



JUDICIAL COURT OF TEXAS A&M

Rossi v. Speaker Pro-Tempore Crews

No. | 70-01

Argued: November 30th, 2017

Decided: December 3rd, 2017

Syllabus

COMES NOW the first case in the 70th session of the Student Senate. The Appellant, Mr. Jacob Rossi claims the Appellee, Speaker Pro-Tempore Crews wrongfully removed him from his position in the Student Senate. On November 16th, 2017, Pro-Tempore Crews informed Mr. Rossi could no longer serve in his capacity as a student senator because he had violated the attendance policy, as described in the Student Senate By-Laws (henceforth, “By-Laws”). According to Pro-Tempore Crews, Mr. Rossi accumulated six unexcused absences in one session of the Student Senate. The relevant By-Laws require the automatic removal of any senator who accrues six or more unexcused absences. The Appellant rejects Pro-Tempore Crew’s assertion that all six absences applied to the same session and contends an absence on April 12th, 2017 occurred during the 69th session, while all other absences occurred during the 70th session. The Appellant also claims that because he was not contacted within 48 hours of incurring his sixth absence the Student Senate violated the due process provisions in the By-Laws. The Court thus examines whether the decision to remove Jacob Rossi from his seat was justified pursuant to the By-Laws.

The Court Issues a Per Curiam Opinion:

Mr. Rossi was elected to the 70th Session of the Student Senate and was recorded as being absent at several called general assembly meetings. In his time associated with the Student Senate, he accumulated a total of six unexcused absences during the period beginning on April 12th, 2017 and ending on November 8th, 2017. In the entirety of this period, Mr. Rossi had access to a “Google Sheet” with full accountability of each senator for each week of the 70th session. Early on November 8th, 2017, Mr. Rossi was specifically notified that he had 5 absences on his record. Later the same day, Mr. Rossi was marked absent without excuse from a committee meeting, constituting his sixth absence according to Pro-Tempore Crews. Days later, on November 16th, Mr. Rossi received an email from the Appellee formally announcing his removal from the Student Senate. Pro-Tempore Crews cited the By-Law provision regarding unexcused absences as her reason for dismissing him. We begin consideration of the aforementioned circumstances by first remarking on the vested interest the Court has in the present case.

Each branch of government adopts certain standards and procedures designed to regulate its internal operations and the conduct of its members. The judicial, legislative, and executive branches separately agree upon these so-called By-Laws to avoid any need for one branch to intercede and adjudicate a question rightly belonging to a different branch, thereby maintaining the principle of separation of powers. However, recognizing the judicial branch’s particular charge to uphold and promote just results, the Court must answer a question of injustice when the Constitution of the Texas A&M University Student Government Association (henceforth, “Constitution”) extends the invitation.

Article IV, Section I, Subsection (a) of the Constitution defines the extent of interference the Court may exercise on the otherwise internal workings of another entity within government:

The powers of the Judicial court shall extend to any case between any student and any member of the Student Government Association in regards to: this Constitution; any statute; *any rule or procedure enacted pursuant to this Constitution* or any rule or procedure enacted pursuant to any statute; or any action or inaction authorized by the same (emphasis added).

To wit, if the Constitution specifically grants a body within the Student Government Association the power to establish a rule or procedure for said body, then the Court may claim jurisdiction. Further, Article III, Section III, Subsection (e) of the Constitution specifically notes the following as a duty of the Student Senate:

Establishing such rules and procedures in the Student Senate By-Laws as are necessary to organize the Student Senate, to organize and govern its proceedings, to discipline its members, and to provide for any other rule or procedure expressly called for by this Constitution by bill and a two-thirds (2/3) vote of the Student Senate membership present and voting at an announced meeting.

The By-Laws passed by the Student Senate are clearly granted by the Constitution, which also grants Judicial Court purview over rules enacted through a constitutional allowance. With the Court's jurisdiction thus understood and established, we now proceed to adjudicate those questions relevant to today's dispute.

