

IN THE SUPREME COURT OF THE
FLORIDA STATE UNIVERISY
STUDENT GOVERNMENT
ASSOCIATION

**Law School and Medical School Councils
v.
Congress of Graduate Students**

PROCEDURAL POSTURE

This complaint was filed on March 30th, 2016. The complaint requested the Court to issue an injunction preventing the Congress of Graduate Students General Assembly from voting on the revised budget pending resolution of this suit. The Chief Justice decided not to issue the injunction because if the budget did not pass, this suit would be rendered moot. The Chief Justice did issue an injunction preventing the Speaker of COGS from ratifying the approved budget until the resolution of the suit. On April 7th, 2016, the Supreme Court met to discuss the need for a hearing to resolve issues in this case. Representatives from both parties were present at this meeting. The Court decided to hold an Oral Argument on the “substantial changes” issue and a hearing on the alleged discrimination. The Court resolved Issues three thru five without a hearing. The Court held hearings on April 12th, 2016. Representatives for both parties were in attendance and the meeting was recorded. The Court deliberated immediately following the meeting and the results are provided as follows.

JURISDICTION

The Supreme Court has jurisdiction to hear this case. The Supreme Court has jurisdiction to hear cases and controversies involving the constitutionality of actions by student governing groups and their

representatives. FSU SGA Const. Art. IV, Section 3(C)(1). The Supreme Court has jurisdiction over violations of the Student Body Constitution and Statutes. FSU SGA Const. Art. IV, Section 3(C)(2). This case involves the constitutionality of the budgeting process undertaken by the Congress of Graduate Students (COGS) as well as claims that representatives of COGS violated the Student Body Constitution and Statutes.

ISSUES

1. Whether the Congress of Graduate Students’ Budget Committee made “substantial changes” to the proposed budget?
2. Whether the Congress of Graduate Students discriminated against the Law School and Medical School Councils in its budgeting procedures?
3. Whether the Congress of Graduate Students violated the Law School and Medical School Councils’ due process rights by refusing to allow the chairpersons to sit on the budget committee during deliberations.
4. Whether the Congress of Graduate Students failed to provide adequate notice of budget committee meetings by simply posting the time and location on the SGA website.
5. Whether the Congress of Graduate Students’ Budget Committee violated the Student Government in the Sunshine Act by not keeping minutes at each of its meetings.

HOLDINGS

1. Yes, whether the Budget Committee made “substantial changes” to a failed proposed budget is a political question and the passage of the new budget

signifies that “substantial changes” were made.

2. No, while there is a disparate impact against the Law School and Medical School Councils, there is no evidence that the Congress of Graduate Students acted in a discriminatory manner.
3. No, the Chairpersons of the Law School and Medical School Councils are not entitled to sit on the Budget Committee.
4. No, SGA statutes clearly indicate that this is sufficient notice.
5. Yes, all SGA entities must keep minutes at any meeting at which official business is conducted, including the COGS Budget Committee.

FACTS

This suit arises from allegations of improper procedure and discrimination involving the Congress of Graduate Student’s budgeting procedure. On February 9th, 2016, the Congress of Graduate Student’s (COGS) Budget Committee met and decided on a proposed budget to allocate COGS’ funds for the 2016-2017 fiscal year. The proposed budget was then heard by the COGS general assembly and debated on February 29th, 2016. During this general assembly meeting, members of the Law School and Medical School Councils (Petitioners) voiced their dissatisfaction with the proposed funding for their respective organizations. The Petitioner’s complaints were based on an assertion that the Budget Committee relied on inaccurate data and exhibited systemic bias against the Petitioner's in allocating the proposed budget. As a result of this dissatisfaction, the COGS general assembly voted to deny the proposed budget.

Once the proposed budget failed at the general assembly, the budget committee was tasked with resubmitting a budget to COGS with substantial changes. The Budget

Committee met on March 23rd, 2016. The Budget Committee advertised this meeting on the SGA website including both the date and time of the meeting. Prior to the meeting the Law School Council President requested to sit on the committee, this request was denied by the Speaker of COGS. The Law School Council President and Treasurer attended this meeting and were allowed to present to the committee. During this meeting, the committee adjusted the proposed budget as follows: increase the LSC and MSC budgets by \$3,500; zero-funding the scholar’s commons for \$750; reducing the Graduate School budget by \$2,000; and reallocating \$2,790 from the general unallocated fund. The new budget passed the budget committee with a vote of 5-1, with both representatives of the Law School and Medical School voting in favor of the revised budget. This general assembly voted in favor of this revised budget on April 4th, 2016 with a vote of 13-3-3.

