From: SGA SENATE PRESIDENT <sgaspres@admin.fsu.edu>
Date: Monday, November 2, 2020 at 3:55 PM
To: Amy Hecht <ahecht@fsu.edu>
Cc: "brianckeri@earthlink.net" <brianckeri@earthlink.net>
Subject: Appeal of Denton v. Daraldik

Dr. Hecht,

Please find below the grounds for my appeal of the Student Supreme Court Opinion issued on October 26, 2020, regarding the complaint brought by Jack Denton.

I. Lack of Due Process.

I was denied due process as related to the October 19, 2020, hearing on Jack Denton's complaint to the Student Supreme Court, and thus, the resulting opinion should be overturned. In short, I was denied the proper notice and opportunity to have my private counsel defend me at the hearing. When I received notice of the hearings scheduled by complainants against me, I reached out to the Student Supreme Court, requesting guidance as to my rights of representation. I was advised by the Student Supreme Court that counsel would be provided to me. I was never notified that I could appear with my own counsel, or any representative of my choice. I am not aware of any other situation where the university does not clearly advise of such rights, in writing, to the person affected.

A law student was appointed to represent me at the hearing. To my surprise, Mr. Denton's private counsel in the federal action being brought against me, you, and others, was allowed to argue on behalf of Mr. Denton, while I was not notified that I could do the same, and instead, was provided a representative that was lacking in experience and ineffective. This is a clear violation of my due process rights, and cannot stand. Section 205.3(f)(1), Student Statutes, provides that "no officer or employee will deny any student the right to due process or the right to an impartial hearing or trial." The university's failure to provide proper notice as to my representation rights clearly affected my individual rights and opportunity to adequately present my defense to the complaint.

II. Lack of State Action.

The Student Supreme Court erroneously concluded that the actions of the Student Senate amount to state action. State Action is an extremely important issue currently pending before the federal court in the action Mr. Denton brought against, me, you, and others, and the Student Supreme Court wrote it off in one sentence as if it was a given that the Student Senate's actions are state action. They are not. Applying the erroneous rule the Student Supreme Court created without legal support, every single action taken by the Student Senate would amount to state action, and would hold me (as Student Senate President) and the University accountable for all acts taken by the Student Senate while I (or any other senator) presided over any meeting. It was an error for the Student Supreme Court to conclude there was state action.

This complex issue is not one that can possibly by resolved in one sentence, as the Student Supreme Court erroneously attempted to do. Contrary to what the Student Supreme Court concluded, student members of student government are not state actors unless college officials "coerced or encouraged" the alleged acts of the student. *Dharod v. Los Angeles City Coll.*, 2011

WL 3555622, at *6 (C.D. Cal. June 7, 2011), *report and recommendation adopted*, 2011 WL 3555793 (C.D. Cal. Aug. 11, 2011), *aff'd in part, vacated in part, remanded*, 509 F. App'x 664 (9th Cir. 2013) (citing *Husain v. Springer*, 494 F.3d 108, 134-35 (2d Cir. 2007), *cert denied*, 552 U.S. 1258 (2008)); *see also, San Francisco Arts & Athletics, Inc. v. United States Olympic Committee*, 483 U.S. 522, 546 (1987) (holding a government failure to supervise or "mere approval or acquiescence" in the private decision of a private actor does not render the private entity a state actor). The Student Senate's actions did not amount to state action and therefore, there was no constitutional violation. I incorporate by reference herein the argument made on my behalf in federal court in my motion to dismiss (Doc. 49, pp. 3-5) filed September 23, 2020. As you are a party to that case, I assume you have a copy of my motion to dismiss. Please advise if you need a copy for this appeal and I will provide it to you.

Where there is no state action, there cannot be a constitutional violation. The record clearly shows no state action by the Student Senate, as the University did not compel the Student Senate, and more importantly, me individually, from taking any action in regards to Mr. Denton.

