

**IN THE SUPREME COURT OF THE
FLORIDA STATE UNIVERSITY
STUDENT GOVERNMENT
ASSOCIATION**

James Moorhead

v.

**Student Government Association
Elections Commission**

PROCEDURAL POSTURE

On February 9, 2017, the Court received an advisory opinion request from the Supervisor of Elections regarding whether the Student Government Association Constitution or Student Body Statutes permit a candidate to run for the Student Body President position without naming a Vice President as a running mate. The request further specified that the issue was time sensitive and required a response in four days. On February 13, 2017, with limited time for fact finding, the Court issued a cursory Advisory Opinion, Advisory Opinion 2017-2, advising the Supervisor of Elections to remove the Presidential Candidate running without a Vice President from the Election Ballot. On February 17, 2017, the Elections Commission met pursuant to Chapter 712.1(E), FSU SGA Statutes, to hear a petition from the solo candidate to be

reinstated on the SGA Presidential Election Ballot. The Elections Commission determined that the candidate would be allowed to run without naming or nominating a Vice President. This appeal was filed on February 20, 2017. The appeal requested the Court to issue an injunction preventing the Elections Commission from including the solo Presidential candidate on the spring 2017 SGA Presidential Election Ballot. The Court did not issue the injunction and permitted the candidate, Erin Lusaka, to run for Student Body President.

JURISDICTION

The Supreme Court has jurisdiction to hear this case. The Supreme Court has jurisdiction to hear cases and controversies involving the constitutionality of actions by student governing groups and their representatives. FSU SGA Const. Art. IV, Section 3(C)(1). The Supreme Court has jurisdiction over violations of the Student Body Constitution and Statutes. FSU SGA Const. Art. IV, Section 3(C)(2). The Supreme Court has jurisdiction to issue writs as necessary and proper to complete the exercise of its jurisdiction. FSU SGA Const. Art. IV, Section 3(C)(4). This case involves the constitutionality of the Election Commission's decision to permit a candidate to run in the Student Body

Election without naming or nominating a Vice Presidential Candidate.

ISSUES

(1) Whether the Elections Commission acted properly by overriding the Supervisor of Elections disqualification of a candidate?

(2) Whether a candidate for the Student Government Association Presidential Election may run without a Vice Presidential candidate?

HOLDING

(1) Yes, the Elections Commission acted properly by overriding the Supervisor of Elections disqualification of a candidate for Student Body President. As required by the Section 703(B) of the Student Body Statutes, the Supervisor of Elections shall “rule on qualifications within three academic days of the filing deadline, subject to final approval by the Elections Commission.”

(2) Yes, a candidate for the Student Body Presidential Election may run without a Vice President because the Student Body Constitution and Statutes do not require a Presidential candidate to have a Vice Presidential candidate as a running mate. Furthermore, requiring Student Body Presidential candidates to run with a Vice

Presidential candidate limits student participation in Student Government which is in conflict with the purpose of the Florida State University Student Government Association.

FACTS

This appeal arises from allegations of improper procedure involving the Elections Commission permitting candidate Erin Lusaka to run for SGA Student Body President without a Vice Presidential candidate. Erin Lusaka is procedurally a qualified candidate for the election. She has followed and completed all the required procedures as laid out in the Election Code. Pursuant to Chapter 710.3 of the Student Body Statutes, the Supervisor of Elections ruled that Erin Lusaka was not permitted to run for Student Body President without a Vice Presidential candidate. This decision was based off of the Advisory Opinion issued by this Court. *See* Advisory Opinion 2017-2. Candidate Erin Lusaka appealed the decision of the Supervisor of Elections pursuant to Chapter 702.2 of the Student Body Statutes. The Elections Commission determined that Candidate Lusaka was permitted to run for Student Body President without a Vice Presidential candidate because the Supervisor of Elections decision was issued past the qualification

determination deadline. The Supreme Court now reviews the action of the Elections Commission to determine the constitutionality of their actions and whether a candidate for Student Body President may run without a candidate for Student Body Vice President.

OPINION

J. Tomassetti for the Court, C.J. Meyer and J. Thompson joining on all issues. J. Donnelly and J. Mitchell dissenting on issue 2.