OPINION

Written by the Composite Court, Justices Cox, Meyer, and Tomassetti joining on all issues. Justice Thompson and Mitchell, dissenting on issue 1 and joining on issues 2-5,

1. The Budget Committee made “Substantial Changes” before resubmitting a budget proposal to the general assembly.

The first issue involves whether the COGS Budget Committee made “substantial changes” to the proposed budget before resubmitting it to the general assembly. The Court found that defining the term “substantial changes” would be an overreach of the Court’s power and would, in effect, result in the Court budgeting for the Legislative Branch. The Student Government

Constitution provides that the legislative branch shall take final action on the proposed Activity Fee Budget. *SGA Const.* Art. II, Section 5(A)(6). This places all decisions regarding the annual A&S fee budget solely within the Legislative Branch. The Constitution further delegates this authority to the Congress of Graduate Students. *SGA Const.* Art. IX, Section 2. Therefore, this issue falls within the political question doctrine, prohibiting the Court from determining an issue that is expressly designated to a coordinate branch.

The political question doctrine is designed to restrain the Judiciary from inappropriate interference in the business of the other branches of Government. United States v. Munoz-Flores, 495 U.S. 385, 394 (1990). A political question arises when there is:

found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious

pronouncements by various departments on one question.

Baker v. Carr, 369 U.S. 186, 217 (1962).

In this case, the SGA Constitution expressly delegates the formation and approval of the annual A&S fee budget to the legislative branch. Additionally, the Court is unable to decide whether a “substantial change” was made without making an initial policy determination regarding the appropriate levels of funding and the reasons why the initially proposed budget failed to pass. Therefore, the court is proscribed from determining whether the political branch made a substantial change to its proposed budget. The purpose of dedicating the budgeting process to the legislative branch is so that the political process may work to allocate funds based on compromise and utility. Any attempt by the Court to dictate how the legislature must allocate its funds is prohibited. Ultimately, this is a political question for the Legislative Branch to determine. By default, any re-proposed budget that ultimately passes the general assembly did so with substantial changes, or else it would not pass, any budget that continues to fail, therefore, did not include substantial changes. Any issues presented by this process should be worked out with the representatives of the aggrieved parties in COGS. Therefore, it is not the place of the Court to mandate what is or is not a substantial change. Therefore, in light of the approval of the budget by COGS budget committee and COGS general assembly this Court finds that the budget process was valid.

2. The Congress of Graduate Students did not discriminate against the Law School and Medical School Councils.

For the second issue, LSC and MSC contend that COGS consistently underfunding the professional Councils is unconstitutional. They argue that “[t]he professional school Councils have been systemically discriminated against in the COGS budgeting process for several years.” The Court determined that due to the Plaintiffs not qualifying as a protected or suspect class, the proper standard of review is rational basis with the burden being on the Plaintiffs to prove their case by a preponderance of the evidence.

The United States Supreme Court has held that when economic or social legislation is challenged, the burden is on the Plaintiff to meet the rational basis standard. *See Bd. of Trs. Of the Univ. of Ala. v. Garrett*, 531 U.S. 356, 382-83 (2001). Rational basis is the most lenient form of judicial review and is generally used where no fundamental rights or suspect classifications are at issue. To pass rational basis review, the challenged action must be rationally related to a legitimate interest. The Supreme Court in *Garrett* also held that although disparate impact may be relevant evidence of discrimination, such evidence alone is insufficient even under a strict scrutiny review. *Id.* at 372-73.

In the instant case, Plaintiffs put on evidence of COGS budgets dating back to 2012. These budgets show that LSC and MSC funding has been consistently cut throughout the years. While COGS budget also decreased over this period, the reports show that LSC and MSC have been bearing most of the brunt of these decreases. This is most vividly demonstrated by the initial proposed budget for 2016-2017 in which over 50% of COGS budget cut was taken out on LSC and MSC. This could be seen as a disparate impact.

Although a disparate impact may be present here, there was no evidence of any express or intentional discrimination. Therefore, the Court holds that the Plaintiffs failed to meet their burden of proving discrimination. The court noted that the difficult choices inherent in allocating limited funds requires compromise and debate and will inevitably leave some groups dissatisfied.

The court, however, did identify some very concerning issues with the COGS budgeting process. In addition to the disparate impact of the cuts, the Court found that the use of incorrect, incomplete, or misleading data in the budgeting process is alarming. Ultimately, the issues presented here were mostly representational in nature and are best handled by the political process. Through this process the first budget was denied, changes were made, and both the MSC and LSC representatives voted to approve the new budget. Therefore, this Court unanimously holds that no constitutional violation is present.

