Burden v. McCaig

October 30, 2003, 7:00 p.m.

Majority Opinion

In the case of Burden v. McCaig, according to the Student Government Association Constitution Article III, Section II, subsection (f),

> "A recall for any elected member of the Student Senate may be called for, by an official petition form from the Student Government office, signed by ten percent (10%) of his/her constituency or three hundred students in his/her constituency, whichever is smaller..."

The plaintiff cites no actionable defect that would require either the cessation or the temporary injunction of the recall petition concerning Senator Teems. Therefore, the Judicial Court finds for the defendant and dismisses the plaintiff's appeal.

Concurring Opinion

I, Daniel Jones, acting as Chief Justice of the Judicial Court, submit this concurring opinion, which is joined by Justices Richard Graff, Kevin Capps, Leslie Scheuermann, Stacy Reed, and Sarah Rapp. I support the majority opinion issued by the Court in the case of *Burden v. McCaig*. While the petition for the recall of Senator Dustin Teems is based upon extremely suspect reasoning, there is currently no stipulation in the SGA Constitution which undermines its legality as the petition now reads.

The article in dispute, Article III, Section II, subsection (f) is a good provision in its nature, but the law is being used for shameful and unreasonable purposes in this case. Nevertheless, the law is clear in its intention, so the recall unfortunately must be allowed to proceed.

The basis for this recall election has no reasonable justification. Senator Teems has established himself as an accomplished and competent Senator, serving his off-campus constituents. Matthew Wilkins, Speaker of the Student Senate, says of Senator Teems: "I affirm that, according to all of the information available to me, the Hon. Mr. Teems has served as a Senator in good standing, has at no time violated our governing documents, and has fully lived up to his Oath of Office."

Senator Teems has committed no crime, nor has he taken any action that even remotely deserves a removal from office. The only "crime" that Senator

Teems has committed is speaking a legitimate opinion held by a portion of his constituency. He is taking a stand, and is calling for both fellow Senators and Aggies, to work within the rules to achieve change.

The defendant Mark McCaig boastfully and unashamedly admits that he broke the rules by circumventing the legal means to obtain the SGA Diversity line-item budget. At present, he is seeking the protection of the same rules he so easily disregarded in an attempt to remove Senator Teems, a Senator in good standing with the Student Senate. As Aggies and students of this great university I hope that our commitment to integrity and working to accomplish our goals the right way will prove stronger than this baseless recall would suggest. In the event that this petition does succeed, I hope that the off-campus students of this university will stand up and say that we as Aggies value and strive for integrity in ourselves and in our student leaders by voting to keep Senator Dustin Teems in office.

It is my sincere hope that the Student Senate will, in the immediate future, take the proper actions to amend the SGA Constitution to prevent any future abuses of this important constitutional process. The Student Senate should ensure that only the constituents of the offending Senator may initiate this process. A recall of a sitting Student Senator should be an action that is reserved for extreme circumstances, and the Student Senate should define the terms of what constitutes an extreme circumstance in the SGA Constitution.

While I personally detest the basis of this recall attempt, this decision reflects the commitment of the Court to maintain and abide by a high standard of ethics and integrity even when those we are protecting under the law choose otherwise.

Concurring Opinion Footnote:

Since the time of the decision in Burden v. McCaig, it has been discovered that Mr. McCaig broke no University rule concerning his acquisition of the SGA Diversity line-item budget. No such rule exists under the University policies. In testimony, Mr. McCaig admitted to breaking the alleged rule only because at the time he was under the impression that such a rule existed.

Dissenting Opinion

As Justices of the Student Government Association, our oath requires us to work in the best interests of the student body at Texas A&M University. The interests of the student body are often best expressed by representatives in the Student Senate. However, it is impossible for any representative to at all times satisfy the wishes of

every member of his or her constituency. A representative should not be deterred from expressing an opinion out of fear that such an opinion will initiate a recall of their position.

In the case at hand, Senator Teems is facing a recall petition because he expressed an opinion contrary to that of another student. Mr. Teems, as a Senator listed in good standing, had every right to express an opinion on the topic at hand. Surely, this opinion did not satisfy every one of his 30,000 off campus constituents. Does this fact merit a recall of his elected position? Is it reasonable to hold student representatives liable for opinions expressed during open debate, simply on the grounds that not every one of his or her constituents agrees with the statement? Article III, Section II, Subsection (F) of the SGA Constitution asserts that any elected member is subject to recall. The dissenting justices feel that the framers intent in including the aforementioned subsection was not to provide recourse for differing opinions, rather for gross neglect of duty. Senator Teems hardly neglected his duty by partaking in debate on the senate floor, and thereby should not be vulnerable to a recall petition.

The precedent set by the majority opinion of the Judicial Court states that senators may be subject to the recall process for simply stating an idea not in line with every constituent he or she represents. This makes possible future recalls based on nothing more than the disagreement of one student with any senator, perhaps leading to a student senate permanently embroiled in recalling its senators. If this occurs, no progress can be made to further the interests of the students they purport to represent.

This dissent is based on the notion of protecting the well being of the Student Government Association and the students thereby represented. By attempting to recall a representative on the grounds of a differing opinion, any extreme group of students can remove any senator, thus disenfranchising the students who elected that representative. We now ask what is more threatening to the interests of the student body—allowing rogue and extreme students to initiate a frivolous recall or eliminating the right to recall senators on such grounds? It is the belief of the undersigned that the students have the opportunity during every student election process

to elect their representatives. Should they become unhappy with their representative's actions, they may choose to vote for another candidate in the following election. In the time between elections, it is irresponsible and counterproductive to allow frivolous recalls of senators, simply because they fail to satisfy the wishes of EVERY constituent.

Should the majority opinion become common practice, constant senator turnover will ensue, thereby diminishing the quality of representation every student deserves. It is for these reasons, we the undersigned dissent from the majority opinion set forth by the Judicial Court.