Opinion on the Referendum for a Vote of No Confidence

Petitioned: 12 February 2020
Argued: 17 February 2020

CHIEF JUSTICE CHAPMAN DELIVERED THE OPINION OF THE JUDICIAL COUNCIL, WITH WHOM JUSTICES AGPOON, BEIRUTE, MCINTYRE, REAMER, VASUDEVAN, AND WELLS JOIN.

Petition

On February 12, 2020, two students (Plaintiffs) of the University of Tulsa filed a petition with the Judicial Council of the Student Association (SA) of the University of Tulsa requesting a writ of mandamus to cease and desist the proposal of the referendum regarding the call for a vote of no confidence in Provost Janet Levit (Levit). The Plaintiffs’ petition claimed that the referendum is in violation of the SA Constitution and, as such, should not be allowed to proceed. The Judicial Council convened on February 17, 2020 to hear and deliberate this matter. Ultimately, the Judicial Council denied the request to issue a writ of mandamus and upholds the referendum’s validity to proceed under the governance of the SA Constitution.

In their petition, the Plaintiffs cited that the referendum violates the SA Constitution and made two claims of relief.

The first claim of relief contained three sections (A, B, and C) and claimed that the proposed referendum does not meet the requirements set forth in Article VII of the SA Constitution.

Claim 1A: The Plaintiffs contended that the question posed by the referendum does not contain an actionable request of an SA officer. For this, the Plaintiffs cited Article VII, Section D:

“[...] Upon passage by the student body, the appropriate party shall be responsible for carrying out the actions specified within the referendum.”

The Plaintiffs also stated that, in accordance with the prior claim, the word “shall” should be defined according to Black’s Law Dictionary 1653 (11th ed. 2019):

“[Shall]: a duty to; more broadly, is required to”
Claim 1B: The Plaintiffs contended that the referendum lacks jurisdiction over the supposed party, Levit, given that she is not a member of Student Association as defined by the SA Constitution, Article I, Section II: Eligibility:

“A. Any student who is a member of the Student Association at The University of Tulsa shall be eligible for membership in the Student Senate.
B. Any member who fails to be currently enrolled as certified by the University during his term shall lose their Senate seat.”

The Plaintiffs continued this claim stating that the only way in which SA could involve non-member persons is through the passage of a resolution through the Student Senate of SA. They cited the Senate Standing Rules, Article IV, Section A, Subsection 2:

“A resolution is defined as “[...] legislation that is a formal statement of opinion to groups, organizations, or persons outside of Senate or Cabinet” that “upon final passage and approval of the [SA] President, a resolution shall be submitted to the University President and any other persons addressed in the legislation.”

Claim 1C: The Plaintiffs contended that any alleged connection between former TU President Bob Donaldson’s resignation and the 1995 Student Senate vote of no confidence is purely speculative, citing the article “Petition circulating for student vote of no confidence” from The Collegian by Lindsey Prather and Chris Lierly. They also noted that the 1995 vote was carried out via resolution, not referendum.

The Plaintiffs also cited the 1995 The Oklahoman article “University of Tulsa President to Resign” by Killackey as published:

“[...] the TU Student Senate voted 26-0 on a motion declaring no confidence in the president.”

Further, they cited the SA Constitution, Article VII, Section D:

“The referendum must be approved by a majority of the students voting, provided at least ten percent of the student body votes in the election.”

The second claim of relief contained two sections (A and B) and claimed that the proposed referendum violates the Preamble of the SA Constitution.

Claim 2A: The Plaintiffs contended this referendum is an overreach of SA’s authority because it challenges and undermines prior decisions of the Board of Trustees, the authority-endowing power of SA. They cited the SA Constitution, Preamble, Section A:
“[...] by the virtue of the authority granted to us by the Board of Trustees [...]”

The Plaintiffs also cited the University of Tulsa November Board Update from November 7, 2019:

“The board reaffirmed their full and unqualified confidence in the President, the Executive Vice President for Finance, the Executive Vice President for Academic Affairs-Provost and their respective administrative teams.”

The Plaintiffs also cited Lindsey Prather and Chris Lierly from *The Collegian* on November 13, 2019 after the faculty vote of no confidence:

“When asked whether the margin of the vote would change the Board’s support for the President and Provost, the Chair of TU’s Board of Trustees Frederic Dorwart simply stated, ‘No.’”