1. NO MATERIAL ERROR BY THE ELECTIONS COMMISSION

The first issue before the Court is whether there was a material error in the Election Commission hearing regarding the qualification of candidate Erin Lusaka. While the Student Body Statutes does not establish the proper standard of review for an agency's action, Florida Statutes do provide insight as to the proper standard of review for an agency decision.

According to Section 120.68(7), Fla. Stat. (2017), “[t]he court will remand a case to the agency for further proceedings consistent with the court’s decision or set aside an agency action, as appropriate when it finds that . . . the fairness of the proceeding or the correctness of the action

may have been impaired by a material error in procedure or a failure to follow prescribed procedure.”

Student Body candidate Erin Lusaka, filed her qualification for candidacy on February 8, 2017. On February 9, 2017, Candidate Lusaka was informed that her candidacy was being questioned. On February 12, 2017, Candidate Lusaka received an e-mail instructing her to attend the candidacy meeting. On February 13, 2017, Candidate Lusaka was present at the candidacy meeting. On February 14, 2017, Candidate Lusaka was informed that her name would not be present on the ballot. On February 15, 2017, Candidate Lusaka appealed the decision of the Supervisor of Elections challenging the validity of her name being taken off the ballot.

According to Section 703(B) of the Student Body Statutes, the Supervisor of Elections shall “rule on qualifications within three academic days of the filing deadline, subject to final approval by the Elections Commission.” The filing deadline for candidacy was February 8, 2018. Based on the timeline of the events, the proper date to rule on the qualification of Ms. Lusaka would have been on February 13, 2017. As such, the action by the Supervisor of Elections was improper.

Furthermore, according to Section 702.1 of the Student Body Statutes, the “Elections Commission shall serve as an appeals board before cases are brought to the Student Supreme Court. The Elections Commission shall also determine if alleged violations are upheld. The process by which the Commission shall undertake these duties are outlined in Chapter 702.2 of the Student Body Statutes.” The duties require that the candidate is informed at least 24 hours before the scheduled hearing, the appeal will be read, each party shall be allotted 15 minutes to present their respective cases, each party may be questioned by the Committee, and the Commission shall rule on whether or not the alleged violation should be sustained. Here, it is clear from the facts that the proper procedure was followed. The parties were informed of their hearing and allowed to present their case. Furthermore, the decision of the Committee was rationale as the action by the Supervisor of Election was in violation of the Student Body Statutes. Therefore, the decision of the Elections Commission stands.

2. STUDENT BODY PRESIDENT WITHOUT A VICE PRESIDENT

A candidate running for Student Body President without naming a Vice President is

an issue of first impression for the Supreme Court. Earlier, this Court hastily issued an Advisory Opinion stating that a candidate for Student Body President must have a Vice President running mate. Upon further review of the Student Body Constitution and Statutes, this Court finds that it issued the Advisory Opinion in error. As such, the decision of the Elections Commission is determined to be valid and upheld.

In no part of the Student Body Constitution or Statutes is there a requirement for a candidate for Student Body President to have a Vice Presidential candidate in order to run for the Student Body President.

QUALIFICATIONS FOR STUDENT BODY PRESIDENT

The procedures for establishing candidacy to run for Student Body President are Academic and Procedural. Under Academics, a candidate must be in good academic standing meaning “an undergraduate cumulative FSU grade point average (GPA) of at least 2.0.” FSU SGA Const. Art. V Section 3. Under the Procedures, “[a]ny qualified student may be placed on the Official Ballot by submitting a statement of candidacy.” FSU SGA Const. Art. V Section 5.

The statement of candidacy does not require a candidate for Student Body President to name a Vice President. The required information for a candidate include: Name, FSU Card Number, Phone Number, Mailing Address, E-Mail, Office Sought, Division, Seat #, Major, Party Affiliation (if any), and the name and address of the Treasurer for the Party.

Therefore, a candidate for Student Body President qualifies for the election by maintaining good academic standing and by filing a declaration of candidacy. There is no requirement under the qualifications for the candidate to name a Student Body Vice President.

