Gilson-Bond v. SGA, SC 2025-003

Partial Injunctive Order

PER CURIAM.

Petitioner contends that the Court ought to issue an order protecting him from enforcement of the General Counsel's Opinion.

The Undergraduate Student Congress is hereby ordered to swear Petitioner into the seat for which he was duly elected. Petitioner will have ordinary membership and voting rights, as well as his position as Vice Chair, during the pendency of his appeal.

Additionally, this Court has been asked to review the legality of the Undergraduate Student Congress viewing two contradictory pieces of legislation. At this time, we leave the Congress to exercise its best judgment in considering and passing legislation, so long as it complies with the Constitution, Code, and its own governing documents. We do note also that, as a general rule, bills which are passed at a later time are understood to supersede any contradictory legislation that was passed earlier.

It is so ordered.

Dunn, CHIEF JUSTICE, dissenting in part.

I concur fully with the Court's decision to leave Congress to pass or fail legislation at its discretion. The Court should, whenever possible, avoid weighing in on pending legislation in a way that interrupts the legislative process.

With regard to seating the Petitioner, I would uphold the General Counsel's opinion that Petitioner cannot be seated, in effect maintaining the status quo. I would, however, grant the motion in part by enjoining the Congress from seating anyone in Petitioner's seat during the pendency of his appeal. Were someone to be appointed, that would harm Petitioner in an irreparable way and would be quite a problem to correct if Petitioner were to prevail in his appeal.

I respectfully dissent.

JUSTICE SWEET, dissenting.

The issue before the Court is not one that I believe the Judicial Branch has the proper power to hear or adjudicate. As such, I would reverse the General Council opinion and hold the question nonjusticiable.

The University of Oklahoma Student Government Association ("S.G.A."), in many ways, is intentionally derivative of the federal government of the United States. This is clearly seen in many of its provisions. Its Constitution contains a Bill of Rights, many of which are taken straight from the United States Constitution's Bill of Rights. *Compare* S.G.A. CONST. art. XI, *with* U.S. CONST. amends. I-X. Its Code Annotated upholds the concept of the separation of powers. S.G.A.C.A. Title I, Chapter 2. Illustratively, the oath of office for the S.G.A. President mirrors, nearly verbatim, the oath of office for the President of the United States. *Compare* S.G.A.C.A. Title I, Chapter 6, § 3, *with* U.S. CONST. art. II, § 1. There are many other examples that could be given[1], but the central point is clear: S.G.A. law is purposefully based on the principles of United States law.

That is not to say that it is a carbon copy of the federal structure or the laws thereof. The S.G.A. contains four branches of government rather than three.[2] It provides an appointed, independent General Counsel within the Judicial Branch, rather than an Attorney General under the Executive.[3] It includes elements of direct

[1] *Compare* S.G.A. CONST. art. IV, § 1, *with* U.S. CONST. art. III, § 1; *compare also* S.G.A. CONST. art. X, § 2, *with* U.S. CONST. art. V.
[2] *See* S.G.A. CONST. art. VI.
[3] *See* S.G.A.C.A. Title IV, Chapter 5.

democracy by providing that any member of the S.G.A. may propose legislation.[4] Thus, it is clear that, while taking its basis and inspiration in many ways from the laws of the United States, it also is, in many ways, unique from the federal structure.

This leads to the issue before the Court today: should this Court grant a stay to Petitioner, Mr. Gilson-Bond, and allow him to be sworn in as a representative in the Undergraduate Student Congress? To address this issue fully, we must make reference to three areas of S.G.A. law: the S.G.A. Constitution, the Code Annotated ("S.G.A.C.A."), and the Undergraduate Student Congress' Bylaws.

Before endeavouring to answer any question before this Court, it is necessary to determine whether the Court has the power to hear such a case in the first place. Under the S.G.A. Constitution, judicial power is vested in the Superior Court, and any inferior courts established by the Student Congress. S.G.A. CONST. art. V, sec. 1. The S.G.A.C.A., complementing the Constitution, provides the scope of the Superior Court's authority: "The judicial power of the Student Superior Court shall extend to all cases . . . under the acts of the Legislative Branch, and under University policy when such issues involve the SGA." S.G.A.C.A. Title IV, Chapter 2, § 1. It then defines "Acts of the Legislative Branch" as "those actions passed by either House which affect both Houses or the SGA as a whole." S.G.A.C.A. Title II, Chapter 1, § 5. These acts are distinguished from Congressional Bylaws, which the S.G.A.C.A. states are determined by Congress, with the sole caveat that these Bylaws are pre-empted by

[4] *See* S.G.A.C.A. Title VI, Chapter 1, § 2(a).

the Constitution and the S.G.A.C.A. S.G.A.C.A. Title II, Chapter 2, § 12(a). Thus, before the overall question can be answered, two different questions must first be answered: to what body of law does the challenged provision belong, and if it is part of the Bylaws, is it superseded by the Constitution or S.G.A.C.A.?

