SUPREME COURT OF THE UNIVERSITY OF HOUSTON STUDENT GOVERNMENT ASSOCIATION

COURT OPINION ON SENATE GRIEVANCES WITH THE OCTOBER 2021 RECALL SPECIAL ELECTION CODE

No. 58-003. Decided October 19, 2021

JUSTICE PALACIOS delivers the opinion. ACTING CHIEF JUSTICE TORRES, and JUSTICES, SOLIS, TORRES, LEE, and PHAM join.

THE FOLLOWING COMPLAINT was filed regarding the OCTOBER 2021 RECALL SPECIAL ELECTION CODE written by ATTORNEY GENERAL (hereinafter referred to as "A.G.") N. HUTCHERSON.

The UNIVERSITY OF HOUSTON SENATE (hereinafter referred to as "SENATE") has filed this NOTICE OF COMPLAINT to the SUPREME COURT OF THE UNIVERSITY OF HOUSTON and argues the following:

1. RECALL SPECIAL ELECTION CODE, ARTICLE VI, SECTION I, CLAUSES II & III are unconstitutional as they infringe on powers granted to the SENATE

and UNIVERSITY OF HOUSTON SPEAKER OF THE SENATE. Due to the lack of process regarding special elections, and the overlying power of the SPEAKER OF THE SENATE to be the authority over all STUDENT GOVERNMENT ASSOCIATION (hereinafter referred to as "SGA") controllable budgets, the SENATE questions the legitimacy of the two clauses.

2. RECALL SPECIAL ELECTION CODE ARTICLE IV, SECTION I, CLAUSE I and ARTICLE IV, SECTION 2, CLAUSE 1 are unconstitutional as violating First Amendment speech protections afforded by the UNITED STATES CONSTITUTION.
3. THE RECALL SPECIAL ELECTION CODE is generally vague as a document and should be amended. It contains contradictory language to the UNIVERSITY OF HOUSTON CONSTITUTION.

THE COURT has deliberated the issues presented above, and have reached the following findings:

GRIEVANCE ONE

1. RECALL SPECIAL ELECTION CODE, ARTICLE VI, SECTION I, CLAUSE II is found to be constitutional. If the SENATE wishes to use SPECIAL ELECTION RECALLS to remove an elected official when they deem a constitutional issue, they should be the ones to finance out of their own budget. There are two primary reasons (1a-1b) the SUPREME COURT OF THE UNIVERSITY OF HOUSTON finds this should remain in place:

a. By leaving budgeting for special elections to the UNIVERSITY OF HOUSTON SENATE, it prevents them seeking special election recalls as their primary method for removing an elected official from the SGA. Any legitimate issues of constitutionality or inappropriate behavior by any elected official can be appropriately handled within the UNIVERSITY OF HOUSTON SUPREME COURT without negatively impacting their budget, assuming their issue is legitimate.

b. The SENATE has the ability to enact a RECALL ELECTION independently from other branches. To force a budget upon a SENATE requested procedure would be inappropriate and unfair to any other department, as they have no say in whether or not a RECALL SPECIAL ELECTION takes place. This encourages the SENATE to use impeachment as the appropriate method for removing an elected official in a restrained manner, as impeachment will not be financed through any other department budget.

Regarding ARTICLE VI, SECTION I, CLAUSE III, the COURT finds that it is not constitutional to allow the A.G. to utilize the SENATE budget without *any* approval, but that approval need not be from the SENATE. It is the determination of the COURT that any reasonable expenses to be incurred by the A.G. should be done so with the monitoring and approval of SGA ADVISORS KEITH KAWALKA and DR.. TINA POWELLSON.

GRIEVANCE TWO

2. Concerning the grievances presented to this court regarding ARTICLE IV, SECTION I, CLAUSE 1 and Article IV, SECTION II, CLAUSE I of the A.G.'s RECALL SPECIAL ELECTION CODE: A Recall Referendum is a petition to allow the student body to vote on whether an elected official is fit to lead and remain in office or not. A RECALL is not an official election, as there are no candidates, nor is anyone being voted into office. Given that a RECALL is a procedure, *not* an official election, campaigning is inappropriate for the course of action. The COURT acknowledges the severity of a SPECIAL ELECTION RECALL, and SGA Members are/have been allowed to publish statements in support of or against the upcoming procedure. The student body must be informed of the reasoning behind the RECALL procedure through the statements put forward by the SGA Members, but no further campaigning is necessary.

