

MAJORITY OPINION OF THE COURT

NOTICE: The following document represents an opinion of the Supreme Court of the Student Government Association of Texas Tech University, and constitutes a binding decision on all parties concerned within this decision.

STUDENT SUPREME COURT OF TEXAS TECH UNIVERSITY

PIPPEN v. STUDENT GOVERNMENT ASSOCIATION

Decided January 27, 2014

Memorandum Opinion Issued January 27, 2014

Majority & Dissenting Opinions Issued February 3, 2014

By 5-1 Decision

ROBERTSON, J., delivers the opinion of the Court, in which URYASZ, C.J., BRANCH, ECHOLS, and SCRIVNER, JJ. join. MONTEMAYOR, J. dissents. DIVEL, J. took no part in the consideration or decision of this case.

Petitioner Matt Phippen, a Student Senator for the College of Engineering, brought this action seeking review of a Rules and Administration Committee ruling, and subsequent Student Senate hearing, which purported to impeach and remove him from office on October 24, 2013. Phippen asserted three claims entitling him to a declaratory judgment that the Senate's actions were unconstitutional: (I) that he was denied procedural due process by the R&A Committee; (II) that he was denied procedural due process by the Student Senate; and (III) that his substantive right to privacy was violated by improper discussion of his academic record. We address each of these claims in turn and rule in petitioner's favor on Claim II. Accordingly, we hold that Senator Phippen's right to due process was violated at the October 24 Senate meeting and his removal was, thus, unconstitutional.

FACTS

Many of the facts in this case remain unclear and contested. The parties were unable to stipulate to a mutually agreeable version of what occurred and when it occurred. We have not been asked to decide any factual disputes in this case and are presented only with questions of law concerning due process under the Student Constitution. If the parties desired this Court to hold a fact-finding hearing and rule affirmatively on questions of fact, then they should have requested such a ruling in their pleadings. They have not done so here. We therefore withhold any judgment concerning matters of fact in this case. The following factual description is nothing more than judicial notice of the events which led to this dispute, crafted from the pleadings of both parties in a way which is least controversial and most acceptable to each party. These facts should not be read as a dispositive ruling on what did or did not occur, but are only meant to provide some framework for this dispute and our ultimate decision.

Matt Pippen is a fourth-year Student Senator in the College of Engineering. Jill Berger is the President of the Student Senate, having been dually elected to that office last year. Sometime during the summer of 2013, shortly after taking office, President Berger obtained information which led her to believe that Senator Pippen had dropped below the minimum twelve hour enrollment requirement¹ to be eligible to hold a seat in the Senate. President Berger attempted to contact Senator Pippen regarding this allegation, and it appears to us that these attempts were at first unsuccessful. At any rate, President Berger informed the Chairman of the Senate Committee on Rules & Administration (R&A) and prompted him to conduct an investigation. The Chairman of R&A later resigned over the summer recess and a new chairman was appointed. At this time, Senator Pippen's case had not been resolved or disposed.

The R&A Committee reconvened at the beginning of the fall semester and this is the first time that the full committee was made aware of Senator Pippen's case. The committee attempted to contact Senator Pippen to address these claims, but Senator Pippen was not available to appear before the committee until October 7, 2013. The committee allowed Senator Pippen a chance to appear during the October 7 meeting and he chose to do so. During this meeting (or sometime before it), Senator Pippen was informed of R&A Committee's concerns and asked to present information in his defense. He refused to present his transcript to R&A Committee but did bring a Raiderlink printout to demonstrate that he was not completely "withdrawn" from Texas Tech as the committee claimed. Apparently satisfied that Senator Pippen was not withdrawn, but convinced that he had (at least for a time) dropped below the twelve hour enrollment requirement, the R&A Committee voted to refer Senator Pippen to the Student Senate for impeachment under Senate Resolution 49.26.