3. Due Process was not violated by COGS Speaker not allowing LSC and MSC Chairs to sit on Budget Committee

After convening to review the complaint submitted by the Law School Council and Medical School Council (“Petitioners”), we dismissed this issue upon finding that there was no violation based on the facts presented. Petitioners alleged that the COGS Speaker denied them due process by denying the LSC Chair and MSC Chair requests to be members of the Budget Committee at the March 23, 2016 Committee meeting. In this case, there is no due process violation because the LSC and MSC Chairs did have representation at the meeting, and were allowed to make presentations. Further, the LSC and MSC

Chairs are not COGS members and therefore, could not be members of the Budget Committee. Last, the COGS Speaker had no authority to restructure the composition of the Committee.

First, the LSC and MSC Chairs did have representation within the Budget Committee and were allowed to attend and make presentations. This is counter to Petitioners' assertion that the LSC Chair requested to become a member of the Committee for the March 23rd meeting to ensure appropriate representation. Petitioners acknowledge that there is one representative on the Committee from each of the professional school Councils. Also, Petitioners note that the LSC Chair and LSC Treasurer were able to attend the meeting and represent their constituents.

Second, the LSC and MSC Chairs are not members of COGS, but chairs of funded entities. There is no statutory authority supporting the idea that chairs of funded entities may become "members" of the Budget Committee. Section 108.11 of the COGS Code states that the Budget Committee shall consist of the Deputy Speaker for Finance, along with at least four other COGS members. While the COGS Code does not define the term member, COGS members or representatives join COGS through the election process in the SGA elections or by completing a prospective representative petition. The LSC Chair and the MSC Chair are not elected in this way and therefore are not members of COGS but chairs of funded entities. Therefore, the statute that gives the Speaker authority to appoint COGS members does not seem to allow him to appoint the LSC and MSC Chairs as members of the Budget Committee.

Furthermore, there is no due process violation by the COGS Speaker denying the

Petitioners' requests to be members of the Budget Committee because the COGS Speaker had no authority to change the composition of the Committee. Section 104.2(D) of the COGS Code gives the Speaker the authority to appoint representatives to all standing and ad-hoc committees. However, Section 108.11 states that the Budget Committee shall consist of the Deputy Speaker for Finance, along with at least four other COGS members. These latter members are appointed by the Speaker and confirmed by the Assembly. The Petitioners made their request to the COGS Speaker when a Budget Committee was already formed in accordance with the COGS Code. There is no provision that allows the Speaker to change the composition of the committee in the way that the Petitioners requested.

4. The Congress of Graduate Students' Budget Committee gave adequate notice of the budget deliberation meetings.

For Issue 4, LSC and MSC claimed that the act of posting notice of the March 23, 2016 budget meeting was unreasonable under § 286.011(1), Fla. Stat. (2015), and insufficiently advertised in Congress under § 105.4, COGS Code.

Under the Florida Sunshine Law Act ("Sunshine Act"), the budget committee is required to provide reasonable notice of any meetings. § 286.011(1), Fla. Stat. (2015). Further the COGS code requires that Budget Committee meetings are public and shall be advertised in the Congress, and that the Chairperson shall not exclude any student from witnessing the hearings or deliberations. § 105.4, COGS Code.

The Court found that notice of the meeting was reasonable and sufficient pursuant to

Florida and FSU SGA Statutes, as well as the COGS Code. SGA Statute 210.2 makes clear that posting on the SGA website constitutes posting in a public space as well as advertisement in a widely published forum. Furthermore, SGA Statute 203.9 asserts that a notice violates the Sunshine Act if the notice is not made public twenty-four hours prior to the meeting.

Additionally, the COGS Code references to SGA Statute 409.1, which reiterates that notice must be posted to the SGA website twenty-four hours prior to any meeting. First, the Court notes that the Cogs website is part of the SGA website, so a requirement of posting to the SGA website is satisfied by posting on the COGS page. It was also uncontested that COGS posted notice of the meeting to the COGS website at least twenty-four hours prior to the March 23 meeting.

Further, the Court determined that at least the Chairperson and Treasurer of the LSC did receive actual notice as they both attended the budget meeting. The Chairperson of the MSC did not attend the budget meeting, and no evidence was shown that he received actual notice. The Court notes that if none of the interested parties had been able to attend the March 23 meeting due to not receiving notice, it may have considered a different interpretation of the notice requirement laid out by SGA Statutes and the COGS Code. However, due to representation at the meeting, and pursuant to the aforementioned statutes, the Court finds that posting notice of the budget meeting to the COGS website more than twenty-four hours prior to the meeting was adequate.

5. The Congress of Graduate Students' Budget Committee violated the Sunshine Act by not keeping minutes of the February 9th meeting.

