

ADVISORY OPINION 2021-03
CONCERNING THE PROPER
AUTHORITY AND PROCEDURE
FOR PLACEMENT OF
CONSTITUTIONAL
AMENDMENTS ON THE
ELECTION BALLOT

Ducey, CJ. writing for the Court.

Pursuant to Article IV, Section 3(C)(5), of the Student Body Constitution, it is within the jurisdiction of this Court to issue advisory opinions¹ “concerning student rights under the Student Body Constitution upon request of the Student Body President or any Senator.”

We take this opportunity to emphasize that we have not been presented with a case or controversy and we are not considering a particular set of facts. This advisory opinion is a general interpretation of student rights and is not binding on the Court.

On October 5th, 2021, this Court received a petition by a Florida State University Student Government Association (“SGA”) Senator for an

Advisory Opinion as to the proper constitutional procedures that must be followed for the placement of a proposed amendment to the Florida State University Student Body Constitution (“FSU Constitution”) on a ballot to be put to a vote by the Student Body during the SGA election cycle. Specifically, Petitioner poses, and this Court will address, questions concerning:

- I. What processes must be followed before a proposed amendment to the Student Body Constitution may be placed on the ballot;
- II. The authority of the Supervisor of Elections to decide what is placed on the Ballot and what constitutes the specific requirements of the FSU Constitution and Statutes pertaining to Ballot requirements;
- III. The fate of an SGA election if the required processes are not followed, and the consequences of such on certain SGA actors.

We emphasize that this Advisory Opinion is a statement of this Court’s

¹ A non-binding statement by a court of its interpretation of the law on a matter submitted for that purpose.” Black’s Law Dictionary, 8th ed. 2004.

interpretation of the law and that the Supreme Court reserves ruling on the issues discussed herein without a case requiring a decision before the Court, should this issue come before us again in subsequent litigation.² However, now that the Court has issued an Advisory Opinion on the matter, it should be known that the proper procedures required for a proposed constitutional amendment are laid out in the opinion as follows.

ANALYSIS

In forming our opinion, this Court looked to the specific language of the FSU Constitution and provisions in the Student Body Statutes (“SBS”) regarding the constitutional amendment process. *See Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) (holding that a court must exhaust all traditional tools of statutory construction). When interpreting a provision, Courts begin with the language of the text at issue, giving the words contained in the provision their ordinary meaning. *See N.Y. v. Travelers Ins. Co.*, 514 U.S. 645, 655; *Moskal v. United States*, 498

U.S. 103, 108 (1990). “The beginning point must be the language of the provision, and when the text speaks with clarity to an issue, judicial inquiry into its meaning, in all but the most extraordinary circumstance, is finished.” *Ramey v. Director*, 326 F.3d 474, 476 (4th Cir.2003).

The portion of the FSU Constitution regarding the constitutional amendment process is but a single sentence. Contained in Article VI, titled “Amendment Process And Referendum Elections,” and pertinent to the issue presented here, Section 1 states:

CONSTITUTIONAL AMENDMENTS.

Amendments to this Constitution may be proposed by two-thirds (2/3) vote of the Student Senate, or by petition of 1,500 members of the Student Body, and shall become part of this Constitution upon ratification by two-thirds (2/3) of the votes cast in an election of the Student Body, provided that the proposed amendments have been published in a campus newspaper at least one week prior to the vote of the Student Body.

FSU Const. Art. VI, § 1.

² *See Burns v. State of Ohio*, 360 U.S. 252 (1959) (noting that the court holds the ultimate responsibility of determining violations and imposing sentences).

It is apparent from the plain language of this constitutional provision that an amendment may be proposed in one of two ways: (1) by an action of the Student Senate, wherein two-thirds of the Senators vote in favor of the proposed amendments; or (2) by an action of members of the Student Body, in which 1,500 students sign a petition to that same effect. Once one of these processes takes place, the next affirmative action required for the proposed amendment to become a permanent provision embodied in the FSU Constitution is ratification by the Student Body. This is to take place during an election held by the Student Government Association and the proposed amendment requires an affirmative vote by two-thirds of the votes cast by students in that election. If two-thirds of the students voting in the election vote in favor of the amendments passage, the amendment “shall become part of [the FSU] Constitution.” FSU Const. Art. VI, § 1.

However, there is a final caveat to the proposed amendment’s placement on the ballot. The final portion of the sentence contained in Section 1 states,

“...provided that the proposed amendments have been published in a campus newspaper at least one week prior to the vote of the Student Body.” *Id* (emphasis added). It is this language contained in Section 1 that leads us to Petitioners next inquiry.