III. The Student Supreme Court Erroneously Held Me Vicariously Liable for the Actions of Others.

The Student Supreme Court Opinion has no legal basis, nor sound logical reasoning, for holding me vicariously responsible for the acts of others. The Student Supreme Court acted erroneously by laying blame on me for the actions taken by thirty-eight other Student Senate members. On page seven of the Opinion, without any legal basis, the Student Supreme Court held that for an SGA officer to be responsible for a violation of the organization he represented, "the alleged violation must be properly attributable to action by the presiding officer or representative." Apparently, according to the Student Supreme Court, there will be a constitutional violation when the SGA officer in charge exercised obvious and substantial control over the meeting or event in which an alleged violation occurs and the officer must be on notice of a violation. The Student Supreme Court found this test was met because I presided over the Senate meeting on the day the vote of no-confidence took place. I did not move for no-confidence. I did not vote on the matter nor speak to the issues-I simply presided over the meeting that day as required by the rules, with no input from the University whatsoever. I did not know exactly why the majority of senators voted the way they did-it may have not been for reasons affecting constitutional rights at all. This erroneous opinion by the Student Supreme Court now requires Student Senators, and especially presiding officers, to be constitutional scholars. Please remember the senators are in their teens and early twenties (for the most part), not experts on constitutional matters. Are presiding officers supposed to cut off the speech of students who have the floor? Would that not be a constitutional violation? Is the presiding officer supposed to inquire as to the reasoning behind each senator's vote, or otherwise read the individual senators' minds? The Student Supreme Court's opinion, as it currently stands, would have a chilling effect on the rights of all involved in the student government process, and certainly on a presiding officer's ability to navigate a student government meeting.

I did not personally participate in the no-confidence vote related to Mr. Denton. I simply presided over the student senate meeting. It is inappropriate to hold me vicariously liable for the actions of others.

It is important to note that I faced a no-confidence vote for my speech after being elected Student Senate President. The vote failed, and so apparently because the vote failed it was *not*a violation of my constitutional rights. The Opinion is twisted, it phrases the issue as whether the removal is a violation of one's constitutional rights. And if that is the case, then I had no say in the removal whatsoever, and should not be held vicariously responsible for the actions taken by a majority of student senators.

IV. The Rules Relied on are Impermissibly Vague.

The Student Supreme Court Opinion also relies on rules that are impermissibly vague to hold me accountable for the actions of the Student Senate. Rule 1.8 of the Senate Rules of Procedure provides that "at no time shall the presiding officer allow any debate that involves personal attacks or slander against the Senate President, although pertinent debate related to character and suitability for office shall be permitted." To the best of my ability, and to the best of my knowledge, I followed that rule. Apparently, the Student Supreme Court thinks I did not and so, I am responsible for the violation of Denton's rights. This is unfair and unjust.

This rule is vague. It provides no guidance as to what the presiding officer is to do in this situation. It is entirely unclear from this language what constitutes "pertinent debate" related to "character" and "suitability" for office, and what constitutes slander or personal attacks. In the real world, a regulation is unconstitutionally vague when it either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess as to its meaning and differ as to its application. *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 497–99 (1982). Notwithstanding the fact that the Student Senate consists of college students with no legal experience, the Student Supreme Court Opinion adds the onerous responsibility on the presiding officer (a student) to make judgment calls on what is permissible and what is not, based upon vague terminology. It should not be a student's job, in a learning environment, to determine what is constitutional or not. This rule is vague and creates a chilling effect for all presiding officers of the Student Senate going forward. How is one to know when to allow debate to proceed or not? It is a vague rule and should not be used to punish me.

