IN THE STUDENT SUPREME COURT IN AND FOR THE FLORIDA STATE UNIVERSITY

JACK ROWAN,

Petitioner,

v. Case No. 2021-CA-1

THE FLORIDA STATE UNIVERSITY STUDENT GOVERNMENT ASSOCIATION EXECUTIVE BRANCH; NASTASSIA JANVIER, Student Body Vice-President, in her official capacity; KELVIN READY, Florida State University Student Body Attorney General, in his official capacity,

Respondents.

_____/

Mathesie, J. and Wolski, J. delivered the opinion of the Court.

SYLLABUS

This action was brought before this Court in consolidated complaints filed by Jack Rowan, a Florida State University ("FSU") student (Petitioner), against The FSU Student Government Association ("SGA") Executive Branch, Nastassia Janvier, in her official capacity as Student Body Vice-President ("SBVP"), and Kelvin Ready, in his official capacity as FSU Student Body Attorney General ("AG") (Respondents), for violating Student Body Statute ("SBS") §203.3, §203.5, §203.6, and §204.2. SBS §203.3 states, in relevant part, "All meetings held under the auspices of Student Government Association… at which official acts are to be taken, are declared open to the public at all times." SBS §203.3. SBS §203.5 states, in relevant part:

> "There shall be no less than five (5) minutes aggregate reserved at the beginning of any meeting held under the auspices of Student Government Association for members of the Public and all Student Government Association Affiliates to address those assembled upon application by any member of the Student Body." SBS §203.5.

SBS §203.6 states, in relevant part, "The minutes of any meeting under this chapter shall be recorded at the time of the meeting and such records shall be open to the public…" SBS §203.6. SBS §204.2 states, in relevant part, "Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so..." SBS §204.2.

Petitioner submitted separate complaints that were later consolidated, alleging that Respondents SGA Executive Branch and Janvier were holding cabinet meetings that fall under SBS §203.3, meaning they must be open to the public and cannot be held in private without

announcement to the public. Petitioner also claims that these alleged meetings must allow public comment because they fall under SBS §203.5. Lastly, Petitioner's claim that these alleged meetings fall under SBS §203.6 and thus must have meeting minutes open the public. Petitioner alleges that when requested to produce a copy of the minutes for these cabinet meetings on two different occasions, Respondent Ready denied the requests, thus violating SBS §204.2.

Petitioner requests this Court: (1) Find that meetings of the Executive Cabinet are governed under SBS §203.3 and are bound by the requirements of said statute; (2) Find that Respondent Janvier violated SBS §203 and §204 and that Respondent Ready aided in the violation of said statutes; (3) Issue a Writ of Quo Warranto against Respondents Janvier and Ready requiring them to make public the minutes of all meetings of the Cabinet under the Levin-Janvier Administration and to furnish a copy of said minutes to Petitioner and the Senate Investigative Board on the Executive Branch; (4) Issue a Writ of Quo Warranto against Respondent Janvier requiring her to comply with SBS §203.3 and make all meetings of the Cabinet easily accessible to the public; (5) Issue a Writ of Quo Warranto against Respondent Janvier requiring her to comply with SBS §203.5 and allow for a minimum of five minutes of public comment at all meetings of the Cabinet; (6) Enjoin the Cabinet from meeting until the requirements of SBS Chapters 203 and 204 and any writ issued by this Court are met; and (7) Grant any other relief that the Court sees fit.

ISSUES

This Court addresses the following issues in this opinion:

I. Whether Executive Cabinet Meetings fall under SBS §203.3, requiring them to be open to the public.

II. Whether Executive Cabinet Meetings fall under SBS §203.5, requiring them to have public comment.

III. Whether Executive Cabinet Meetings fall under SBS §203.6, requiring them to have minutes that are available to the public.