STUDENT BODY VICE PRESIDENT'S REQUIRE A PRESIDENT

The Student Body Constitution requires that the Student Body President to be “elected by a plurality of those voting in the Student Body elections.” FSU SGA Const. Art. III, Section 2(A). The Constitution goes on to state that the “Vice President shall be the President’s running mate.” FSU SGA Const. Art. III, Section 2(B). The Constitution further states that the Student Body Treasurer is to be elected by a plurality of those voting in the student body elections. FSU SGA Const. Art. III, Section 2(C). Based solely on the language of the

Student Body Constitution, it is clear that the Student Body President and the Student Body Treasurer are elected positions. Furthermore, the Student Body Vice President is not an elected position and a Student Body Vice President cannot run without being tied to a candidate for Student Body President.

This interpretation is further bolstered by the Student Body Statutes. According to Chapter 712(C)(1), “[f]or the election of the Student Body President and Vice President, the names of the candidate for President and Vice President within the same party (if applicable) must appear on the ballot as one voting bloc.” This statute reinforces the interpretation that a candidate for Student Body Vice President must be linked to a candidate for Student Body President. This language in the Constitution and Statute is included to protect Student Body Presidents from having a Student Body Vice President that is in direct opposition to the Student Body President’s objectives.

In fact, other statutes support the Student Body President and Vice President being of the same accord. For example, the Student Body Statutes vests “all the executive powers of the Student Body” in the President of the Student Body, “assisted by the Student Body Vice President, Student

Body Treasurer, and such administrative officers as the President shall appoint in accordance with the Constitution.” FSU SGA Chapter 300.4. The statute goes on to list the responsibilities and duties of the President and Vice President separately. FSU SGA Chapter 300.4; *see also* FSU SGA Const. Art. III Section 3 and 4 (separately listing the responsibilities of the President and Vice President). It is clear by the delineation of responsibilities and duties between the President and Vice President that the Student Body Constitution and Statutes envision the President and Vice President as of the same accord.

Finally, the only mention in the Student Body Statutes and the Student Body Constitution that a Student Body Vice President is an elected position is found in the Impeachment and Removal Process. FSU SGA Chapter 405. Here, the statute describes that the Student Body Vice President is considered an “elected position” for the purposes of impeachment based on “charges of misfeasance, malfeasance or nonfeasance, as defined by Blacks Law Dictionary.” Therefore, the Student Body Vice President is not an elected position and is only tied to candidates for Student Body President if the candidate names a Vice

Presidential candidate for their running mate.

Therefore, based on the plain meaning of the Student Body Constitution and Statutes, a candidate for Student Body President does not require a candidate for Vice President. However, a candidate for Vice President does require a candidate for Student Body President.

Furthermore, the Student Body Statutes contain provisions for Presidential Appointments of vacancies in office. FSU SGA Chapter 201 and 304. Under Chapter 304, an appointment for a vacancy begins with a Candidate Search which requires advertising to the Student Body for at least one week. Then there is a candidate screening process where the Student Body President determines which candidate is the most qualified. The selected candidate is then sent to the Senate for two-thirds vote for confirmation. Under Chapter 201, appointments by the Student Body President “shall require a two-thirds vote of the Senate for appointments to vacated offices and a majority vote for all other appointments.” FSU SGA Chapter 201.1. As such, the Student Body Statutes have been written in such a way to permit a candidate for Student Body President to appoint a Vice President

with the proper checks and balances by the Student Senate.

**PURPOSE OF STUDENT
GOVERNMENT**

Finally, the Court finds that the requirement for a Student Body President candidate to have a Vice Presidential running partner is in clear conflict to the purpose of the Florida State University Student Government Association. The Student Body Constitution clearly states that the purpose of Student Government Association is “[t]o ensure the greatest participation by students in the immediate governance of the policy development for the Florida State University at all levels.” FSU SGA Const. Art 1 Section 5(A). Setting a precedent that Student Body President candidates must have a Vice President in order to run in the Student Body Elections would severely limit the ability of students to participate in the highest level of student body governance. The Constitution was drafted in such a way that permits a student to run for any student government position so long as they meet the minimum requirements academic qualification and procedures for establishing candidacy. See FSU SGA Const. Art V Section 3 and 4.