Senator Pippen was scheduled to take a test during the Senate meeting at which his impeachment would be discussed. During this meeting, in Senator Pippen's absence, the Senate went into Executive Session and apparently discussed Senator Pippen's case. The Senate then voted to table the impeachment motion until later in the meeting and resumed a regular, open session. When Senator Pippen concluded his test, he attended the Senate meeting and was provided an opportunity to speak on his own behalf. The minutes from the Senate meeting indicate that Senator Pippen was restricted to a maximum time limit, because the Senate had previously voted as a matter of procedure to limit all senators to such a time limit. At the conclusion of Senator Pippen's comments, the Senate took a vote on impeachment, which passed by the required 2/3 majority. Later in the meeting, a second vote was taken to officially remove Senator Pippen, though no further discussion occurred on this issue.

Senator Pippen then brought this action alleging violations of procedural due process and violations of his substantive privacy rights under the Student Constitution. This Court issued temporary restraining orders at Senator Pippen's request on November 7, 2013, enjoining the Student Senate from filling the Senate seat and offices vacated by Pippen's removal. This Court heard oral arguments in the matter of Pippen v. Student Government Association on January 25, 2014 and issued its initial decision on January 27, 2014.

¹ During oral arguments, the question was raised whether the twelve hour enrollment requirement is "per semester" or "per year." Petitioner contends that the language of the Constitution is vague and unclear on this matter, while Respondent SGA contends that long-standing practice defines it as a semester requirement. Neither party has asked this Court to define the twelve hour requirement as a matter of law, and we will therefore withhold judgment on this question for a later date.

DISCUSSION

I

Petitioner's first claim is that he was denied adequate procedural due process during the R&A Committee meeting on October 7, 2013, which resulted in his recommendation for impeachment. To this point, Senator Pippen directs the Court to Rule XI Section 6, which provides "Rules of Senate Procedure shall govern the hearings and operations of each standing committee." Senator Pippen believes that this means he is entitled to the same due process during a committee hearing as he is during a Senate hearing. We agree. We do not, however, believe that Senator Pippen was denied due process during the R&A Committee meeting.

Senator Pippen would have this Court believe that his appearance before the R&A Committee was untimely because R&A first learned of his alleged ineligibility to hold office sometime during the summer.² But counsel for SGA noted in oral arguments that the Student Senate is in recess during the summer and Senator Pippen's counsel did not dispute this. If the Senate stands in recess, then its committees are presumably in recess and cannot be expected to conduct regular business. It would be inequitable to require a Senate committee to meet and conduct business during a university holiday just because they learned of some business which needed attention upon their return to school. In this case, the facts indicate that R&A took up Senator Pippen's case sometime at the beginning of fall upon returning to their regularly scheduled business. Senator Pippen was asked to come to an R&A meeting to address the committee's concerns, but was unable to do so until October 7 and did, in fact, appear at the October 7 meeting. This seems to be the earliest possible date that R&A could have reasonably addressed his case. There is no evidence offered by Senator Pippen to indicate that R&A intentionally postponed his case or subjected him to undue delay and we do not believe their actions were untimely as a matter of law.

Senator Pippen further contends that he did not have proper notice of the hearing and the matters which would be discussed. Senator Pippen claims that the original charges against him were amended and that he was unclear on whether he was summoned to R&A to address being "withdrawn from Texas Tech" or to address being "below twelve hours." We fail to see a legally sufficient difference in these allegations. It is clear that the R&A Committee was interested in addressing whether Senator Pippen met the minimum hours requirement proscribed by Senate rules to be eligible to hold his seat. This should have been obvious to Senator Pippen under either charge and there is no reason he would not be able to bring any necessary evidence to the R&A hearing to address either of these charges, which are not substantially different in character. All that is required by the Constitution and the Senate Rules is that the accused have an opportunity to defend the allegations being made against them. In this case, the charge was that Senator Pippen did not meet the minimum hours requirement to be in good standing with SGA. The R&A Committee subsequently altered the original language of their resolution in the interest of protecting Senator Pippen's privacy, but the underlying charges and implications did not change simply because the title of the document was amended. This was a technicality of wording, not a substantive change in the charges. Senator Pippen is an intelligent individual who is capable of understanding what he is being accused of and the R&A Committee's decision to alter the title of their Resolution did not affect his capability to offer a defense on the merits of the charge.

² The exact timeline of events is somewhat in dispute and neither party was able to agree on when exactly certain parties were informed. It is clear, however, that both parties accept the R&A Committee was aware of Senator Pippen's case at least by mid-summer.