The challenged provision is very clearly part of the Undergraduate Congress Bylaws. Specifically, the question concerns Section 3.2(6)(c), which provide that "[r]epresentatives shall resign if they are appointed to a higher office in S.G.A." GC 2025-006 (citing S.G.A.C.A. Title I, Chapter 2, § 4(a)-(d)). Now, there is a real ambiguity in this provision as to what a higher office means. However, this is wholly irrelevant to our inquiry. Neither the Constitution nor the S.G.A.C.A. gives this Court the power to review Congressional Bylaws per se. The only way this issue reaches us is if this provision violates the Constitution or the S.G.A.C.A.

Because a constitutional question has not been raised by the General Counsel, only the issue of pre-emption by the S.G.A.C.A. needs be addressed. The S.G.A.C.A. provides, in relevant part, "[N]o seated member of Congress nor any Graduate Student Senator shall serve in any of the high executive or judicial offices." S.G.A.C.A. Title I, Chapter 2, § 4. The S.G.A.C.A. is therefore silent on the issue before us. However, the Code further provides that Congress shall elect its officers and possesses "the right to determine the eligibility of a member to be a candidate for its internal elections as well as the procedure for the election . . . so long as that procedure does not violate the SGA Constitution." S.G.A.C.A. Title I, Chapter 2, § 9(a). Since the S.G.A.C.A. makes mention of the Constitution, it is worth noting that

nothing in the Constitution grants any right to high officers of the Legislative Branch to a seat in the Legislature. In fact, the Constitution is *completely silent* as to the issue. This bylaw is therefore not pre-empted.

This is a classic example of a nonjusticiable political question. Under United States constitutional law, a case must be justiciable, or subject to judicial authority. Justiciability, Black's Law Dictionary (10th ed., 2014). Under U.S. law, a case is justiciable only if the court in question has subject-matter jurisdiction, *see generally Marbury v. Madison*, 5 U.S. 137 (1803), the case represents an actual controversy between adversarial parties, *see generally Muskrat v. United States*, 219 U.S. 346 (1911), cannot be a mere advisory opinion, *see generally Chicago & Southern Air Lines v. Waterman S. S. Corp.*, 333 U.S. 103 (1948), cannot be unripe, *see generally Poe v. Ullman*, 367 U.S. 497 (1961), cannot be moot, *see generally DeFunis v. Odegaard*, 416 U.S. 312 (1974) and cannot be a political question, *see generally Baker v. Carr*, 369 U.S. 186 (1962). The S.G.A. differs in at least one significant way from the U.S. Constitution in that an adversarial proceeding is not required. The Superior Court has an affirmative duty to call hearings *sua sponte* "[w]hen a Constitutional issue arises." S.G.A.C.A. Title IV, Chapter 2, § 2(d).

However, this does not mean that *every* facet of American constitutional law is irrelevant or inconsistent with our constitutional law. Political question doctrine is indeed extremely relevant as it "is primarily a function of the separation of powers." *Baker*, 369 U.S. 210. The whole purpose behind preventing representatives from concurrently holding high office is to preserve the separation of powers in the S.G.A.

See S.G.A.C.A Title I, Chapter 2, § 4 (the entire chapter is entitled "Separation of Powers"). By issuing an injunction in this case, we have undermined that very purpose and engaged in a textbook exercise in judicial overreach. Indeed, we are expressly acting to undermine a rule that is outside our statutory purview. Had we taken a cue from the *Baker* Court and adopted its factor test for identifying a political question, we would have rightly recognised that not only are we incapable of making a determination on the issue, but so too is the General Counsel, who is limited to "enforcing the provisions of the SGA Constitution, and enactments of the Legislative Branch." S.G.A.C.A. Title IV, Chapter 5 § 1.

One may legitimately question the wisdom of such a standing rule. It is beyond me how holding office in the legislative body to which one is elected threatens the separation of powers. However, that is not for me, the General Counsel, or this Court to decide. It is firmly within the power of Congress, under both the Constitution, the S.G.A.C.A., and American principles of constitutional jurisprudence to set whatever rules for procedure they see fit, no matter how superfluous or silly I may, or may not, think they are. Likewise, though it may be unfair to Petitioner, it is not the job of this Court to enforce fairness, but to settle issues of S.G.A. law. Mr. Marbury himself had to learn this harsh lesson. I would reverse the General Counsel's opinion and hold this issue nonjusticiable. Therefore, I respectfully

DISSENT.