

**Ralph Wilson**

v.

**Office of the Student Body President**

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Chief Justice Cox writing for the majority with a dissenting opinion as to Part 2.  
Justice Thompson writing the opinion as to Part 2.

### **Opinion**

On April 27<sup>th</sup>, 2015, the Center for Participant Education (CPE) held an election for its Director and Assistant Director. This meeting consisted of four candidates, two for Director and two for Assistant Director. Two of the candidates had been previously involved in CPE, while the other two were looking to become involved. Those present at the election consisted of a mix of people who were previously involved in CPE and people who had never attended a CPE meeting before. During the election, the candidates gave speeches which were followed up by questions from the group.

Once the speeches and questioning concluded, Carolyn Harris, CPE's SGA advisor, proceeded to hand out ballots to vote. At this time, the previously involved members brought a point of order to the attention of the group regarding the first-time attendee's eligibility to vote. This prompted a discussion for the next several hours to decide if the attendees were able to vote. After several hours, around 11:30pm, Carolyn Harris indicated that the paper ballot would be counted and all attendee's votes would count. Meanwhile, the previously involved members held a separate vote. The results of the ballot vote was Sophia Palermo for Director and Candace Tavares for Assistant Director. The results of the previously involved members

was Shivaani Ehsaan for Director and Kathrine Draken for Assistant Director.

### **Jurisdiction**

The Supreme Court has jurisdiction to hear this case. The Supreme Court will have jurisdiction over cases and controversies involving questions of the constitutionality of actions by student governing groups, organizations and their representatives. SGA Constitution Art. IV §4. This case directly involves the constitutionality of the CPE election process and bylaws.

### **Issues**

To decide this case, the Supreme Court was presented with the following issues. First the Court must determine whether the Student Government Statutes are actually in conflict with the CPE constitution. Second, if the statutes are in conflict, which law applies? Once the applicable law is determined, the Court must decide if the election was valid. Lastly, the Court must determine how CPE should proceed.

### **Holding**

The Court holds SGA Statutes are not in conflict with the CPE Constitution. Issue two was not addressed as Moot. The first time attendees were not eligible to vote. Since there was no established definition of "active member" at the time of the vote, both votes are invalid. The Court remands the case to CPE to have a vote in accordance with the CPE constitution under the definition that "active member" means any person who has attended at least one CPE meeting.

## Reasoning

### PART 1

The Court looked at two potential sources of conflict between the SGA statutes and the CPE constitution.

#### Section A

The first potential issue is whether the definition of CPE's membership in statutes and the CPE constitution are in conflict. *Compare* SGA Stat. 906.2 with CPE Constitution Art. III § 1. Student Government Statutes read “[p]articipation is open to students, faculty, and staff of the Florida State University and the Tallahassee community.” SGA Stat. 906.2. The CPE constitution reads “[m]embership is open to all students, professors, and members of the Tallahassee community.” CPE Constitution Art. III §1.

The Court unanimously holds that the definitions of membership are not in conflict.

#### Section B

The second potential issue is whether the process for selecting CPE officers in statutes conflicts with the CPE constitution. Student Government Statutes read “[t]he director shall be election [sic] by the CPE membership, with confirmation by the Student body [sic] President and Senate [. . .] [t]he assistant director shall be elected by the CPE membership, [with] confirmation by the Student Body President and Senate.” SGA Stat. 906.5(A)(1) – 906.6(A)(1). The CPE constitution reads in relevant part “[. . .] all eligible members (as defined in Article III Section 1) present excluding members running for office will come to a decision by consensus [. . .] [i]f consensus is not met, there will be a vote by simple majority through either a show of hands or secret

ballot as decided by consensus.” CPE Constitution Art. V §3.

This issue presents a more complicated problem. The SGA statutes do provide a framework for how CPE is to select its officers. This framework however leaves open to CPE substantial discretion to decide how these elections will take place. The SGA statutes simply mandate that officers will be selected by the membership subject to confirmation. As discussed previously, both SGA statutes and the CPE constitution open membership in CPE to all students, professors, and members of the Tallahassee community. The relevant laws do not mandate that all students, professors, and members of the Tallahassee community *are* members but merely that they may become members. Therefore it is left to CPE's discretion to decide who are and are not considered members.

The Court unanimously finds that the CPE constitution is not in conflict with the SGA statutes. Since the Court has found that the CPE constitution is not in conflict with SGA statutes, there is no need to determine whether SGA statutes pre-empt the CPE constitution. This issue is dismissed as moot.

### Part 2

The next issue is whether there is a difference between “active” and “eligible” within the CPE constitution. While this was a tough case, this issue was clear. Under either major theory of statutory interpretation the result is the same. There are both textualist and purposivist reasons to find the difference between these two terms. Textualists argue that if the legislature does not agree with the result then it will prompt the senate to take up the statute and fix it or incentivize them to be more careful in future drafting.

