UNIVERSITY OF FLORIDA
SUPREME COURT
Heard and Decided January 11, 2018

In re: "PETITION REGARDING WHETHER THE UF SUPREME COURT CAN INTERPRET SENATE RULES AND PROCEDURES"

Boyett, J.,

Petitioner asks whether this Court can interpret the senate rules and procedures enumerated in Article III § 6 of the University of Florida Student Body Constitution. We rule it can.

I.

At its core, Petitioner wishes us to determine the scope of our judicial power under Article V of the Constitution. Petitioner argues the doctrine of "separation of powers" vests in the Senate discretion to decide its own rules and procedures without judicial interference. He argues these rules and procedures are checked only by the politics of the Senate itself (and by the democratic process). While we agree certain political and discretionary zones exist outside this Court's province, Petitioner's arguments are unpersuasive.

While there is no enumerated "separation of powers clause" in the UF Constitution, it is a doctrine built into the very spirit of our Federal, State, and School government. The idea is simple—each branch is vested with certain key powers and responsibilities. The Senate can pass legislation—the president is the arm of diplomacy, and so on.

"It is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). The Court has a duty to determine whether laws and executive actions are lawful. This is a pillar of our Constitutional democracy.

But, as Petitioner correctly points out, the Legislative and Executive branches are vested with specific spheres of discretionary power. Such spheres are out of the Courts reach, and the branch itself must determine the lawfulness of its own decisions within such spheres. If this discretion is abused, it is up to the vote to check the branch. Thus, the term "discretionary powers" is often equated with the term "political powers." *Marbury*, 5 U.S. 137 at 165–166 ("By the constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience.").

These spheres of discretion are enigmatic. Typically, they guard pockets of political discretion—areas of non-law. But, the Court need not presently locate and count every specific sphere of discretion. The Senate Rules and Procedure are not among them.

II.

This Court alone is given the province to determine what the law is—thus we are given the duty to determine whether something *is* law. Additionally, because rules and procedures are an enumerated power under the UF Constitution, the Court has the duty to review whether the Senate is lawfully executing this Constitutional grant of power. We have the province of determining the meaning of the rules and procedure clause. What constitutes a "rule or procedure" is therefore certainly subject to judicial review.

Senate rules and procedures are enumerated as an Article III power of the senate in the UF Constitution. But, our Constitution goes no further in defining where procedure ends and legislation begins. Where do we draw the line? And *who* draws the line?

If the Senate were to create unconstitutional rules or procedures, it cannot be said the rules are immune to judicial rule due to "separation of powers." There very well may be specific senate procedures that are best interpreted solely within the discretion of the legislature. But, it would be anathema to doctrine of separation of powers to say that the stamp "rules and procedures" allows the Senate to act unilaterally on a matter—immune from the review of the Court. After all, it is the Senate that labels one thing legislation and another a procedure.

This would be a dangerous game to play. Any decision the Senate wishes to be protected from the Court could simply be labeled and passed as rules or procedures. Thus, rules and procedures must be subject to judicial review. There must be an arbiter to decide whether the Senate has abused its authority to determine its own rules and procedures under Article III § 6 of the UF Constitution. The rules and procedures in their entirety are not discretionary. It would be unconscionable to rule otherwise.

Thus, the Court has the authority to determine the legality and constitutionality of the Senate's rules and procedures.

IT IS SO ORDERED.

MCCARTHY, C.J., ALLEN, J., BECKER, J., WALLACE, J. concur.

Validity of Referendum Expanding the UF Supreme Court from Five to Seven Members
Decided on February 20, 2018

Associate Justice Wallace delivers the opinion of the Court:

At issue is whether the referendum expanding the number of UF Supreme Court justices in the UF Constitution from five to seven justices (the "2012 Referendum") was constitutionally passed. Section 4 of Article VIII of the University of Florida Constitution (the "Constitution") permits the ratification of proposed amendments which receive three-fifth's approval of the total ballots cast, or three fifth's approval of ballots cast for or against a particular ballot line item. In relevant part, Section 4 of Article VIII provides "a three- fifths approval vote of those voting in the spring general election is necessary to ratify all constitutional amendments." The UF Supreme Court, in its decision in Interpretation of The University of Florida Constitution: Section 4 of Article VIII decided on June 25, 2016, held that Section 4 permits ratification of an amendment where the amendment is ratified by a three-fifths approval vote of the total ballots cast in the spring general election.

Article I, Section 2, subsection (b) of the Constitution grants students the right to submit referendums for ratification by the electorate. UF Student Body Statute 790.21 states that "referendum questions approved by a majority of students voting on the question shall be considered enacted and shall be treated in the same manner as resolutions adopted by the Student Senate."

Here, the following question was listed as a referendum on the Spring 2012 ballot:

> Should the Study Body Article V, Section 3 be amended so that "The Supreme Court consists of the Chief Justice and six justices," (as opposed to the current number of four justices)? Changing this Amendment (as described in the brackets above) would mean that 5 members, as opposed to the current number of 4 would constitute a quorum. Additionally, the concurrence of judgment, which is necessary for any decision, would then consist of 4 members, as opposed to the current amount of 3.

The 2012 Referendum received 4688 yes votes out of 10644 total ballots cast in that Spring 2012 election. Even assuming arguendo that this referendum was actually an "amendment," the question still received only 44% of the vote, and thus did not receive the three-fifth's approval from the student body that is necessary to ratify constitutional amendments. In addition, students may not change the Constitution through referendums, rather the student body can only exercise that power by submitting an amendment under Section 4 of Article VIII of the Constitution. Referendums, in contrast, are treated as resolutions adopted by the Student Senate, if approved according to UF Student Body Statute 790.21. They are not to be treated as amendments.

The Court holds today that the 2012 Referendum expanding the number of justices on the UF Supreme Court was not constitutionally enacted, and therefore the referendum is retroactively voided. As a result, the UF Supreme Court hereby returns to

having five justices, with four justices necessary for quorum, and three justices necessary for a concurrence. Furthermore, the Court holds that a referendum is not a constitutional means for the student body to amend the Constitution.

It is so ordered.

MCCARTHY, C.J., ALLEN, J., BECKER, J., BOYETTE, J. concur.