches in any capacity.[6] Our holding meant that Kaylee Rains-Saucedo and Carrie Pavlowsky, as high officers of the Legislative Branch could not, therefore, simultaneously serve on the Presidential Search Committee.[7]

In an effort to allow high officers to simultaneously serve in multiple branches, Congress Chair Rains-Saucedo and Congressional Administration Committee Chair Tom Cassidy authored Bill 980131.[8] The Bill created exceptions to the section 7.[9] Before the Bill was considered by either house, Petitioner asked the General Counsel if the Bill violated article III, section 6 of the SGA Constitution and whether the "external committee" exception encompassed the Search Committee.[10] Again, before either house had an opportunity to vote on the Bill, the General Counsel opined that the Bill was not unconstitutional and that the Search Committee was an "external committee."[11] Petitioner then filed this appeal.[12] A few days after the General Counsel issued its opinion, Congress considered the Bill and amended it on the floor.[13] The amendment to

[5] SC 2017-001, 5.
[6] *Id.*
[7] *Id.* at 6.
[8] Official Record, 5–6.
[9] *Id.*
[10] GC 2017-006; Official Record, 1–3
[11] *Id.*
[12] Official Record, 13–14.
[13] Official Record, 8.

section 7 limited the prohibition to serving simultaneously in multiple *high offices*.[14] Both Congress and Senate passed the amended Bill.[15]

II

We first turn to Petitioner's appeal of Part II of GC 2017-006. Petitioner asks us to consider whether Search Committee is an external or internal committee in light of our holding in *Monlux v. SGA* and the Oklahoma Constitution.[16] We dismiss Petitioner's appeal of Part II as moot in light of the amended and passed Bill.

The original language of the Bill excepted "external committees" from the separation of powers prohibition of section 7.[17] Petitioner asked the General Counsel whether the Search Committee is an "external committee" as the phrase was used in the original Bill.[18] The General Counsel reasoned it was, saying the Search Committee was not part of SGA and was, instead, part of the Board of Regents.[19] After the General Counsel's opinion, the Bill was amended on the floor to remove the "external committee" exception and to remove the separation of powers language in section 7.[20]

This amendment renders Petitioner's appeal to Part II of GC 2017-006 moot. Mootness essentially means that a plaintiff or petitioner had standing to appeal at one point, but lost standing because there is no longer an injury.[21] There are exceptions (injury is capable of repetition, yet evades review; collateral injuries exist even though the primary injury has been resolved; a "class"

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[14] *Id.*
[15] Official Record, 9.
[16] Official Record, 14.
[17] Official Record, 5–6.
[18] Official Record, 14.
[19] GC 2017-006; Official Record, 3.
[20] Official Record, 14.
[21] *DeFunis v. Odegaard*, 416 U.S. 312 (1974).

doesn't moot when the lead plaintiff moots), but none apply here. In reality, the amendment to the Bill eliminates Petitioner's complaint because there is no longer an exception for "external committees." We decline to solve a problem that no longer exists.

III

We next consider Petitioner's challenge to Part I of GC 2017-006. Petitioner asks us to find that the original and amended language of the Bill violates article III, section 6 of the SGA Constitution.[22] The challenge to the original language is moot for the reasons explained *supra*, Part II. While the new language has not been considered by the General Counsel, we will analyze Petitioner's challenge in light of the amended language for sake of judicial economy and efficiency. In examining the new language of the Bill against the language of the Constitution, we find that the Bill is constitutional and affirm Part I of GC 2017-006.

Petitioner asks us to impute our analysis from *Monlux v. SGA*, in which we interpreted the then-existing language of title I, chapter 2, section 7 of the Code Annotated.[23] In that case, we held that the language of section 7 meant that a person serving in the Executive or Legislative branch could not simultaneously serve in a high office of any other branch.[24] Conversely, this means a person serving in high office of any branch cannot serve simultaneously in the Executive or Legislative branches (unless they are a high officer of that particular branch already).[25]

We cannot impute our reasoning from *Monlux v. SGA* because the language of the then-existing Code Annotated section and the language of the Constitution are different. Article III, section 6 of the SGA Constitution states: "No Congress member or Senator shall serve

[22] Official Record, 13.
[23] *Id.*
[24] *Monlux v. SGA*, SC 2017-001, 5–6.
[25] *Id.*

simultaneously in any high executive or judicial office of the SGA."[26] The language of this section is very straightforward: Congress and Senate members cannot serve in a high office of the Executive or Judicial Branches. Conversely, this means that a high officer of the Executive or Judicial branches cannot simultaneously serve as a Senator or Congress member. In short, the two sections are vastly different. The Constitutional provision is much broader than the then-existing Code Annotated section because the former only limits members of the Legislative branch; the Code limited membership in both the Legislative and Executive branches. The limitation on the Executive branch that existed in section 7 simply does not exist in the Constitution.

The new language of section 7 as passed by the Legislative Branch in 980131 does not violate the Constitution. The section now forbids only serving in simultaneous high offices. A high officer of the Legislative branch can now serve in the Executive branch so long as the latter position is not a high office. The prohibition of a high officer of the Executive branch serving in the Legislative branch still exists because of the language of the Constitution. Because the new language of section 7 does not violate the Constitution, we affirm Part I of GC 2017-006.

As a practical matter, the Court is tempted to dismiss this appeal for want of ripeness. Where standing asks whether we have the right *person* bringing a claim, ripeness asks whether the claim is brought at the correct time.[27] It is possible for a claim to be filed too early, meaning the claim is not yet ripe. Because the Petitioner filed his question with the General Counsel before the Bill even passed, it is possible that his claim was not yet ripe for consideration. We will not analyze whether Petitioner's claim was or was not ripe, however, because his claim ripened while his appeal was pending when the Bill passed both houses and became part of the Code Annotated. We

[26] SGA Const. art. III, § 6.
[27] *Abbott Labs. v. Gardner*, 387 U.S. 136 (1967).

mention ripeness only to encourage the General Counsel to consider in the future whether or not a question is ripe for judicial review before answering questions pertaining to acts of the Legislature.

IV

Because the Bill's language was amended on the floor to remove the "external committee" exception, we dismiss Petitioner's appeal of Part II of GC 2017-006 as moot. Furthermore, we hold that the new language of section 7 does not conflict with the language of the constitution. We affirm Part I of GC 2017-006.