IV. Whether Respondent had custody of minutes and permitted them to be inspected under SBS §204.2.

HOLDING

This Court answers issues I, II, & III in the negative and enters judgment in favor

of Respondents. We dismiss issue IV as moot as explained below.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The relevant facts are as follows. On June 23, 2020, during the Summer session of the 72nd Student Senate, the Senate Judiciary Committee voted to initiate a Senate Investigative Board on Presidential Appointments Ad Hoc pursuant to SBS Chapter 406. The Investigative Board was created after several students brought forward complaints about how their applications for SGA office were handled by the Executive Branch. The first meeting of the Investigative Board was held on July 2, 2020. According to the Petitioner's response to interrogatories, the "original charge of the Board was to investigate any wrongdoing in the application, candidate screening, and forwarding process by members of the Executive Branch, which includes the Executive Cabinet."

Throughout the course of the Levin-Janvier Administration, the Student Body President ("SBP") has held monthly meetings with his Executive Cabinet. These Cabinet meetings are not open to the public and no meeting minutes are posted on FSU's SGA website.

On July 13, 2020, the Chair of the Investigate Board emailed the Director of Cabinet Affairs ("Director") inquiring about Cabinet meeting minutes. Later the same day, the Director responded to the Chair and informed her that she would need to make the request for minutes to Respondent Ready. The Chair did not reach out to Respondent Ready. The next day on July 14, 2020, Respondent Ready sent the Chair a letter letting her know that he was the new Attorney General, would get up to speed on the situation, and would be happy to testify in front of the committee. On July 16, 2020, the Chair replied to Respondent Ready, however she sent it to an incorrect email address so Respondent Ready never received it. About two months later, on September 22, 2020, after the fall semester had begun, the Chair emailed both the Director and Respondent Janvier requesting the minutes. The next day on September 23, 2020, the Rules and Calendar Committee passed a motion "to open investigative board to expand scope to all of executive branch."[1] Lastly, on September 28, 2020, the Director replied to the Chair, again reminding her that

[1] A transcript of the publicly available Senate Rules and Calendar Committee minutes can be found at: https://sga.fsu.edu/committee-minutes/fall20/Rules-and-Calendar-Minutes-9-23-20.pdf.

Respondent Ready handles any requests. As of January 31, 2021, Respondent Ready had not received an official request.

On September 28, 2020, Petitioner Leckie filed a complaint with this Court alleging that the Executive Branch violated SBS §203.6 by denying access to the Cabinet meeting minutes. On October 10, 2020, Petitioner Rowan filed a separate complaint with this Court alleging that the Executive Branch violated SBS §203.3 by not having Cabinet meetings open to the public, §203.5 by not having an opportunity for public comment at the Cabinet meetings, and §203.6 by not making meeting minutes available to the public. Petitioner also alleged that Respondent Ready violated SBS §204.2 by not permitting public records he had custody of to be inspected.

OPINION

I.

This case centers around the question of whether provisions in Chapter 203 of the Student Body Statutes ("The Florida State University Student Government Association in the Sunshine Law") and Florida's Sunshine Law pertain to the Executive Branch's Cabinet meetings. We hold that they do not.

The purpose of SBS Chapter 203 is to lay out and apply Florida's Sunshine Act to the FSU SGA. In the Sunshine Act, the Florida legislature included the meetings of any board or commission of an authority of the state or its political subdivisions at which official acts are to be taken. Because the student governments at each state university are created by state statute,[2] each student government is presumably a recognized board, commission, or authority of the state and would be subject to the Sunshine Act. Whether the law governs bodies that have been delegated authority is less clear.

In forming its opinion, this Court looked to the specific language of SBS §203.3. 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, Courts begin with the text of the provision 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). This Court is mindful that, "the beginning point must be the language of the provision, and when the text speaks with clarity to an issue, judicial

[2] *See* Fla. Stat. Ann. 1004.26.

inquiry into its meaning, in all but the most extraordinary circumstance, is finished." *Ramey v. Director*, 326 F.3d 474, 476 (4th Cir.2003).