We hold that Senator Pippen had adequate notice of the charges presented against him for the purposes of the R&A Committee hearing and had an adequate opportunity to appear before the committee and defend himself. His right to procedural due process was, thus, not violated by the introduction of, or the subsequent amendment to, Senate Resolution 49.26.

II

Petitioner's second claim is that his right to procedural due process was violated during the October 24 Senate meeting which impeached and subsequently removed him. To this point, he argues that he was denied a "meaningful" open hearing in front of the Senate, that he was limited in time to speak, and that the hearing was an "administrative proceeding filed by University officials," triggering the protections of Amendment X of the Student Bill of Rights.

It is apparent to this Court, through the language of Senate Resolution 49.26, the minutes of the Senate meeting on October 24, 2013, and the differing opinions of counsel during oral arguments, that there is substantial confusion in the Texas Tech SGA concerning the correct procedures for impeachment and removal. Indeed, there appears to be some indication that the Student Senate does not even correctly understand that these words have two separate and distinct meanings. Admittedly, Article II, Section 8 of the Student Constitution is poorly written and does not clearly provide any answers on this matter. It is also seemingly in conflict with the rules of procedure adopted by the Student Senate. We therefore find it necessary to judicially interpret Article II, Section 8 and define clearly what "impeachment" and "removal" mean, as well as exactly what process is required for both. Because Senator Pippen's specific contentions regarding this claim cannot be resolved without a definitive finding of what due process requires, and because this issue will be adequately clarified and resolved in Senator Pippen's favor by our interpretation of due process requirements, we find it unnecessary to address each of Senator Pippen's individual arguments and will turn instead to an analysis of procedural due process.

We begin, as always, with the language of the Student Constitution. Article II, Section 8 is titled "Removal of Senators" and prescribes the following:

1. Members of the Student Senate may be removed by a 2/3 vote of the Senate. Malfeasance, neglect of duty, or improper conduct shall constitute reason for removal. Persons whose removal is being considered shall be entitled to an open hearing before the Senate.
2. Any committee member may be removed by a 2/3 vote of the Senate. Reasons for dismissal include malfeasance, neglect of duty, or improper conduct.

Additionally, Article III, Section 11 (which has no title) prescribes the following:

1. The President, Vice President for Internal Affairs, Vice President for External Affairs, and Vice President for Graduate Affairs may be removed from office. Reasons for removal are malfeasance, neglect of duty, or improper conduct. The removal shall be made by a 3/4 vote of the total membership of the Senate.

In neither of these provisions does the Constitution mention that an impeachment must precede a removal. Indeed, the Constitution never uses the word "impeachment" at all and only defines the process for removal. However, we hold, as a matter of law, that an impeachment must necessarily precede a removal for several reasons.

First, Black's law dictionary defines "impeachment" in a way that clearly indicates it is a separate, if interrelated, concept from "removal." Impeachment is defined as "[t]he act (by a legislature) of *calling for the removal* from office of a public official, accomplished by presenting a written charge of the official's alleged misconduct . . ." (emphasis added). If impeachment means the calling for removal, then it necessarily cannot be synonymous with removal itself. Additionally, this definition indicates that an impeachment (charge of alleged misconduct) must necessarily come before a removal. This is consistent with the language of Article II, Section 8 which provides the opportunity to have an open hearing for Senators "whose removal is being considered." It seems obvious to this Court that a senator could not be considered for removal unless they had first been impeached on some allegations constituting grounds for removal. A defendant in a criminal case cannot legally be guilty until after he has been charged for the crime; in the same way, an elected official cannot be found guilty of malfeasance, neglect of duty, or improper conduct—and cannot be removed from his office on those grounds—unless he has first been charged (impeached) for one of those offenses.

Second, we find that there is legislative intent to define these terms separately, even if the Student Senate in this case used them interchangeably. The Student Constitution refers only to removal and never once mentions impeachment. But the Senate's self-adopted procedural rules mention the word "impeachment" eight times, and "remove(d)" an additional eight times. Because both words appear in the Senate Rules, which provide additional procedures and regulations beyond the minimum requirements of the Student Constitution, it is clear that the SGA understands these to be two separate concepts. We follow basic canons of constitutional interpretation and read the Senate Rules in conjunction with the Constitution, except in cases where their language is directly contradictory. Here, the Constitution fails to mention impeachment, so the use of impeachment in the Senate Rules is not contradictory with the Constitution's requirements. Instead, the fact that impeachment appears in the Senate Rules is evidence that the Senate has chosen to provide supplementary procedures to the Constitution and require more than the minimum due process prescribed by Article II, Section 8.