The Appellant argues Pro-Tempore Crews violated the section of the By-Laws that specifies the due process procedures required to properly remove a Senator from his or her office. Article IV, Section II, Subsection (a) of the Student Senate By-Laws reads:

If the Speaker Pro-Tempore is unable to contact a Senator in violation of the absence policy by phone or email within forty-eight (48) hours after the sixth unexcused absence, this officer shall announce this Senator as having been removed from their seat and their seat announced as a vacancy.

The above conditional neither places any requirement on the Speaker Pro-Tempore nor explains any consequent for a situation in which the Speaker Pro-Tempore does not contact the Senator in violation of the absence policy within 48 hours. Logically, the antecedent of a conditional statement can be false (e.g. the Speaker Pro-Tempore does not contact the Senator) and the consequent be true while leaving the whole of the statement still true. Nevertheless, if the Speaker Pro-Tempore need not inform the Senator in question, then why create the appearance of a 48 hour onus? Consider a By-Law in the same section as Article IV, Section II of the Student Senate By-Laws, namely Subsection (c):

All absences are to be considered conditionally unexcused. For an excused absence to be granted, the Senator must show reasonable cause for the absence. The Senator must present his/her case to the Speaker Pro Tempore within forty-eight (48) hours for a determination of the status of the absence in question. If this absence is not reviewed before the next Senate meeting, the absence will automatically be considered an unexcused absence regardless of the reason.

Again, the 48 hour grace period appears. There exists, clearly, a competing set of duties between Pro-Tempore and absented Senator. On the one hand, the former section implies the Pro-Tempore should (not shall) inform the absented Senator of his or her 6th absence before taking action, while the latter section clearly states a Senator must contest an absence to the Pro-Tempore within 48 hours of the related absence. The Court resolves a conflict of duty by acknowledging a difference between strong duties and soft duties. A strong duty for due process includes a legal prescription, a legal "shall", which demands certain actions before proceeding to a conclusion. A soft duty for due process, contrastingly, includes only a legal suggestion, a legal "should", which demands nothing at all. It must be noted a soft duty does not properly belong to law but oddly finds habitation in the By-Laws. Due to the ineffectiveness of a soft duty, the Court only contemplates the strong duty of Subsection (c), where the Senator must act to preserve his or her station.

In this vein, the Appellant presented adequate evidence in the "70th Absence Request Form (Responses)" sheet, showing Mr. Rossi made no attempt to request removal of any absences

from his record. Additionally, Mr. Rossi did not produce any testimony or documentation attesting to an attempt of any kind to contest his 6th and final absence to Pro-Tempore Crews within 48 hours of receiving the absence. While Mr. Rossi steadfastly denies being aware of his 6th absence before receiving the November 16th email, the By-Laws do not call for any level of awareness on the part of the absented Senator in order to confirm the absence as unexcused. We therefore conclude Mr. Rossi's due process rights were not in any way violated.

Turning now to the absences per se, the By-Laws limit the number of unexcused absences any senator may acquire. Article IV, Section II, Subsection (a) of the Student Senate By-Laws places this ceiling at 6 unexcused absences:

If a Senator accumulates *six (6) unexcused absences during one full term of the Senate*, they are automatically removed from their position following the sixth unexcused absence regardless of the reason (emphasis added).

The question before the Court here is twofold: 1) did Mr. Rossi indeed accumulate at least six unexcused absences while serving in the Student Senate and if so 2) did all six absences occur during one term (i.e. the 70th session). In order for the actions of Pro-Tempore Crews to be legally recognizable and actionable, the two aforementioned conditions must be met. The first question persists largely without dispute. The Appellee clearly demonstrated in the "70th Absence Sheet" Mr. Rossi has six absences attached to his name. Hence, it cannot be denied that Mr. Rossi incurred six total absences in the period spanning from April 12 to November 8. Next, we contemplate whether these six absences all pertain to one term, specifically the 70th session.

The timeline of events and the manner in which the Constitution defines the Senate's session or term remain vitally important to this latter question. Article III, Section II, Subsection (d) of the Constitution provides:

The term of each session of the Student Senate shall begin and end during a final general assembly meeting during the *last fourteen (14) days of the spring academic semester every calendar year. The incoming Student Senate shall not begin its session until the outgoing Student Senate adjourns at the final called general assembly meeting* (emphasis added).