In relevant part, SBS §203.3 states: "All meetings held under the auspices of Student Government Association… at which official acts are to be taken, are declared open to the public at all times." SBS §203.3. Quite plainly, it is apparent from the language of this statute that it was intended to set out which meetings of SGA are to be open to the public. See *United States v. Locke*, 471 U.S. 84, 95 (1985) (noting that the Court is required "to assume that legislative purpose is expressed by the ordinary meaning of the words used"). This statute offers a specific criterion to decide which meetings of SGA must be "open to the public at all times." See SBS §203.3 ("…at which official acts are to be taken…" denotes the criteria in which meetings must be open to the public). So, since the issue being addressed is whether Executive Cabinet Meetings fall under SBS §203.3, thus requiring them to be open to the public, we must determine if "official acts" are being taken at these said Cabinet meetings.

The Court is first guided by the FSU Constitution and then by the Student Body Statutes. The FSU Constitution grants the duties and powers of the Student Body President. FSU Const. Art. III, §3. The President shall appoint Cabinet members as specified in the Statutes. FSU Const. Art. III, §3(B). The President shall instruct and require reports from Cabinet members and approve all policies made from them. FSU Const. Art. III, §3(H). The Constitution specifically has a section titled "President's Cabinet" that lays out the purpose of the Cabinet: "There shall be a Cabinet to assist and advise the President…" FSU Const. Art. III, §5. SBS Chapter 301, "The Executive Cabinet", further specifies the role and duties of the Executive Cabinet. "In accordance with the Student Body Constitution, there shall be a cabinet in the Executive Branch to assist the constitutional officers in the execution of their duties." SBS §301.1(A). The composition of the Executive Cabinet shall be composed of the Executive Office of the President and the Advisory Cabinet. SBS §301.1(C). The Executive Office of the President is defined as "the vehicle through which the Student Body President and Vice President execute their constitutional powers and carry out their administration's programs, projects, and agenda;" and the Advisory Cabinet is defined as "the group that shall exist for the purposes of coordination among executive branch groups, projects, and

offices, and to provide information and assistance to the Student Body President and Vice President." SBS §301.2(A)-(B). Further, SBS §301.3 states the authority and duties of the Executive Office of the President as deriving "its authority from the Student Body President and has no authorization, power, or authority to act unless specifically granted by the Student Body President or Vice President. It shall not have the authority to pass resolutions or acts." Specifically, the Executive Office of the President shall have the duty of assisting the Student Body President and Vice President in the execution of the plan for the Executive Branch. SBS §301.3(A).

Now, given the information provided in the complaint regarding the meetings in question, as well as the information provided by Respondents regarding who attends these meetings, it is the Court's position that this complaint is just pertaining to Cabinet meetings consisting of just the Executive Office of the President and not the Advisory Cabinet. However, this opinion would not change even if Petitioner intended to include the meetings with the Advisory Cabinet; although given the information provided, the Court is unsure if there are even meetings with the Advisory Cabinet other than Town Halls. Nonetheless, as stated in SBS §301.7(A)-(C), the Advisory Cabinet shall not be permitted to pass binding resolution or legislation. They shall advise the SBP and SBVP on general matters and assist in the coordination of the Executive Branch and shall meet as deemed necessary by the SBP to discuss activities and events of the Executive Branch.

In a plain meaning interpretation, one can assume that a Cabinet meeting would be for Cabinet members to assist the President, advise on general matters, and hear reports from the members. What is clear, however, is that the Cabinet "has no authorization, power, or authority to act" and "shall not have the authority to pass resolutions or acts." SBS §301.3 and §301.7. Nowhere in either the SBS or the Constitution can any language be found regarding the Cabinet's ability to make decisions or take official acts without further approval and action by the SBP. As the Constitution and the SBS are both clear and repetitive in addressing this, there is no reasonable alternative interpretation as to the roles, duties, and responsibilities of the Cabinet. *Jones v. U.S.*, 526 U.S. 227, 266 ("[Alternative] construction is applicable only if the statute at issue is genuinely susceptible to two constructions after, and not before, its

complexities are unraveled.") (internal quotations omitted).

Because we have established that there are no "official acts" that are taking or even can be taken on behalf of the Cabinet, we then turn to the question of whether any "official acts" are taken on behalf of the SBP at these Cabinet meetings. "Acts" of the SBP are defined in SBS §210.3(A) as executive orders, appointments, vetoes, and dismissals. It is this Court's understanding that none of these "acts" would ever be taken at a Cabinet meeting. At most, ideas for Executive Orders may be generated at these Cabinet meetings, although there is no indication nor evidence of this. Even the generation of ideas for an Executive Order would not cross the line into the territory of an "official act," as the SBP would still have to act further on the ideas.