Third, we find that there is a general presumption in student governments across the State of Texas that impeachment and removal are distinct processes. The student constitutions for the University of Texas, University of North Texas, Baylor University, Texas Christian University, Southern Methodist University, and many others, all use the terms impeach and remove in different contexts within their constitutions. The one notable school not following this format is Texas A&M University. A&M's student constitution, however, includes express language defining that impeachment and removal are the same thing. In the context of actual governments, most states (as well as the federal government) are bicameral legislatures and require that the House of Representatives first votes to impeach an elected official and then the Senate votes on whether to remove them. Several notable politicians—including multiple U.S. Presidents—have been impeached, but not removed from office, which is further evidence that these concepts are independent of each other. The State of Nebraska has the only unicameral legislature in the United States, making it more analogous to Texas Tech's SGA; but Nebraska's constitution still defines impeachment and removal as two separate processes. We therefore find a presumption exists that impeachment and removal are separate processes requiring separate votes: one which charges an official with conduct constituting grounds for removal, and the other which finds him guilty of that conduct and punishes him by removing him from office. We further find that this presumption may only be overcome if the legislature includes express language (such as found in Texas A&M's student constitution) that the processes are to be understood as identical. Because the Student

Constitution of Texas Tech University does not include this express language, we rule, as a matter of law, that the terms are to be interpreted separately by Texas Tech's SGA and that impeachment is implied to come before removal under Article II, Section 8, even though it is not expressly defined there.

In the case at bar, the R&A Committee properly conducted an investigation into Senator Pippen's alleged misconduct and recommended impeachment to the Student Senate, as required by the Senate Rules. The Student Senate then gave Senator Pippen an opportunity to be heard³ and, after this hearing, voted affirmatively to impeach him. The Senate then conducted a vote on removal without Senator Pippen having an opportunity to speak again. We find that this process was out of order and constitutionally inadequate. Senator Pippen was effectively "removed" without an opportunity to present a defense on the charges he was actually impeached upon. He did not have a constitutional right to speak prior to his impeachment vote, but was entitled to receive adequate notice of exactly what charges he was being impeached upon and to have a reasonable opportunity to present a defense to those specific charges. Therefore, Senator Pippen should have received an opportunity for an open hearing in the Student Senate *after* he had been impeached, but *before* the Senate voted for removal.

We hold that Senator Pippen was denied adequate procedural due process, as required by Article II Section 8 of the Student Constitution, in relation to his removal hearing only. Senator Pippen was properly impeached (and remains so after this ruling), but his removal from the Student Senate was unconstitutional and is, thus, invalid.

III

Petitioner's third, and final, claim is that his right to privacy, as guaranteed by Amendment V of the Student Constitution, was violated through improper discussion of his academic record, and suggests to this Court that Senate Rule VII Section 12 is unconstitutional to the extent that it allows the President of the Senate to request confirmation of the GPA and enrollment status of student senators. We are mindful that issues concerning the disclosure of student academic records are governed by the 1974 Family Educational Rights and Privacy Act (FERPA) and are a matter of substantive federal law. While petitioner presents questions arising under Texas Tech's Student Constitution (over which this Court has certain jurisdiction), these issues are interrelated with U.S. federal law and the administrative policies and procedures of Texas Tech University (over which we have no jurisdiction). Because this Court is not a court of law and has no authority to interpret or apply FERPA, we are unclear how far our jurisdiction extends over this claim and are hesitant to provide any definitive ruling which might mislead the SGA into inadvertently violating the law. Because our jurisdictional limits are unclear, and because we have already ruled in Senator Pippen's favor on Claim II, we withhold judgment on Claim III and decline to reach its merits.