First we must look to the textualist interpretation of the terms. 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 is clear that active and eligible are not synonymous. Canons of interpretation state that we must use the ordinary usage of terms unless the legislature has given them a specified or technical meaning. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 64 (1989). Additionally they require the use of the dictionary definitions of terms unless the legislature has provided a specific definition. *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218, 225-26 (1994). Under these two canons the result is the same. Further the rule against Surplusage would suggest that the two terms are distinct. *Ratzlaf v. United States*, 510 U.S. 135, 140-41 (1994). If they were the same then there would be no reason to continuously use the word active. Instead membership alone would suffice.

In Article V Section one of CPE's constitution it states "Active voting membership will be limited to all active members in good standing." Complying with the above Canons, the use of the word "limited" is a clear sign that there is a distinction between active and eligible. CPE read this language and said that the two terms were distinct. In talks to define the word active CPE proposed a very generous definition requiring attendance of only one meeting. Canons of interpretation dealing with agencies require us to give deference to agency interpretations, unless contrary to plain meaning of the statute or unreasonable. *Sullivan v. Everhart*, 494 U.S. 83, 88-89 (1990). There is a presumption that agency interpretations of its own regulations are correct. *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512-13 (1994).

Now we must look to possible purposivist interpretations. There is much debate whether purposivism should ever be used. However it is clear that if it is to be used the legislative history must be very clear. Here there is no clear legislative history and there are multiple possible intents. One argument in the support of keeping a distinction between the terms would be that we want to prevent the possibility of a hostile takeover to gain control of smaller organizations with people that have never been to a meeting and may never go to one again. Some may argue that is exactly what happened here. However there is also an argument for the other side. The argument could be made that the terms should be construed as the same because we would want to allow new people with the desire to participate in and improve a struggling organization the opportunity to do so.

Active and eligible have clear plain meanings and the text specifically uses the term limited. Without a clear history as to the intent of the drafters, and with such strong rules of interpretation, there is only one conclusion to be made. It is the opinion of the majority that active and eligible are not the same.

### **PART 3**

#### **Section A**

The Court unanimously declares that neither election process was valid. While the Court agrees with the petitioner that the CPE constitution controls, the Court recognizes that the difference between the terms was unclear prior to the election. Since there was no definition of "active member" prior to the election, both election results must be invalidated.

To decide this issue, the Court again looks to the Federal Government for guidance. When evaluating agency decisions, the US Supreme Court has

indicated that it will not accept an agency's post-hoc rationalizations for agency actions. Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 34 (1983). The agency decision must be upheld, if at all, by the basis articulated by the agency itself. *Id.*

In this case, while the CPE constitution did delineate "active members" and "eligible members" there was no indication that the term "active members" had ever been defined in the past. Similar to the situation where a federal agency attempts to rationalize actions in a post-hoc manner, this Court will not validate an election based on a term that was only defined at the time of the election. Accordingly it is the unanimous decision of this Court that the results from both the balloted election and the consensus election are invalidated.

### **Section B**

Since neither election was valid, CPE will need to conduct another election in accordance with its Constitution. This Court thereby remands the case back to CPE to conduct an election with the understanding that "active member" refers to eligible members who have attended at least one CPE meeting. In reaching this conclusion, the Court was presented with an interesting issue. While the Court would like to remand the issue of defining "active member" to CPE, there is no way that the organization would be able to do so in a manner consistent with their constitution. The only way to decide a new definition of "active member" would be through a consensus of eligible members followed by a potential vote of the "active members." Since there is no definition of "active members" in place, any potential vote would be invalid. Therefore the Court will remand with instructions that "active member" means having attended at least one meeting. This is the bare minimum definition available that

would create a meaningful difference between eligible and active members. Once the organization has a working definition of active member, they will be able to conduct the election, as well as, entertain votes to fix the organization's severely flawed constitution.

### **Holding**

The Supreme Court remands this case back to the Center for Participant Education to conduct a new election consistent with the holdings above.

### **J. DUBOSAR, Concurring**

I concur with the majority's thoughtful discussion of the issues presented in this case and in all portions of the opinion. This case has presented a variety of complex issues, and more importantly, it has exposed the severe disconnect between the executive – agency (not to mention legislative) relationship. I will not devote much of this concurrence to that issue however, because I recognize other issues that this case has presented; issues which fall outside of the scope of the opinion.