We have not been provided any evidence by Petitioner of any suspected or alleged "official acts" being taken at these Cabinet meetings. More so, Respondents certified in a sworn interrogatory answer that the business conducted at Cabinet meetings consists of: "check ins (example How are we dealing with these crazy times?), timelines, how we can help each other? Project Updates, Dates/Events Coming Up, etc." Respondents also swear that there are no official acts or decisions taking place at the Cabinet meetings, and if there ever were, that the meetings would be open to the public as prescribed in SBS §203. Further, Respondents point out that: "the executive branch hosts Town Halls regularly that are open to the public. At these meetings, the executive announces actions they are going to take. Additionally, public comment is allowed per §203."

As this issue is fully resolved solely by referring to the SBS and the Student Body Constitution, we need not look further. However, as these statutes were drafted in response to binding Florida Statutes, we look to the guidance of Florida law as well. In the case of *Bennett v. Warden*, 333 So. 2d 97 (Fla. Dist. Ct. App. 1976), the appellant junior college president regularly held meetings with certain college employees to discuss problems relating to employees' working conditions, wages, and hours. *Id.* Appellee, a labor union organizer, charged that these meetings were subject to the Florida Sunshine Law, which provided that all meetings of any board or commission of any agency or authority of a county, city, or political subdivision were open to the public. *Id.* The court held that the meetings were not subject to the Florida Sunshine Law, therefore not open to the public, because appellant was not a board or commission and

frequent unpublicized meetings between an executive officer and advisors or personnel under his direction to assist him in the execution of his duties were not meetings within the contemplation of the Florida Sunshine Law. *Id.*

We see exact parallels to the present case as the Cabinet is not a board or commission under the state since the makeup of the Cabinet is at sole discretion and delegation of the SBP. Further, the Cabinet meetings in are "frequent unpublicized meetings between an executive officer and advisors or personnel under his direction to assist him in the execution of his duties" according to the interrogatories. The holding in *Bennett* is almost an exact match as to how the Cabinet is defined in the FSU SBS and Constitution.

Continuing our examination of relevant Florida precedent, the facts present in this case before the Court are distinguishable from *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983), where the court held that committee meetings *were* subject to the Florida Sunshine Law. In *Wood*, a university president formed a search-and-screen committee that was elected by the faculty to find a new dean for the law school. *Id.* The court held that that the search-and-screen committee was a board or commission within the meaning of the law, noting that the committee had both a "fact-gathering" role and a decision-making function in screening the applicants. *Id.* The court noted that although the president had the final decision in selecting the new dean, in instructing the faculty to elect the search-and-screen committee to perform the elimination portion of the decision-making process, respondent university president delegated official acts to a board within the meaning of the Florida Sunshine Law. *Id.* In the present case, the Cabinet was neither elected nor is the Cabinet delegated with any decision-making powers of the SBP. No discussion at these meetings that would be construed an "official act" being taken.

In yet another applicable Florida precedent case, *Jordan v. Jenne*, 938 So. 2d 526 (Fla. Dist. Ct. App. 4th Dist. 2006), the court found that a committee meeting in question was fact-finding only, and no ultimate decision was made. *Id.* Rather, the inspector general, who made the final determination, reviewed the committee's recommendation on his own; he then made the ultimate decision, and was free to reject the recommendation. *Id.* Therefore, since the committee did not exercise any decision-making authority, the committee could not be

considered a "board" or "commission" within the meaning of the Florida Sunshine Law. *Id.*

Not only does this Court not find any evidence of even "recommendations" being made to the SBP, but as the Constitution and Statutes lay out, the SBP ultimately makes the final decisions on issues. He is free to reject any input from his Cabinet. Following past case precedent, the SBP's private meetings that he holds with his closest advisors did not exercise any decision-making authority so as to constitute a "board" or "commission" within the meaning of the Florida Sunshine Law. As a result, we find that the Executive Cabinet Meetings *do not* fall under SBS §203.3, therefore they *are not* required to be open to the public.