Moreover, the rule is so vague that the Student Supreme Court adds language to it to hold me responsible. The Student Supreme Court Opinion indicates that according to Senate Rule of Procedure 1.8 "it was within the sole authority of the officer presiding over the Senate's June 5th vote of no-confidence to allow the motion to proceed." But rule 1.8 says no such thing. Rule 1.8 provides:

> In the event the members of the Senate believe that the Senate President should be removed from their position and a new election for Senate President be held, ***any member may***, at any time, make a motion of no-confidence and shall require a second. The Senate President Pro-Tempore shall then assume the chair, and the Senator who made the motion shall present their motion pursuant to the structure of debate described in Rule Eleven. At no time shall the presiding officer allow any debate that involves personal attacks or slander against the Senate President, although pertinent debate related to character and suitability for office shall be permitted. For the motion of no-confidence to pass, a vote by iClicker shall be cast and shall require a two-thirds majority with

> no less than three-fourths of the members of the Senate being present. Following passage of the motion of no confidence, the Senate President Pro-Tempore shall immediately call for the election of a new Senate President following the same procedure above.

SRP 1.8. Nowhere in this rule is there any mention of the presiding officer having the sole authority to allow or prevent the vote of no-confidence. To the contrary, the rule provides that any member may make a motion for a vote of no-confidence. The Student Supreme Court was wrong to conclude that it was within the sole authority of the officer presiding to allow the motion to proceed. I was in no position to prevent other members from debating and moving for a no-confidence vote, and was never instructed by anyone that I had the power to prevent the vote from happening. It is still my position that I did not have the power to prevent the vote from happening. Rule 1.8 is impermissibly vague and I should not be held responsible for allegedly failing to follow a vague rule.

The rule does not provide clarity and is impermissibly vague; it should not be utilized to punish me. The Student Supreme Court Opinion should be overturned on these grounds.

V. The Execution of the Writ without Due Process is Unconstitutional.

The issuance of the writ by the Student Supreme Court, if allowed to be enforced, violates my rights by depriving me of my position as Student Senate President without due process. I was duly elected as President of the Student Senate on June 5, 2020. I ran against several other candidates and was chosen among them by my peers. The writ overturns the decision of the Student Senate to elect me as President without affording me any due process of law. I have a right to a hearing on whether I should be removed or not. As I mentioned earlier, I was deprived of the opportunity to have counsel of my choice represent me, and therefore, the hearing on October 19, 2020, does not sufficiently afford due process of law to deprive me of my rights. Moreover, I was never provided proper notice that my right to be Student Senate President, a paid university position, was in jeopardy.

At this time, it is unclear to me whether the writ has even been issued. The Opinion indicates that a writ will be issued, but I have not received any such writ to date.

Interestingly, the Opinion issues declaratory relief as to the June 5, 2020, no-confidence vote, and issues a writ ordering Mr. Denton's reinstatement, but the Opinion does not order my removal from the paid university position. There has been no due process in regards to my rights and the deprivation thereof. If this Opinion is truly against me in my "official" capacity, then it does not speak to me in any "individual" capacity, the capacity in which I hold these rights.

VI. Conclusion.

Regardless of the ultimate substantive outcome of the issue before you, the Student Supreme Court opinion, and the grounds on which it is based, cannot stand. The Student Supreme Court Opinion impugns my character and it should be nullified. It would be easy for you to suggest that the opinion is merely against me in an "official capacity," but a fair reading shows otherwise. Pages eighteen and nineteen of the opinion indicate that the Student Supreme

Court considered imposing penalties on me, meaning this is a personal attack well beyond any "official capacity."

I am hereby seeking a hearing to address the short-comings of the Opinion as provided herein and to address the deprivation of process I have incurred. Please advise as to the hearing I will receive in this appeal. I am also requesting a copy of any recording or transcript that was made of the October 19, 2020, hearing.

I did not seek a no-confidence vote, did not comment on the motion, did not vote on the motion, but simply presided over a student senate meeting as required by the student government rules. I ask that you overturn the Student Supreme Court's Opinion for the reasons set forth above.

With the utmost sincerity,

Ahmad Omar Daraldik

72nd Student Senate President

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