Dissent

Lamarque, J. Joined by Powers, J.

Concerning the grievances presented to this court within Article IV, § 1, clause 1 and Article IV, § 2, clause 1 of the Attorney General's Recall Special Election Code; In this case, the court is tasked to evaluate the constitutionality of restricting the right to campaign afforded by the First Amendment to the United States Constitution as relevant to the Recall Special Election currently called to order.

Generally, First Amendment Rights are among the most sacred rights in our republican system of governance, and enjoy the highest level of constitutional protection. The Founding Fathers thought it prudent, for a system of self governance to thrive, that basic protections be afforded to the people to ensure the dissemination of ideas, and principles throughout the nation in order to stave off the encroachment of tyranny. The concepts of a free press, freedom of speech, and assembly are paramount to the survival of a free democracy and traditionally, upheld to the highest honor, and reverence in these United States.

In reference to the question at hand, The Attorney General, in their Recall Special Election Code has defined the act of campaigning as throughly as " the intentional direct or indirect solicitation of votes, the purposeful bolstering of one's personal brand and/or name, and/or any form of personal, group, or mass advertising initiated by the candidate or involved parties with the purpose of affecting the recall election outcome."

The Attorney General (hereinafter referred to as "A.G.") has constitutional authority under Article VII, § 7.02, clause 8 of the Student Government Association Constitution to "conduct and schedule any recall elections" where a recall is defined as "a special election where eligible voters decide whether or not to remove an elected official from office." As already stated by this courts Advisory Opinion *No. Fall 2021 – 002*, Delivered October 11, 2021, this power is limited by constitutional constraints. "Conduct and schedule" cannot be interpreted to mean that the office of Attorney General has the authority to suspend the practice of constitutional rights.

Although the A.G. has the intention of protecting the integrity of the Recall election process, we do not believe the A.G. the has the authority to determine what speech is allowed and which is not in any manner that exceeds well settled constitutional precedent. Campaigning, as defined in Article IV, §1, clause 1 of the Recall Election Code, is not compatible with the powers outlined to the A.G. in Article VII, §7.02, Clause 8 of the Student Government Association Constitution. Since the proposed suspension of all campaign activities would violate a fundamental right enumerated in the United States Constitution, this court would apply the highest scrutiny to determine whether the office of A.G. is acting in accordance with the norms of jurisprudence exercised in this nation. *See United States v. Carolene Products Co*., 304 U.S. 144 (1938) (discussing strict scrutiny); *Grutter v. Bollinger, 539 U.S. 306* (2003) (discussing a compelling state interest).

We do believe the interest of the AG is not compelling enough in this particular situation to restrict the exercise of the right to campaign, although this court finds that there may be situations in which the suspensions of such activities may be warranted in order to maintain the integrity of a fair recall.

Although we appreciate the majority's distinction between a procedure and election, we cannot agree in the implicit assumption that this distinction nullifies constitutional rights in some way. Political speech is a right protected under the Constitution regardless of whether a formal election is in progress or not. For these reasons, we respectfully dissent from the majority as to Grievance Two.

GRIEVANCE THREE

3. To address the issue of lack of definition of violations, sanctions, and other lacking processes in the RECALL SPECIAL ELECTION CODE, a revised code was sent out after the subject grievance was filed to alleviate the issues presented. Furthermore, it should be presumed anything not specifically included within the UNIVERSITY OF HOUSTON SPECIAL ELECTION CODE should be referred to within the general UNIVERSITY OF HOUSTON ELECTION CODE. To address RECALL SPECIAL ELECTION CODE ARTICLE VII, SECTION I, CLAUSE I, it should be up to the A.G. in all Special Elections going forward how to organize their recall elections; as granted to them by the UNIVERSITY OF HOUSTON CONSTITUTION, ARTICLE VII, SECTION II, CLAUSE 8. They cannot make a *binding* document out of one, but every A.G. going forward can use previous A.G.'s Special Election Recall Codes as a guide and inspiration going forward. ARTICLE VII in this matter is only suggestive in nature, and is not to be interpreted as the sole document to conduct SPECIAL ELECTION RECALLS moving forward.

It is so ordered.

Justice Rodriguez took no part in the consideration or decision of this case.