Claim 2B: The Plaintiffs clarified that because SA lies within a clearly established framework of authority, SA is not given authority with respect to greater or older University entities, stating that SA should work with Administration instead of campaigning against them. They cited the TU Organizational Chart, as well as the SA Constitution, Preamble, Section A:

“We the students of The University of Tulsa do recognize our role and embrace our responsibility as a self-governing body within the framework of the University Community [...]”

The Plaintiffs also cited the SA Constitution, Article VI, Section A:

“This Constitution shall be proposed by a majority vote of the Student Senate existing in the Fall of 2000 [...]”

In summary, the Plaintiffs’ petition argued that the referendum violates SA governing law because it lacks actionability, lacks jurisdiction, is not subject to precedence, and is an overreach of SA’s authority over the Board of Trustees. The demand for relief was for a writ of mandamus to be issued by the Judicial Council to cease and desist the proposal of the referendum.

**Background**
The origin of the referendum is a petition authored by the Students for Responsible Change (SRC) that calls for a vote of no confidence in Provost Janet Levit in accordance with the SA Constitution, Article VII: Referenda. The SRC petition was officially submitted on January 28, 2020. Upon receipt of the petition, the appropriate SA officer achieved verification of the signatures within the allotted time frame. The petition garnered 395 verified signatures out of 4,105 currently enrolled students at the University of Tulsa. This represents 9.6 percent of the student body, satisfying the requirement of signatures from at least five percent of the student body to create a referendum. The vote was scheduled to take place on February 19-20, 2020.

**Judicial Hearing**

The Judicial Council convened at 6:36 PM on Monday, February 17, 2020 to hear the Plaintiffs’ petition brought against the appropriate officer of the Student Association (Defendant) of the University of Tulsa, as detailed above. The Judicial Council heard arguments from both parties, gathered witness testimony, and reviewed submitted evidence. As per Article XI, Section A, Subsection 3 of the Judicial Code, which states

“In all cases the burden of proof shall be on the party bringing the petition before the Judicial Council,”

and as per Article XI, Section A, Subsection 1 of the Judicial Code, which states

“In cases where a Writ of Mandamus is petitioned for, the cases shall be decided on a preponderance of the evidence [...].”

the Plaintiffs, as the petitioning party, were required to provide the Judicial Council with sufficient evidence to prove that the proposed referendum violates the SA Constitution. The Plaintiffs presented their argument with the aforementioned evidence, as well as other evidence submitted, and answered questions from the Judicial Council. The Plaintiffs explained further the claims of their petition. They contended that the language of the governing documents is subject to context and that, because SA Constitution Article VII, Section D uses the word “shall” and not “may” or another less binding term, the call for an action pursuant of the vote is not merely applicable but required. They argued that referenda should only be considered to remove an SA officer or to amend or appeal governing documents, and all other questions should be proposed as resolutions. Thus, the current question’s lack of an action item by an SA officer disqualifies the referendum. The Plaintiffs also argued that since Levit is not a member of Student Association and cannot be compelled by SA’s governance, a referendum could not be created in regard to her, also disqualifying it. The Plaintiffs proposed that the only way to publicly demonstrate SA opinion on persons outside of the organization is through a resolution passed through the Student Senate by the University Improvements Committee. To allow this
The Defendant presented arguments, referenced evidence submitted, and answered questions from the Judicial Council. The Defendant explained how, upon receipt of the student-created petition, 395 signatures were verified and found to be in accordance with Article VII, Section A of the SA Constitution. They contended that the only two codified requirements in Article VII to create a referendum are that the proposed question must be of student origin and that the petition for the referendum must garner signatures of at least five percent of the current student body. Further, they stated that there is neither codified restriction to the subject matter of referenda nor any codified power to an SA officer to reject referenda on the basis of subject matter. Thus, rejecting the referendum on these grounds would be an over-exertion of SA officers’ power. The Defendant claimed that this referendum operates functionally as a poll to gauge student opinion, and while this does not have a pursuant request, Article VII, Section D does not presuppose that an action should be required for all referenda. The Defendant contended that the purpose of SA, as outlined in the SA Constitution, is to advocate for student interest and allow the student voice to be heard, and that, as currently defined in Article VII, referenda are a valid avenue through which to do this. Further, the Defendant challenged the jurisdictional argument of the petition by stating that since there is no request for action following the vote of no confidence, there is no attempt to impose jurisdiction on Levit nor undermining of the Board of Trustees. In reference to resolutions and referenda, the Defendant held that, as currently defined, both should be considered valid channels for gauging student opinion and that limiting this power to only resolutions could make the student voice less directly accessible. In sum, the Defendant argued that since the referendum meets current criteria set forth in Article VII, there are neither reasons nor grounds to disqualify it. Thus, the vote of no confidence should proceed as scheduled.