³ It is important to note that the Constitution only requires an opportunity to be heard, but does not prescribe how much time the accused is required to speak or how much evidence he is entitled to present. We decline to hold, as Senator Pippen urges us to, that his due process was necessarily violated by the fact that he was only allowed to speak for five minutes. Evidence suggests that all senators were limited to five minutes of speaking time during this hearing and Senator Pippen is not entitled to more floor time than any other senator if such time limits have been adopted in accordance with the Senate's procedural rules. The length or extensiveness of an "open hearing" required to be constitutionally adequate is a case-by-case determination, and we refuse to adopt a bright-line rule which would apply uniformly in all cases.

IV

Our decision today officially interprets Article II Section 8 of the Student Constitution and imposes specific requirements of procedural due process on all future attempts by the Student Senate to impeach and remove student senators. As such, we feel it necessary to spell out exactly what we have held Article II Section 8 to require, in the hopes that the Student Senate will clearly understand what is required and avoid any violations of due process in the future.

As we have discussed above, Article II Section 8 is ambiguous and does not clearly explain what is required for impeachment or removal of student senators. We therefore exercise our power of judicial review to interpret the provisions of Section 8 and declare that the minimum due process required by the Student Constitution is as follows:

1. First, upon learning from reliable sources that a senator⁴ is potentially in violation of a requirement to hold office (whether that requirement is imposed by the Student Constitution or an SGA rule), the R&A Committee shall conduct a thorough investigation into the matter. During this investigation, the accused party has a right to speak before the R&A Committee, to inspect any evidence presented against him, and to present evidence in his defense. At the conclusion of such an investigation, the R&A Committee shall take a vote to determine whether it will *recommend* the official to the Student Senate for impeachment.
2. Second, if the R&A Committee votes affirmatively to recommend impeachment, the Student Senate shall promptly schedule a vote on impeachment in accordance with its own procedural rules. According to the Senate Rules, discussion on impeachment may occur in executive session, but the vote must be an open vote, on the record. There is no constitutional requirement that the accused be allowed to speak or present evidence prior to a vote on impeachment, beyond his right to a defense during the R&A Committee meeting.
3. Third, if the Student Senate votes affirmatively to impeach the accused official, then that official must be presented with adequate notice of the charges he has been impeached upon.
4. Fourth, the Student Senate, after a reasonable amount of time⁵ following notice of impeachment, shall schedule a vote on removal in accordance with its own procedural rules. Before this vote is taken, the accused official must be given an adequate opportunity to present a defense in front of the Student Senate, during open session. The vote on removal following this hearing shall be an open vote, on the record.
5. If, after all of the procedures above have been followed, the Student Senate votes affirmatively to remove the accused, then he shall forfeit his offices and titles within the SGA. After the removal vote has passed, the removed official may appeal to the Texas Tech Student Supreme Court.

⁴ This procedure applies to all student senators, whose removal is provided for in Article II, Section 8. We note that the level of due process required to impeach executive branch officials may be different under Article III, Section 11, which contains notably different language than Article II, Section 8. We have not been asked to address the impeachment or removal of executive branch officials in this case, so we will reserve this question for a later date.

⁵ We decline to set a bright-line rule for what constitutes a reasonable time, but will leave this to the Student Senate's discretion. We believe that the Constitution only requires enough time to adequately gather evidence and prepare a defense to the charges of impeachment.

CONCLUSION

In accordance with our reasoning above, we hold that:

- I. Matt Pippen was properly impeached by the Student Senate, consistent with the due process requirements of the Student Constitution;
- II. Matt Pippen was improperly removed by the Student Senate and the manner of his removal violated the procedural due process requirements of the Student Constitution;
- III. Article II, Section 8 of the Student Constitution is judicially interpreted to require the procedural due process outlined above and all subsequent efforts to impeach and/or remove an elected SGA official must comport with this process to be constitutionally valid; and
- IV. Any existing rules or procedures of the Student Senate or the Student Government Association, which expressly or impliedly contradict with this opinion, are unconstitutional and void to the extent that they contradict this opinion.



Hon. Andrew Robertson, *Associate Justice*

/s/ Michael Uryasz

Hon. Michael Uryasz, *Chief Justice*

/s/ Riley Branch

Hon. Riley Branch, *Associate Justice*

/s/ William Echols

Hon. William Echols, *Associate Justice*

/s/ Khaki Scrivner

Hon. Khaki Scrivner, *Associate Justice*