This Section of constitutional text does not specify any particular “campus newspaper” for the required publication, nor does it define the word “published” or what constitutes “publication” of an amendment. Looking to the text of the FSU Constitution, one would notice that it does not mandate publication in *the* campus newspaper, which would imply that only one source of publication would satisfy the requirement; the language calls for publication in *a* campus newspaper. This implies that there may be more than one newspaper circulated on FSU’s campus which would meet this requirement.

To address Petitioner’s second question regarding the authority of the Supervisor of Elections (“SoE”) to decide what gets placed on the ballot—specifically the SoE’s authority to

determine which campus newspaper counts as a campus newspaper and the manner in which a Constitutional Amendment is published in a campus newspaper—we must look to the duties outlined in SBS and allocated to the SoE.

Under Chapter 705, Fall Elections “shall include elections for Student Senate, [other offices], and all referenda and constitutional amendments duly proposed pursuant to the Student Body Constitution and Statutes.” SBS § 705.1. The duties of the SoE pertaining to elections are outlined in Chapter 702, SBS. There are many of them, including choosing the official format of the electronic ballot (SBS § 712.1) and “ensur[ing] the publication of the official ballot. . . and constitutional amendments, a week before the elections on the SGA Website [and] necessary SGA-related platforms.” SBS § 702.2(K)(2). Under section 712.1, the official ballot must contain the constitutional amendments proposed in accordance with statutes and the FSU Constitution, along with a “Statement of Intent” to be placed above the amendment, consisting of not more than 100 words. *See SBS § 712.*

We will not provide an exhaustive list of the responsibilities enumerated in statutes regarding the specific duties (spanning from (A) to (T)) of the SoE, however, nowhere in this list of duties do the statutes provide the SoE with the authority to designate which campus newspaper counts as a campus newspaper, the manner in which a Constitutional Amendment is published in a campus newspaper, nor do they subject the publication of a proposed amendment to the approval of the SoE. Rather, the statutes denote an affirmative duty on the SoE to include on the official ballot all constitutional amendments that satisfy the requirements of the FSU Constitution and SBS. This leads us back to our inquiry.

Because the text of the FSU Constitution does not provide specificity, and the authority of the SoE is confined to his enumerated duties, we look to provisions contained in the Statutes to seek additional clarity on the proposed amendment publication requirements. Nowhere in the Student Body Statutes can one find a clarification as to the term “newspaper” as it is used in the FSU

Constitution. However, Chapter 409, titled “Senate in the Sunshine,” governs the notice requirements for Senate meetings, as well as the required notice for an amendment prior to its passage in the Senate. Regarding Senate meetings, § 409.1 requires that notice of the time, place and agenda of all Senate meetings must be posted to the SGA Website. *See SBS § 409.1.* That section also provides that copies of such notices “must always be made available to any newspaper or newsletter or general student circulation so requesting.” *Id.* Alas, another non-descriptive use of the phrase “any newspaper”. In the same statute, § 409.2 states: “All . . . constitutional amendments. . . with a short descriptive phrase. . . must be advertised in a widely published forum prior to their debate on the Senate floor.” SBS § 409.2. Similarly, SBS § 401.7, titled “Record Keeping and Online Posting” provides: “All . . . constitutional amendments passed by the Student Senate shall be documented and posted on the [SGA] website.” SBS § 401.7. Lastly, § 210.2 provides that posting on the SGA Website will “constitute posting in a

public space and advertisement in a widely published forum.” SBS § 210.2.

While none of these statutory provisions provide an answer to what “campus newspaper” the FSU Constitution is referring to in Article VI, or what constitutes a “publication” for a proposed amendment, these provisions do offer insight into the purpose of the notice requirements as envisioned by the drafters of these provisions. The use of the phrases “any general student circulation,” and “a widely published forum,” seem to hint that, so long as the publication is made widely available to the general Student Body, so as to inform voters that an amendment which may affect them directly is going to be placed on the ballot and to alert the voters of the opportunity to voice their vote on the matter, it will satisfy a notice requirement. While the SGA Website is considered a ‘widely published forum’, the website itself could not be said to constitute a ‘campus newspaper’, or there would be no need for the statutes to differentiate between the two. However, seeing that the SGA Website often satisfies the notice requirements of publication as mandated

in other areas of the statutes, it would seem that any newspaper circulated on campus which is accessible to the Student Body at large via print or online would meet the requirements of Article VI.