II.

The second issue the Court turns to is whether the Executive Cabinet Meetings fall under SBS §203.5, requiring them to allow public comment. As we answered the first issue of whether these meetings are open to the public in the negative, we similarly hold that these meetings are not required to have public comment. It would not make sense to hold public comment at a meeting that is not open to the public.

The Supreme Court of Florida once held that Florida's Sunshine Law gives Florida citizens an "inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made." *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969). As there are no decisions or actions being held at the Cabinet meetings in question, they do not require time for public input. Members of the public who wish to voice their opinions to members of the Executive Branch have multiple means of doing so, such as messaging the email addresses of public officials found on the SGA website at any time, attending any of the twenty office hours that the SBP holds every week or one of the twenty office hours that the SBVP holds per week, or attending the town halls that the Executive Branch holds once a month where decisions and official acts are announced. The monthly town hall meetings are open to the public and allow public comment.

Putting "common sense" aside and looking towards statutory interpretation, we conclude that the line "at which official acts are to be taken" found in SBS §203.3 is to apply to the entirety of Chapter 203. SBS §203.3 is the first statute in Chapter 203 that does not create a definition. The entirety of Chapter 203 refers to meetings that fall under Florida's Sunshine Act. We first read SBS

§203.3 as the focal point of the chapter, while the rest of the statutes give more specific and tailored issues that all fall under the umbrella of the Florida Sunshine Law. Chapter 203 defines meetings that fall under the Florida Sunshine Law and the obligations required from these meetings by the Florida Sunshine Law. In addition, we find that the language in SBS §203.3, "at which official acts are to be taken," to apply to SBS §203.5 also. This is further supported by the legislative history behind this chapter.

The legislative history behind Chapter 203, specifically Bill 85 of the 59th Senate, is very informative to the issue at bar. Bill 85 shows that Chapter 203 originally only consisted of what is now SBS §203.3, §203.6, §203.9, and §203.10. This shows that the original chapter was intended to address which meetings were to fall under the Florida Sunshine Law and were thus open to the public (§203.3). In the original creation of Chapter 203, the law described what obligations were required of these public meetings. These meetings required that the minutes of these meetings under §203.3 have to have meeting minutes open to the public (§203.6), these meetings have to be announced 24 hours in advance (§203.9), and that announcement must meet certain criteria (§213.10). SBS §203.3 is the originally created statute and SBS §203.5 was added in after the fact. This leads to the conclusion that SBS §203.5 follows the definition set forth in SBS §203.3. Executive Cabinet meetings do not require public comment because they are not meetings open to the public where official acts are being taken, as defined in SBS Chapter 203.

III.

Applying the analysis in the second issue above, we hold that the Executive Cabinet Meetings *do not* fall under SBS §203.6, and thus they *are not* required to have minutes that are available to the public. SBS §203.6 is a bit clearer here: "The minutes of any *meeting under this chapter*…" SBS §203.6. We do not hold that the Cabinet meetings qualify as meetings defined in Chapter 203 that are subject to Florida's Sunshine Law and thus the meetings are not subject to, nor require minutes under SBS §203.6.

IV.

The last issue this Court addresses is whether Respondent Ready had custody of minutes and whether he permitted them to be inspected under SBS §204.2. SBS §204.2 reads:

> "Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under the supervision of the custodian of the public record or a designee." SBS §204.2.

We find that Respondent Ready does have custody of minutes from the Cabinet meetings. While the Cabinet meetings do not fall under Chapter 203 requirements for open meetings, public comment, or minutes, this Court does find another relevant, guiding statute. SBS §301.3(E), which neither party in this case addressed in any complaint, response, or interrogatory, states: "The Executive Office of the President shall meet on a regular basis no less than once every two weeks during the fall, spring, and summer semesters. Minutes of these meetings will be recorded and kept on record." SBS §301.3(E). This statute makes it clear that minutes of these Cabinet meetings shall be "recorded and kept on record," but it does not give guidance as to whether they are able to be inspected by the public. It is confirmed, via Respondent's sworn interrogatory answers that: "the executive cabinet does keep minutes for its meetings."

