

MEMORANDUM

To: Senate Judiciary Committee

CC: Student Body President, Senate President, Senate Internal Affairs Committee, Student Government Senate and All Interested Parties

From: Florida State University Student Government Supreme Court

Date: July 8, 2015

Re: Complaint Regarding OGA Deputy Director

Senate Judiciary Committee,

A complaint was recently filed regarding the forwarding and confirmation of any person for the position of Deputy Director of the Office of Governmental Affairs. The complaint alleges that the appointment of an individual to this position was not in compliance with Student Government Statute § 908.4(B)(1). Section 908.4(B)(1) states that the Director of the Office of Governmental affairs “shall be responsible for conducting a formal interview process for an Internal and External Assistant Director, and forward one candidate per position to the Student Body President for appointment. The complaint alleges that the Student Body President did not comply with this procedure in appointing the candidate. Section 908.5(A)(1), however, indicates that “[t]he Deputy Director position shall be... interviewed and then appointed by the Student Body President and confirmed by the Senate in accordance with 202.1(A).”

This presents a non-justiciable issue that is inappropriate for the court to resolve. There can be no procedural violation until the candidate is in fact confirmed by the Senate. This has been the case as far back as the United States Supreme Court's decision in Marbury v. Madison, where the Court established:

The question whether a right has vested or not, is, in its nature, judicial, and must be tried by the judicial authority. If, for example, Mr. Marbury had taken the oaths of a magistrate, and proceeded to act as one; in consequence of which a suit had been instituted against him, in which his defence had depended on his being a magistrate; the validity of his appointment must have been determined by judicial authority.

So, if he conceives that, by virtue of his appointment, he has a legal right, either to the commission which has been made out for him, or to a copy of that commission, it is equally a question examinable in a court, and the decision of the court upon it must depend on the opinion entertained of his appointment.

That question has been discussed, and the opinion is, that the latest point of time which can be taken as that at which the appointment was complete, and evidenced, was when, after the signature of the president, the seal of the United States was affixed to the commission.

Marbury v. Madison, 5 U.S. 137 (1803). As such, at this stage, the proper forum for this issue to be resolved rests in the Legislative Branch not the Judiciary. Since the Court does not resume regular session until the Fall Semester, this Court cannot issue an advisory opinion on the meaning of the statutes at issue.

This Court is writing to apprise the Senate of this development so it may consider all relevant evidence in rendering its opinion. Any remedy to this apparent conflict in statutes lies within the sole authority of the Legislature.

For any additional questions, please do not hesitate to contact Justice Harrison DuBosar at hrd09c@my.fsu.edu.