As for what must be included in this newspaper publication, the text requires that the proposed amendments be published. FSU Const. Art. VI, § 1. That is all it says. *See id.* The plain meaning of this would entail, at a minimal understanding, that the text of the proposed amendment be included. The requirement of SBS § 712.1 that a “Statement of Intent” accompany the amendment on the official ballot could also lead to the conclusion that this Statement should be included in any publication meant to provide notice to the Student Body of the changes the amendment will establish. However, this is not a mandate embodied in the text of Article VI, and this Court will not insert text into the FSU Constitution where it was not emphatically placed by those who drafted it. We simply note that while *less may be more in some contexts*, in the context of providing the Student Body with information regarding changes to a

document with which all members of the Student Body must comply, perhaps *more* may be helpful in allowing these students to adequately assess the consequences of their votes.

While the FSU Constitution and Statutes are admittedly imprecise in defining the specific parameters of their requirements to a ‘T’, in this Courts view, both the spirit and the letter of the applicable law embody a single theme: let the members of the Student Body exercise their right to engage freely in the democratic process of self-government, as demonstrated through the constitutional amendment process, and let them know what they are about to vote on when elections come around. We can imagine many edicts far harder to comply with than those laid out in the single sentence governing the requirements for an amendment to our constitution to be placed on an election ballot.

As for Petitioners final questions, the Senator asks: Should an SGA election be delayed if those processes outlined above (1) are not followed due to negligence; (2) are willfully disregarded;

or (3) were actively circumvented by the improper addition of rules which do not exist in the FSU Constitution or Student Body Statutes? In addition, Petitioner inquires: are any of the three preceding questions, if found to be true, grounds for impeachment of the SoE?

As to the first part of Petitioner's Question, the FSU Constitution does not designate a specific date when elections must be held (aside from requiring that they be held in both the fall and spring semesters, *see* FSU Const. Art. V, § 1(A), (B)). Therefore, we must look to Title VII of SBS, which encompasses all statutes beginning in 700 and constitutes the Student Body Election Code. SBS § 705.4 states that Fall elections shall take place on the seventh Wednesday of the fall semester. If there is a conflict with that date, the statute provides that the Senate must pass a resolution to change the date, however this must occur no later than the last Senate meeting of the spring semester. SBS § 705.4. If the Senate fails to do so, the SoE may change the date, but no later than the Friday following the third Wednesday of the semester. *Id.*

While this Court does not find it necessary to comment on whether an election *should* be postponed due to the failure to abide by procedures in the FSU Constitution or Statutes, the specific language in the Election Code leads us to conclude that the very limited circumstances permitting an election to be held on a date other than that which is specified by statute do not include any of the circumstances outlined in Petitioner's inquiry.

Petitioner also asks us to opine on whether any of the circumstances outlined are grounds for impeachment of the SoE. This is a touchy subject, and not one that this Court will provide an opinion on absent more knowledge of specific facts surrounding an actual controversy presented before us. Removal of a student from a position he or she was duly elected or appointed to is something that, in this Court's view, should be utilized especially infrequently.

We will provide Petitioner with the provisions in the FSU Constitution and Statutes which pertain to the impeachment of SGA officers. As to

impeachment, the constitution provides that process only for “elected [SGA] officials” on charges of malfeasance, misfeasance or nonfeasance. FSU Const. Art. VII, § 3. In SBS § 711.3, governing enforcement of the Election Code, the statute states: “The Supervisor of Elections. . . shall enforce the Election Code. Failure to enforce the Election Code shall be an impeachable offense.” SBS § 711.3(A). We decline to rule on whether a specific action constitutes an actionable violation until it has gone through the proper channels provided for by the Elections Commission or the other branches of Student Government.

As a final thought, we offer Petitioner an additional provision in SBS to take notice of. The Election Code provides that, should an emergency or unforeseen circumstance render it infeasible for someone to comply with the Code, or it be a miscarriage of justice to enforce the code, such an individual may be found not to be in violation of the Code if a court finds that the individual made a “good faith effort” to comply with the Code. *See SBS § 703.2(F)(16)*.

CONCLUSION

In issuing this Advisory Opinion, we do not render any decision as to the merits of a potential claim brought before us regarding any of the issues discussed herein. After careful consideration of the provisions contained in the body of laws which govern this Court, we conclude that: (I) the process outlined herein is the process required for placement of a proposed constitutional amendment on an SGA election ballot, (II) the SoE does not have any enumerated statutory or constitutional authority to designate what constitutes compliance with the publication requirements of Article VI of the FSU Constitution, (III) the Election Code does not provide for the delay of an election in the case of negligent or willful disregard of, or active circumvention of the required constitutional amendment processes by the improper addition of rules not existing in the FSU Constitution or Statutes. We decline to opine further as to the Senators final question.

Respectfully Submitted this the 5th day of October, 2021.