We turn to SBS Chapter 204, "The Florida State University Student Government Association Public Records Act of 1988", for guidance. SBS §204.1(C) in relevant part, defines a "public record" as: "all documents…made or received pursuant to the…Statutes…" SBS 204.1(C). Since statute §301.3(E) requires the minutes to be taken, we find that these minutes would be documents made pursuant to the statutes, and thus a "public record" as defined in SBS §204.1(C). As quoted above, SBS §204.2 lays out the process for public inspection. While we do acknowledge that there are minutes and that Respondent Ready either has custody or the ability to gain custody as the official representative of the Executive Branch, we point to SBS §204.4 which states: "Any application of this chapter that conflicts with Federal or Florida Law is null and void in that individual circumstance." As we have already held above, the Cabinet meetings—as they currently stand with no official acts being taken or decisions being made—are not subject to Florida's Sunshine Law and thus are not required to be open to the public, have public comment, or have minutes taken. We thus hold, under SBS §204.4, that the application of SBS Chapter 204 in general, but specifically SBS §204.4, is in conflict with Florida law. These statutes are null and void in this circumstance.

Further, we look to the Florida Constitution, specifically Article I, Section 24 ("Access to public records and meetings"), to solidify our holding. Section 24(a) reads in relevant part:

> "Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body… except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution." FSU Const. art. I, § 24(a).

Section 24(b) reads in relevant part:

> "All meetings of any collegial public body of the executive branch of state government…at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public and meetings of the legislature shall be open and noticed as provided in Article III, Section 4(e), except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution." FSU Const. art. I, § 24(b).

Petitioner has not provided any evidence that there is public business or official acts being taken at these meetings. Further, Respondents in sworn interrogatory answers stated that there is no such business or acts taking place at these meetings. If there *were* any acts or business of the Executive Branch that could not be traced back to its origins, we would have doubts about the contents of these meetings. But given that the Executive Branch holds monthly town halls where the public can attend and make comment, as well as the announcements of plans, decisions, or acts, this Court have no reason to believe that these Cabinet meetings are cover ups for public business.

This also must be looked at from a wider lens – the SBP has full authority vested by the Constitution to make executive decisions. FSU Const. art. III, § 1. The SBP has the ultimate power and authority, there are no votes or debates to be had on issues; the SBP has the ultimate decision. The Cabinet meetings are a time for the SBP to have time with his closest advisors, that he hand-picked to work alongside him, to talk about issues that are pressing to the student body at FSU. Should this Court allow the public into these meetings via attendance or through minutes, a new era of public scrutiny would result.

The SBP and his Cabinet have to be able to meet and communicate confidentially in order to effectively discuss their thoughts, ideas, and concerns. Opening up their discussions would be a breach on the separation of powers as explained by the idea of "executive privilege." The early understanding is simply that this is just a logical consequence of separation of powers,

that each branch has to be able to assert its powers relative to the other branches. The basic idea behind executive privilege is that an entity like the government requires a lot of transparency, but also can't function if there's no possible way to speak about things confidentially. All reasonably complicated organizations need some space in which people can discuss what they're going to do, with some degree of confidentiality. Why? If you know everything you consider is going to made public, or shared in some way, then that's going to chill your ability to have frank and open discussion. The term "executive privilege" is not in the U.S. Constitution, but it's considered an implied power based on the separation of powers laid out in Article II, which is meant to make sure one branch of government doesn't become all-powerful. Executive privilege is one way the legislative branch's power over the executive is limited. Executive privilege was created to prevent legislative branch overreach, and we are concerned of the possibility of this happening here.

This complaint originated when the FSU Senate created an Investigative Board. In Petitioner's interrogatory answers, they state:

> "The Investigative Board was created after several students brought forward complaints about how their applications for SGA office were handled by the Executive Branch…The original charge of the Board was to investigate any wrongdoing in the application, candidate screening, and forwarding process by members of the Executive Branch, which includes the Executive Cabinet. After a motion being passed by the Rules and Calendar Committee, the Board's scope was expanded to include investigating any wrongdoing committed by the Executive Branch, which falls under the oversight powers of every legislative branch and the principle of checks and balances."