The final issue upon the Court is whether the Congress of Graduate Students ("COGS" or the "Committee") violated the Sunshine Act by failing to keep and maintain adequate minutes of the February 9th Budget Committee meeting.

On February 10, 2016, Petitioners requested the February 9th Budget Committee minutes (the "February 9th Minutes") from COGS Speaker, Tristan Hall. Five days passed without response from Speaker Hall and Petitioners sent a follow-up email requesting the February 9th Minutes. In response, Speaker Hall sent Petitioners a Budget Packet containing the February 9th Minutes. Subsequently, Petitioners filed their complaint against the COGS alleging that the COGS failed to keep and maintain adequate minutes.

According to Student Body Statutes, § 203.6, "[t]he minutes of any meeting . . . shall be recorded at the time of the meeting and such records shall be open to the public." Here, the Committee maintained and recorded the minutes from the February 9th Budget Committee meeting. However, Petitioners maintain that the minutes were inadequate and requested that the Court make a determination as to the adequacy of the minutes provided to Petitioners.

Based on the facts, Petitioners requested the February 9th Minutes less than twenty-four hours following the Budget Committee Meeting. Additionally, minutes of some sort were provided to Petitioners within five days. In recognition that time constraints may have affected the quality of the minutes provided to Petitioners, the Court declines to rule on the adequacy of the COGS minutes. However, the Court will issue an injunction to the COGS. According to Student Body Statutes, §203.6, "[t]he Student Supreme Court shall have jurisdiction to issue

injunctions to enforce the purposes of [the Sunshine Act] upon application of any member of the Student Body.” In issuing the injunction, the Court will reiterate the record keeping duty of the COGS and will emphasize the requirement that such records must be maintained adequately.

CONCLUSION

In conclusion, the Court finds that the budget as passed by the General Assembly on April 4th, 2016 is valid. The Budget Committee made substantial changes to the budget. There was no discrimination against the Law School and Medical School Councils. The budgeting process did not deprive the Law School and Medical School Councils of their due process rights. The Budget Committee did provide adequate notice of the meeting. The Budget Committee did, however, violate the Sunshine Act by not keeping minutes at the April 9th, 2016 meeting.

J. Thompson joined by J. Mitchell, Dissenting as to Issue 1

I am writing to express dissent as to Part 1 of the judgment regarding whether a substantial change was met. The Majority held that the definition of a “substantial change” is to be left to the political process. While I agree that it would not be proper for this Court to define exactly what a substantial change is, it is within our purview to determine whether or not a substantial change occurred in this case.

The Majority based its decision on the legislative intent behind the statute containing the language at issue. They posit that the purpose of “substantial change” is to act as an edict to the Budget Committee

from the General Assembly to change the budget enough to get it passed when it is re-presented to the General Assembly. However, based on a textualist perspective, the use of the word “substantial” cannot be ignored. If the legislature does not agree, then it will be prompted to fix the statute and be incentivized to be more careful in the future.

Under the plain meaning rule, we must follow the plain meaning of the statutory text, except when the text suggests an absurd result. *United States Nat'l Bank of Oregon v. Independent Ins. Agents*, 508 U.S. 439, 462 (1993). Here the plain meaning of substantial is of considerable size or worth. Additionally, under the canon of Surplusage, the use of “substantial” was intended for a specific purpose. *Ratzlaf v. United States*, 510 U.S. 135, 140- 41 (1994). If the statute merely omitted the word substantial, it would still serve the purpose that the Majority suggests. Therefore, substantial was included for a reason.

In the instant case, Plaintiffs have presented enough evidence for this Court to determine whether a substantial change was met. COGS had a total budget of \$565,000 with 27 line items, 21 of which could have been adjusted. When the budget was adjusted LSC and MSC each received an additional \$3,500 coming from 3 line items. Of these 3 line items, one was from the previous year’s budget and one was from the unallocated budget. Therefore, only one organization was directly impacted by the adjustments.

There are many ways to reach a substantial change. These could consist of a substantial amount of money being moved around, a substantial number of line items

adjusted, or other possibilities. However, none of these were met here. There is no evidence that the Budget Committee carefully considered each line item to best determine where funds could best be shifted around. Four line items were actually increased and the \$155,000 budget for presentation grants was not touched.

In my opinion, no substantial change occurred here. It appears that the Budget Committee made very minor changes merely to appease the General Assembly in order to get the budget passed instead of really making an effort to make a substantial change. The definition of "substantial change" is best left up to the legislature and is not for this Court to decide. However, it is my opinion that only taking money directly from one other organization does not constitute a substantial change.