

# ADVISORY OPINION 2021-1

## REVIEW OF STUDENT GOVERNMENT ASSOCIATION APPOINTMENT POWERS

*Wolski, J. 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 opinions<sup>1</sup> “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 December 4, 2020, this Court received a petition from a Florida State University Senator for an advisory opinion as to whether the power to appoint candidates to fill vacancies in Student Government Association (“SGA”) offices as established in Article V of the FSU Student Body Constitution and Student Body Statutes (“SBS”) §304 rests solely with the Student Body President or extends to the Senate

President for non-elected Senate officers. We conclude that all appointment power remains solely with the Student Body President.

We emphasize that this advisory opinion is the Court’s interpretation of the law and while there are cognizable remedies that could be employed should a case regarding this issue be brought before this Court, we have already addressed a similar question in *Bynum v. SGA*, 2020-CA-3.

### ANALYSIS

In forming this opinion, this Court looked to the specific language of the FSU Student Body Constitution and Statutes. See *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019) (holding that a court must exhaust all traditional tools of statutory construction). When interpreting a statute, a court must give words used their ordinary meaning. *Moskal v. United States*, 498 U.S. 103, 108 (1990). Article V, Section 7(B) of the Student Body Constitution provides that:

“All other vacancies created in elected Student Body offices, except for those in the Union and Recreation Boards, the Congress of Graduate Students, in Agencies, Bureaus, and Affiliated Projects with campus-wide elected officers, as well as in the Senior Class Council, shall be filled

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<sup>1</sup> “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.

by appointment by the Student Body President, with confirmation by a two-thirds (2/3) vote of the Senate, provided all succeeding officers have the same constitutional qualifications as the originally elected officers.” FSU Const. Art. V. § 7, cl. B.

Normally, the phrase “*all* other vacancies” in this context would provide a straightforward answer to our question. However, as noted by the Senator who submitted the petition for this opinion, this section of the FSU Constitution specifically references *elected* Student Body offices but remains silent on non-elected offices. An examination of the remaining text of the FSU Constitution returns no direct answer on this issue. Therefore, a more thorough analysis is required.

Article II of the FSU Constitution defines the composition, powers, and duties of the SGA Legislature. The FSU Constitution grants sole power to the Senate to select Officers to fill positions in only two circumstances: “From this body the Senate shall select a Senate President and President Pro Tempore in the Fall Semester.” FSU Const. art. II, §2(B). And Section 5 states that the “Senate shall...[c]onfirm appointments of the Student Body President by a two-thirds (2/3) vote for appointments to fill vacated offices, and by a majority vote for other appointments.” FSU Const. art. II, §5(A)(4).

Implicit in this provision is that appointments are coming specifically from the Student Body President and not from any other SGA officer.

SBS Chapter 201 provides further guidance on the Student Body President’s appointment powers in §201.3, which provides that, “[i]n all cases where an individual applies, or is forwarded for a Student Government position, the Student Body President shall act in accordance with Chapter 304.3 of the Student Body Statutes.” SBS §201.3. Here, the statute makes the previously mentioned implication from Article II explicit. This section does not limit itself to applying only to elected officers, but specifically states that it applies “in *all* cases” for a “Student Government position.”

SBS Chapter 304 is entitled, “Presidential Appointment and Dismissal Powers” and provides greater detail regarding the process that must be taken to fill vacancies in SGA offices. Given the request to this Court to clarify a statutory ambiguity on this issue, it is somewhat ironic that the stated purpose of this chapter is “to clarify and define the Student Body President’s constitutional powers of appointment.” SBS §304.1(B). Further, SBS §304.3(A) states that “Upon the receipt of applications for a vacant position in Student Government Association, a

screening process shall be overseen by the Student Body President to determine the most qualified candidate.” Like SBS §201.2, we again see the statutory language clearly indicate that the application process – and by inference, the ensuing appointment – applies to any vacancy in SGA and is, again, exclusively under the authority of the Student Body President.

To quote former New York Yankees baseball player Yogi Berra, this Court is experiencing “dépjà vu all over again.” We discussed many of these same constitutional and statutory provisions earlier this academic year in *Bynum v. SGA*, 2020-CA-3. In *Bynum*, plaintiff was an FSU student who applied for the position of Senate Parliamentarian, a non-elected office in the SGA. *Id.* Plaintiff was never interviewed for the position, and instead the Senate President bypassed the process outlined in SBS §304 and appointed a different candidate. *Id.* The Court discussed a statutory conflict presented by the plaintiff and struck down parts of the SBS that appeared to unconstitutionally grant the Senate President the authority to appoint certain Senate officers. *Id.* In its holding, the Court affirmed that “the power to appoint officers to positions within SGA vests solely within the Executive Branch, through the Student Body President and his Chief of

Staff.” *Id.* Further, the Court held that “the statutorily-mandated screening process defined in SBS §304 must be followed in order for any SGA appointment to be valid.” *Id.*

Because this Court struck down as unconstitutional those provisions in the SBS that created the conflict – even though the Senate has yet to pass legislation to remove them in accordance with that decision – they cannot be consulted to answer the question posed herein. Therefore, we are left only with Chapters 201 and 304 of the SBS to guide us.

In light of our decision in *Bynum*, it seems as though the question we are tasked with answering in this advisory opinion has, in fact, already been answered, though we understand the petitioning Senator’s request for further clarification. We look to one final provision of the FSU Constitution that may further guide us in our analysis.

Article V, Section 7(B) of the FSU Constitution, discussed earlier in this advisory opinion, also states that:

“Vacancies in the above listed offices shall be filled as provided for in the Student Body Statutes, except that if no pertinent statute exists then the Student Body President shall have the power of appointment by default.” FSU Const. Art. V., §7, cl. B.

While this provision refers to the aforementioned *elected* SGA offices, the

inclusion of the final clause gives us a clue as to the intent of the drafters as it pertains to appointments overall. The clause grants *default* appointment power to the Student Body President absent a “pertinent statute”. Given that the only potentially pertinent statutes were struck down by this Court in *Bynum* as unconstitutional, it is logical to presume that the FSU Constitution would intend to extend that appointment authority to the Student Body President only.

On one final note, the petitioning Senator noted that non-elected Senate offices are not created in the constitution and thus wondered if this would exempt them from appointment by the Student Body President. In short, we re-emphasize that the relevant provisions discussed herein have made references to *all* Student Government positions, thus eliminating any potential distinction between offices created in the FSU Constitution and those created by statute.

Combining the specific and limited appointment authority vested in the Senate in Article II with the default appointment power granted to the Student Body President in Article V, and the relevant portions of Chapters 201 and 304 of the Student Body Statutes, the only logical conclusion is that appointment power remains exclusively with the Executive Branch.

## CONCLUSION

In conclusion, it is this Court’s opinion that the power to appoint all SGA officers, whether to elected or non-elected positions, rests solely with the Student Body President. As discussed in *Bynum v. SGA*, there is no appointment power granted to the Senate President in the FSU Constitution, and conjuring a power that does not exist in the text of the FSU Constitution, even if the Senate may view it as more expedient, is not and shall not be the undertaking of this Court.

We also take this opportunity to advise the Senate that short of a Constitutional Amendment, no statutory change will alter this Court’s view of appointment power.