We take a moment to consider any differences in denotation between the words "term" and "session", given the By-Laws' mention of "term" and not "session". In the citation above, "term" appears to denote a period of time, as days and portions of the calendar are mentioned soon after its invocation, whereas "session" denotes an assembly of the Student Senate. Notably, "term" defines the beginning and end of a "session". For this case and these circumstances, the two are synonymous and interchangeable.

We recognize the Student Senate held joint meetings of the 69th and 70th sessions in April of 2017. We also recognize the Student Senate began collecting attendance records on new Senators during these joint sessions. However, the fact that the membership of

the 70th session attended joint session meetings, like the one on April 12th, to conduct various logistical and transitional tasks does not mean that said meeting was held while the 70th session had begun; the Constitution precludes the 70th session's inception at that time, as the 69th session of the Student Senate did not end until their "final called General Assembly meeting" on the 26th of April. Even so, calling the final General Assembly meeting on April 26th opposes the constitutionally defined period in which one session ends and the next begins. The meeting must take place in "the last fourteen (14) days of the spring academic semester".¹ The Constitution does not, however, preclude the incoming Student Senate from meeting to perform such duties as necessary to facilitate the transition from one session to the next. In fact, the only preclusions of action existent here is that which the By-Laws provide.

According to the 2016-2017 Academic Calendar, the last day of finals and thus the last day of the spring academic semester occurred on May 15th. By Constitutional definition, the earliest the 70th Session of the Student Senate could have begun was 14 days prior to May 15th, or May 1st. Any senator may begin accruing absences for the 70th Session after this earliest date. Between the dates of May 1st and November 8th, Mr. Rossi collected a total of 3 unexcused absences, excluding his absences in April.² Therefore, according to the By-Laws, Mr. Rossi receives only 3 unexcused absences for the 70th session, short of the 6 required for the removal of a Senator. Pro-Tempore Crews, in removing Mr. Rossi from the Student Senate, violated the By-Laws, properly understood and applied.

¹ The Student Senate may choose to begin collecting attendance records of new Senators whenever they please, yet the current By-Laws do not allow for actionable absences to begin until the constitutionally defined term or session.

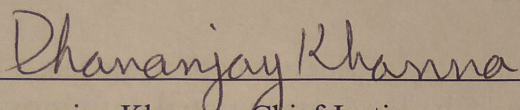
² Considering a timeline from May 1st to November 8th, although not the most accurate reflection of the events as they unfolded, represents the largest potential period of interest for accruing absences. Even under these circumstances, Mr. Rossi still does not violate the By-Laws' absence policy.

Fall Term 2017

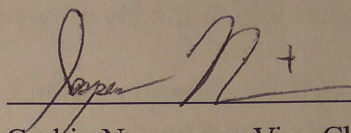
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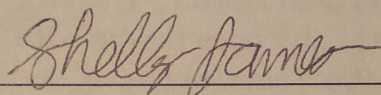
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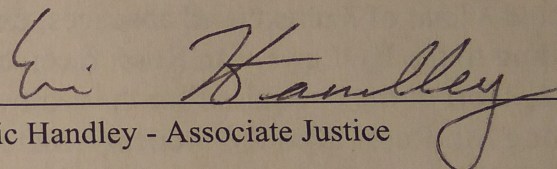
Dhananjay Khanna - Chief Justice



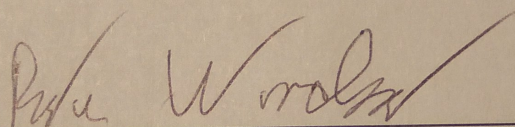
Corbin Neumann - Vice-Chief Justice



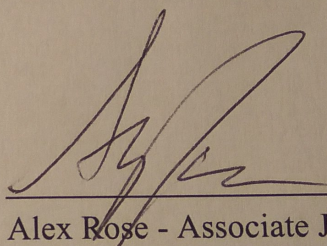
Shelby James - Associate Justice



Eric Handley - Associate Justice



Ryan Woolsey - Associate Justice



Alex Rose - Associate Justice