Primarily: a recording of the concluding 30 minutes of the Center for Participant Education (CPE) election was submitted and accepted as evidence. In part of the recording, Respondents state that they are submitting the results of their choice as final and that, whimsically and lackadaisically, if Petitioner is displeased with the presumably "not kosher" election process, Petitioner must take that up as issue with the Supreme Court. While this case presents an incredibly complex issue, it is the responsibility of students, and specifically the advisor (who is heard telling them to just simply take it to the Supreme Court), to attempt to settle this. Based on my listening to the recording, I do not see any effort made

on the part of Respondent to attempt to resolve this issue. In my opinion, there was a blatant disregard for the process that has been respected (and that arguably makes CPE so unique) by decades of “active” CPE members. I lambast the loftiness of using the Supreme Court, the high Court and decision maker of the Student Government Association, as both a threat and nonchalant way out of a long and arduous process toward resolution, thereby fulfilling the common goal of furthering the mission of The Florida State University. I recommend diplomacy in the future.

Second: something must be said for the existence of the agency/bureau. The Student Body Statutes (in conjunction with the FSU Constitution) are the guiding principle and law for the existence of these agencies and bureaus. They are not however the finality of authority. Much like in the United States Executive, agencies and bureaus, like CPE, are granted some individuality. The Chief Executive is granted an immense amount of discretion, and rightly so. However, even in the most extreme circumstances, the Chief Executive will often defer to the agency director. This was not the case for the CPE election and process. I strenuously suggest that the Chief Executive recognize how great a resource in field experts are, for without their experience and actions as continuous members, combined with extensive knowledge of the inner workings of their agencies, they would not have climbed to the ranks of administrator.

In closing, the results are correctly invalidated. However, I strongly recommend that CPE address their large amount of statutory problems, for we do not need to find ourselves in this situation again, and again.

### **J. Meyer, Concurring in the Judgment, Dissenting in Part**

In this case, The Court reached a thoroughly deliberated and well-reasoned opinion of a complex issue made unnecessarily complicated due to a poorly written constitution and what can only be called unorganized leadership. I hold no issue with The Court’s reasoning or ruling with its decisions on the conflicting statutes, the eligibility of the voters, the difference between active and eligible members, or the invalidation of the votes. The only questionable part of the ruling was The Court’s decision to define “active members” on its own power for the purpose of expediting a new election. It is this reason alone that I respectfully dissent in part.

The Center for Participant Education (CPE) is undoubtedly in need of leadership and it is not my contention that a new vote should not be held as soon as possible, only that the court should not take responsibility in defining an active member, as this should be left to the legislative branch. The definition of active members given by The Court, mirrors the generous definition given by the self proclaimed “active members” of the CPE, by saying that any eligible member who has attended at least one meeting shall be considered an active member for the sake of voting if the consensus process fails. There are, however, many problems with this definition. There was an abundance of evidence that showed that the CPE does not dutifully record who attends meetings or events, has no membership lists, and does not have any voting records. With the absence of these recordings, any attempt at a new election will be met with the same issue of who exactly qualifies as an active member. Furthermore, any of the twenty to thirty first time attendees who attended the meeting on April 27<sup>th</sup>, 2015 will now be technically considered active members with

full voting privileges. When this is taken into account with the fact that CPE meeting attendance was reported to be generally less than ten members, it is clear that The Court imposing a definition of active members could in itself determine the results of the next election. It is therefore my opinion, that The Court's attempt to facilitate a new election by bypassing the legislature and defining active members under its own power will only lead to future problems with CPE elections.

As an alternative to The Court defining active members on its own and remanding for a new election, I would recommend allowing the legislature to determine the proper course of action while putting a hold on any CPE elections in the meantime. The main argument against this is that the issue could take much more time to reach resolution if sent to the legislature while the CPE clearly needs leadership presence. I contend that while this may be true, the legislature has a strong interest in resolving this issue in a timely manner. The CPE is a storied part of the Florida State University's community involvement, and this case may set precedent for handling statutory interpretation issues involving RSO's in the future. It would therefore be in the best interest of the University to leave the future resolution of issues like this to the legislature as opposed to the judiciary.

In closing, The Court correctly invalidated the elections and followed proper reasoning in Its deliberations. However, I contend that the imposition of a definition of active members with instructions for a new election was not the proper remedy, because determining the definition of active members as well as the proper course of action are issues better left to the legislature.

### **C.J. Cox, Concurring in the Judgment, Dissenting in Part**

I am writing to express dissent as to Part 2 of the judgment. While I agree that there is a semantic difference between the words "active" and "eligible," my position is that since the CPE constitution did not explicitly define this difference, the two words should be read together. CPE has made no effort to keep records of "active" membership. I believe that this explanation of the CPE constitution only came about as a means of preventing the newcomers from being elected to CPE leadership. I believe that the self-proclaimed "active members" went to the constitution, not in hopes of having a valid election, but rather to find a way to void an election where they did not like the result. I would have validated the balloted election and determined that since CPE had never kept any records of "active membership," that the difference in wording was merely an oversight and not an accurate representation of CPE practices.