CONCLUSION

In conclusion, the Court finds that the Elections Commission acted properly by allowing Erin Lusaka to run for Student Body President without a Vice Presidential running mate. An interpretation of the Student Body Constitution and Statutes clearly indicates that there is no requirement for a candidate for Student Body President to have a Vice President running mate. In addition, the sole purpose of Student Government would be violated by requiring such a high burden for participation in the governance of the student body. As such, this Court dismisses the appeal and the Elections Commission’s determination is deemed valid.

However, the Court warns that a candidate for Student Body President running without a candidate for Student Body Vice President should be a rare occurrence and not the norm. If a candidate for Student Body President is unable to locate a candidate for Student Body Vice President or a party has no one interested in running for Student Body Vice President, then the candidate for Student Body President should be allowed to run so as not to impede access to the political process. But, a candidate running for Student Body Vice President should not run without a candidate for Student Body Vice President

in order to circumvent the political process in order to gain a strategic advantage regardless of the checks and balances provided by the Senate approval. This Court urges the Senate to remain vigilant when it comes to the appointment of a Student Body Vice President when the Student Body President ran without a running mate. While participation in Student Government is important, we fear that the appointment process circumvents the rights of students to participate in the democratic voting process.

J. Donnelly dissenting as to Issue 2. J. Mitchell joining.

Under a strictly textualist view the candidate, Ms. Erin Lusaka, is a valid candidate for President of the Student Government Association. The election of a Vice President is dependent of the election of a President, but the reverse is not true under the text of the FSU Student Constitution. However, this reading of the Constitution is certainly not the intention of those who wrote the constitution.

The intention of placing the President and Vice President together on the ballot is to allow for voters to elect the Executive and potential Executive. This manner of election ensures that the voters choose the Executive and that the potential succession of the

executive is also a popularly elected individual.

The purpose of FSU SGA elections is to allow for an expansive student body to choose those who would represent them in the legislative and executive branches of the Student Government Association. Allowing a Presidential Candidate to run without a Vice Presidential Candidate will always create a vacancy in a position that is intended to be elected by the people. This would give greater power to the President and the Senate at the expense of the Student Body.

The Constitution does allow a mechanism in which a President can nominate (and the Senate confirm) a Vice President when a vacancy is present. This system is for the practical purposes of filling a vacancy by the people's representatives, rather than holding an emergency school wide election. This makes the Vice President as close to a popularly elected leader as possible when weighed against the administrative difficulty of a school wide snap election and the need for a swift filling of the vacancy. A vacant office of the Vice President, a presidential appointment, and a Vice President without popular support cannot be the norm in the system we find ourselves in. A candidate for President

should not be able to create their own vacancy to be filled when the time is more convenient.

Even the majority argument can be used against itself. Section 2(B) of the Constitution says the Vice President "shall" be the President's running mate. While (A) and (C) make specific mention that the roles of President and Treasurer shall come from a plurality vote, the Vice President position does not have the same language. The language used implies that the Vice President is also elected by the same plurality vote as the President. Saying a Vice Presidential Candidate shall be the Presidential Candidate's running mate makes it clear that the Vice President is expected to run with the President. Looking to Blacks Law Dictionary for the definition of shall, shall means "has a duty to; more broadly is required to," and as noted, "[t]his is the mandatory sense that drafter typically intend and that courts typically uphold." p.689 4th Edition.

To use the mistakes peppered throughout the Student Body Constitution and the FSU statutes in a manner that reduces democratic control of the executive dismisses our unique traditions of democracy. Our system with a popularly elected legislature and executive is unique compared to the

parliamentary system seen throughout much of the world. To allow the legislature to creep into the election process of the executive is to condone and promote a breakdown of the separation of powers that is unique to our system and traditions.

This Court should be cautious when deviating from the text of the Student Body Constitution. The overwhelming nature of the interests of popular control of the executive and separation of powers demands that this Court protect our democratic traditions when our Constitution fails to do so.