Judicial Ruling

The Judicial Council voted unanimously to reject the Plaintiffs’ first claim of relief that the proposed referendum does not meet the requirements set forth in Article VII of the SA
Constitution. Further, the Judicial Council voted unanimously to reject the Plaintiffs’ second claim of relief that the proposed referendum violates the Preamble of the SA Constitution.

In response to the Plaintiffs’ petition Claim 1A regarding an alleged lack of actionability of the referendum, the Judicial Council interprets that action is not required pursuant of a referendum’s passage if there is no request for action nor appropriate party applicable. The Judicial Council also holds that, currently, not one specific definition for “shall” can be assumed in the interpretation of SA governing documents. This referendum, then, seeking no action, still meets the criteria as defined by Article VII, Section D:

“[...] Upon passage by the student body, the appropriate party shall be responsible for carrying out the actions specified within the referendum.”

In response to Claim 1B regarding the referendum’s alleged lack of jurisdiction over Levit, the Judicial Council finds that since no action is being requested as a result of the vote of no confidence, there is no jurisdiction being implied or forced upon Levit. Further, the Judicial Council cites the current definition in the SA Constitution, Article VII, Section A:

“A referendum shall be proposed through the initiative of the student body. Any student wishing to propose a referendum or to call for the removal from office of a Student Association officer must acquire the written support of at least five percent of the student body; this support must be given in a verifiable manner.”

By this definition, the Judicial Council interprets that referenda are not currently subject to rejection by SA officers on the basis of subject matter, and both resolutions and referenda can currently be considered valid channels through which to express student opinion of this nature.

In response to Claim 1C, the Judicial Council finds the Plaintiffs’ speculation upon the connection between the 1995 no-confidence vote and resignation with this proposed referendum to be irrelevant to the referendum’s validity, both because it is speculative in nature and because any student government action prior to the 2000 ratification of the current SA Constitution cannot be considered judicial precedent.

In response to Claim 2A, the Judicial Council interprets that, because there is no action requested to imply jurisdiction or authority, a vote of no confidence proposed as a referendum does not undermine the Board of Trustees nor constitute an overreach of SA’s authority granted by the Board of Trustees in the SA Constitution, Preamble, Section A:

“[...] by the virtue of the authority granted to us by the Board of Trustees [...]”
In response to Claim 2B, the Judicial Council agrees that SA does not have authority over institutional entities outside of the SA governing structure but interprets that, because the referendum does not seek action, it wields no authority nor attempts to establish authority in this way. The referendum seeks only to serve as an expression of student opinion, and, thus, is still a right of SA constituents within the university structure, as defined by the SA Constitution, Preamble, Section A:

“We the students of The University of Tulsa do recognize our role and embrace our responsibility as a self-governing body within the framework of the University Community [...]”

The Judicial Council affirms that the referendum for the vote of no confidence in Provost Janet Levit meets the qualifications for a referendum as defined by the SA Constitution, Article VII and does not violate the SA Constitution Preamble. Ultimately, the Judicial Council asserts that the referendum is in accordance with the SA Constitution. To this degree, the Judicial Council unanimously denies the Plaintiffs’ demand for a writ of mandamus to cease and desist the proposal of the referendum and maintains that the referendum will proceed as scheduled.

Finally, this ruling does not reflect the personal views of any justice on the content of the referendum. This judicial body serves to protect the integrity of Student Association and its members, and to do this, the SA Constitution and supporting documents must be upheld to the highest standard.

**Recommendations**

The Judicial Council recommends that the Government Operations Committee (GOC) should define referenda more clearly, in relation to other types of legislation, namely resolutions.

The Judicial Council recommends that GOC should define referenda more clearly, in relation to whether or not they require actionable items pursuant of their passage.

The Judicial Council recommends that GOC should define referenda more clearly, in relation to their scope of jurisdiction.

The Judicial Council recommends that Student Association leadership, as a whole, should better educate its constituents on their options for exercising their rights as members of Student Association.