Even with just the "original purpose" of the Investigative Board, it is a stretch to assume that any action regarding the screening or forwarding process happened at these meetings. There are certainly not any interviews taking place. Regardless, the decision of the SBP on who he wishes to forward for confirmation is a his and his alone. "Checks and balances" comes into play when the Senate exercises its constitutional authority to confirm or deny the forwarded nominee. At this juncture is where public comment, debate, and then a

vote occurs in an "official act;" additionally, there are minutes for these legislative meetings. It is also worth noting that one of the nine cabinet members is the Secretary of Appointments. It would be more logical to assume that the SBP, along with his Secretary of Appointments, do not conduct their business that is just pertinent to them while in presence and time of the entire Cabinet; but again, let the Court be clear that there is no "official act" that the public would have right or access to, that involves the application, interview, or forwarding process of a nominee, other than the hearing and vote at the Senate meetings. Further, while we are not asserting this as a ruling by the Court, we point to the possibility that a candidate's application may be considered a public records exemption on the ground of an educational record. F.S. 1006.52.

What is worrisome to this Court is the second admission in Petitioner's response to interrogatories that the Investigative Board's "scope was expanded to include investigating *any* wrongdoing committed by the Executive Branch." This again is the exact reason for executive privilege, to prevent the overreach of branches and maintain the separation of powers. SBS §406(A) specifically states that the purpose of a formed investigative board is to "examine any impropriety or to question any action of any Student Government Association officer." There has to be a specifically targeted issue or question of a specific officer. To create a specific investigative board to investigate "*any*" wrongdoing by an *entire* branch of government seems eerily close to a witch-hunt.

The U.S. Supreme Court held in *United States v. Nixon*, 418 U.S. 683 (1974) that executive privilege can be overcome in a criminal proceeding where the petitioner's "demonstration of need sufficiently compelling to warrant judicial examination in chambers…" overcome the presumptive privilege. We do not find that this is a criminal proceeding, nor dos the Petitioner demonstrate a compelling, sufficient need to overcome the exerted executive privilege.

Regardless of the minutes being publicly accessible or not, we do not find that there was ever a formal request made to Respondent Ready. On July 13, 2020, the Chair of the Investigate Board emailed the Director of Cabinet Affairs inquiring about minutes. Later the same day, the Director responded to the Chair and informed her that she would need to make the request to Respondent Ready. The Chair did not reach out to Respondent Ready. Unsolicited, on July 14, 2020, Respondent Ready sent the

Chair a letter. On July 16, 2020, the Chair responded to Respondent Ready, except she sent it to the wrong email address (fsusgaag@gmail.com). We cannot find any reference to this email in any correspondence, past records, or anywhere on the SGA website. Not only was this not the email that Respondent Ready sent his initial correspondence from, Respondent Ready included his email and personal phone number in the correspondence. Additionally, Respondent Ready's contact information, as well as every other SGA officer's, can be found on the SGA website. Then on September 22, 2020, the Chair emailed both the Director and the SBVP requesting the minutes. Lastly, on September 28, 2020, the Director replied to the Chair, again reminding her that Respondent Ready handles any requests. As of November 11, Respondent Ready was to yet receive an official request.

We therefore find the last issue in front of this Court, whether Respondent Ready permitted records to be inspected, under SBS §204.2, moot as he was never provided with an official request to inspect the minutes.

CONCLUSION

We hereby enter judgment on issues I, II, & III in favor of Respondents and dismiss issue IV as moot. We hold that Executive Cabinet meetings do not fall under §203.3, §203.5, or §203.6 of Student Body Statutes and thus are not required to be open to the public, allow public comment, or publish their meeting minutes. We dismiss the question pertaining to Respondent Ready's permitting of minutes to be inspected under §204.2 of Student Body Statutes as moot as Respondent was never provided with an official request to inspect the minutes.

DONE and ORDERED, this the 31st day of January 2021, in Tallahassee, Florida.