

Opinion of the Court

UNIVERSITY OF MIAMI
STUDENT GOVERNMENT SUPREME COURT

RULING ON CONSTITUTIONALITY OF ACTION #19030

ASSOCIATE JUSTICE KATIE GIACOBBE delivered this opinion of the Court.

The Court finds the amendment to Article IV, Section 2 of the Student Government Constitution, further referred to as Action #19030, to be unconstitutional on the grounds that it violates the principle of Separation of Powers. The Court rescinds the action.

The principle of Separation of Powers is clearly outlined in the Constitution under Article I, Section 4. Student Government is to be composed of independent branches and agencies with no single branch or agency reigning supreme. The intent of Separation of Powers is to prevent the concentration of unchecked power by providing for checks and balances to avoid autocracy or one branch overreaching over another. These checks and balances are in place to evenly distribute power throughout the branches and organizations of student government, such as the Senate's right to veto, the President's appointment of the Chief Justice, and the Supreme Court's power of Judicial Review. However, Action #19030 compromises the Separation of Powers by limiting the terms to one-year discretionary reviews by the President (and Chief Justice in the case of Associate Justices) and giving the President too much power in the selection of Court members.

Due to these factors, the Court remands this amendment under two violations of the purpose and context of the Constitution. Firstly, and most pertinently, the Court finds that the President and Chief Justice gaining the sole power to determine eligibility for each Associate Justice annually is contrary to the context and purpose of the role of the Supreme Court according to this Constitution. The inclusion of a one year term of office up for reappointment takes away the Court's potential for impartiality. The Supreme Court is a body which has the duty, outlined in Article 4 Sections 4 and 5 to "render fair and impartial decision[s]" particularly on those cases which may arise related to enforcement and interpretation of this Constitution." Under a careful examination of this amendment in light of Senate's noted concerns of productivity within the Court, this Court finds that an annual reappointment procedure for Supreme Court overriding the Constitution's initial declaration of a retainment of office for the duration of the Justices' undergraduate education does not solve the problem of maintaining a highly efficient and impartial Court, but rather compromises it. The Court is not a place to play politics. Justices previously held office until graduation to avoid this issue. In light of this, if justices must go through a reappointment process, the President and Chief Justice could choose to only re-appoint Justices who agree with their political agenda and further their goals. For

instance, if a future President disagrees with a position or decision from a Justice on a particular issue (violation, legislation, etc), the President need only wait until the end of the year to simply remove the Justice and not have him reappointed. In this scenario, Justices may also be biased or otherwise motivated to serve the agenda of certain members of the Executive or Legislative branch in order to ensure reappointment the next year. This is a situational risk the Court seeks to safeguard against in order to preserve the foundational concept of Separation of Powers. This issue of maintaining independent branches which are not manipulated and cannot manipulate is most concerning to the Court, which prides itself on its impartiality and ability to critically understand cases and application of the Constitution. In sum, the reappointment process gives too much power to the President to play politics with Court members, further violating the Separation of Powers. Thusly, the Court deems the amendment in question unconstitutional and rescinds and remands it to Senate.

Secondly, the Court finds that the President co-choosing internal members of the Court is a reflection of a lack of trust in the Chief Justice whom he/she has appointed. The Court is meant to be an independent branch of Student Government. If the President has the power to remove the Chief Justice *and* co-remove any other internal member of the Court at the end of each year, the President could easily abuse this power, appointing a Chief Justice who will follow his lead, thus essentially allowing the President manipulative control over the Court. This not only risks a slippery slope which could compromise the integrity of the Student Government, but it also poses a grave threat to the independence of the Judicial branch. As explicitly stated in Article II Section 4.4 of the Constitution, the Senate confirms the appointment of each Justice in the swearing-in process. As the President is the one who appoints the Chief Justice, the President should be confident in the ability of the Chief Justice to choose competent members of the Court. Also, the President should be confident in the Senate's ability to exercise their power of confirming Judicial Appointments, as outlined in Article II Section 4.4 of the Constitution. Thusly, the President need not have any further explicit powers in the appointment of Associate Justices.

Also, Section 2-1.5 of Article IV describes a process to solve procedural disagreements between the President and the Chief Justice. The usage of the words "such procedures as" creates an ambiguity which allows the tie-breaking power of the Speaker of the Senate to be applied beyond the scenario of "judicial nominations," which is beyond the intent and scope of the amendment proposed. In addition, an argument could be made that the provision allows for amendments to the Constitution to be passed with only two votes: an agreement from the President and Chief Justice or a tie-breaking vote from the Speaker of the Senate. This power is far beyond the Speaker's powers outlined in the Constitution and is a further violation of Separation of Powers.

According to Chapter 3 Title I Section 5-1 of the Student Government Statutes, the Supreme Court has the power to review the Senate's action of passing this amendment. For the

aforementioned reasons, the Supreme Court of Student Government finds Action #19030 to be unconstitutional and hereby RESCINDS and REMANDS the action and its amendments.
