

**SUPREME COURT OF THE
STUDENT GOVERNMENT OF THE
UNIVERSITY OF HOUSTON**

No. Fall 2021 – 005

Background:

Attorney General Nadiia Hutcherson has submitted a complaint to the University of Houston Student Government Association Supreme Court on Thursday, October 28th, 2021, regarding members of the Legislative Branch and Executive Branch violating the Special Recall Election Code and the Student Government Association governing documents such as the Bylaws and Constitution. Since the passing of the Resolution for Recall on October 6th members of the Executive and Legislative branch have repeatedly attempted to discredit the authority of the Attorney General to conduct and schedule the Special Election. The SGA constitution provides the Attorney General the authority to schedule and conduct the Special Recall Election. The Attorney General is solely responsible to direct the course of, manage or control a Recall Election. In the Supreme Court Advisory Opinion 58-002 and Declaratory Judgment 58-003. Both decisions addressed the power granted to the Attorney General in the UH Constitution, Article VII, Section II, Clause 8. The referenced clause granted the Attorney General the exclusive power to fully organize special elections. By failing to comply with the provisions of the Special Recall Election Code and continuing to breach the governing documents. Attorney General Nadiia Hurtcherson is using the following statues to hold the administration accountable for their actions, Title IX: Article 3, Section 1 that reads

“Members of the Student Government Association should encourage their colleagues to adhere to the Code of Ethics by holding each other accountable while striving to be examples themselves. Members should ensure enforcement, while at the same time showing their commitment to the Code and Core Values to the rest of the Student Body.”

Questions Before the Court:

1. Given the complete disregard of the special recall election code's provisions on campaigning, can the recall be invalidated after a judicial review of the evidence that proves an undue influence of the election?
2. Considering all of this, can the A.G. amend their code to require expenses of this Special Election be split evenly (\$300) between The Senate, The Office of the President, The Executive Assistant, The Director of Outreach, The Director of External Affairs, due to their participation in this manner?

Court Analysis:

1. The University of Houston Student Government Associate Supreme Court majority finds that legislative members and executive members ignored the provisions on campaigning that the Attorney General has laid out. Both Branches took it upon themselves to not hold their colleagues accountable. At the October 6th Senate meeting members of the Legislative Branch and Executive Branch wanted to have the democratic process of allowing the student body to vote in the recall unfortunately the evidence clearly shows the Legislative and Executive Branch members influencing students to vote in the recall election even after the Attorney General and the Judicial Branch's rulings which clearly shows that both the Legislative and Executive Branch are trying to be above the law by breaking the Special Recall Election Code and the governing documents. After a careful judicial review of the evidence that were provided to the Student Government Association Supreme Court the Court majority agrees that Special Recall Election results be invalidated due to the influence of the members of the Legislative and Executive branch campaigning when they were specifically told not to campaign. The Legislative and Executive Branch have violated the following statues of the Special Recall Election Code:

Article 4, Section 2, Clause 1 of the Special Recall Election Code that reads:

“A member of the Student Government Association may not participate in or assist an organization in campaignin on the behalf of their cause.”

Article 4, Section 3, Clause 1 of the Special Recall Election Code that reads:

“No candidate, involved party or known associate of, may make threats towards any individual or group. This includes but is not limited to: physical threats, emotional threats, social threats, or any threat which might prove distressful to an individual or group’s physical, emotional, and/or financial well-being.”

Article 4, Section 3, Clause 2 of the Special Recall Election Code that reads:

“No candidate, involved party or known associate of may offer anything of value nor threaten or promise any particular action to a member of the Attorney General, or a member of the Justice Department with the intention of incentivizing or causing undue influence in the recall election process”

The Legislative Branch have violated the following statues of the bylaws:

Title I: Article 1, Section 2, Clause 1 of the Student Government Association Bylaws that read:

“No motion or vote within the Senate may suspend the rules within the Bylaws or Constitution without a Student Government Bill to amend the Bylaws being passed and enacted according to the exact process outlined in Title I, Article 10, Section 6, Clause 1 of the Bylaws.”

Title I: Article 8, Section 4, Clause 2 of the Student Government Association Bylaws that read:

“Responsibilities of the Committee on Internal Affairs will include but are not limited to: Senate appropriations, enforcement of the Student Government Association Constitution, Bylaws, Statutes, and Rules, amendments of the Student Government Association Constitution, Bylaws, Statutes and Rules.”

Both the Legislative and Executive Branch have violated the following statues of the bylaws:

Title IX: Article 4, Section 1 of the Student Government Association Bylaws that read:

“No official will knowingly misrepresent the truth while acting in their capacity as an officer of the UH Student Government Association.”

Title IX: Article 4, Section 4 of the Student Government Association Bylaws that read:

“Each Student Government official must make every reasonable attempt to fulfill their responsibilities to the best of their ability. Each member must discharge their duties in good faith and with due regard for the welfare of the entire Student Body.”

Title IX: Article 4, Section 6 of the Student Government Association Bylaws that read:

“Each Student Government official must represent both Student Government Association and UH in a dignified manner.”

Title IX: Article 4, Section 8 of the Student Government Association Bylaws that read:

“Each Student Government official, while acting in an official capacity, will represent the student body by maintaining a professional demeanor.”

Members of the Legislative Branch and Executive Branch have continued to disregard the Judicial Branch’s rulings in regards to the Special Recall Election Code and continuing to breach the governing documents. The Court grants the Attorney General the rights to remove those that violated the Special Recall Election Code and the Student Government Association governing documents which included the Constitution and Bylaws effectively admittedly. Regardless of the number of violations made and filed upon a complaint the evidence made it clear that there was a concentrated and deliberate effort amongst the Legislative and Executive Branches to influence the Special Recall Election outcomes in their respective favors. These efforts have not only damaged the integrity of this election but the reputation of this organization. The lack of precedence for punishment does not negate the fact it is warranted. Therefore it is the discretion of the Attorney General as the enforcer of the law in this organization to decide. Due to the severity of the accusations against President Arsalan Darbin he will be suspended until December 19th and must complete four (4) diversity workshops that are provided by the Center for Diversity and Inclusion by 11:59 PM by the end of his suspension.¹ President Darbin will need

¹ With this decision the Court is NOT asserting the allegations against President Darbin are true. However, the court acknowledges there are issues amongst the organization regarding Diversity and

to provide training transcripts and/or reflections to the Office Attorney General and Advisor Keith Kowalka to show completion. In the event of time or availability conflicts with available workshops provided by the Center for Diversity and Inclusion, the Office of the Attorney General, with the advice of Student Government Association advisor Keith Kowalka will find an alternative to replace the workshop in question. If he fails to complete the diversity courses by his assigned deadline, Vice President Maryam Alghafir will assume all duties of the President until the remainder of the Administration.

JUSTICE LAMARQUE, with whom JUSTICE A. TORRES, JUSTICE PALACIOS and JUSTICE POWERS join, concurring in part and dissenting in part

Concurring:

Concurring in part and dissenting in part. The notion that a campaign can be nullified by an act of this court is an act that we cannot in good faith subscribe to. The doctrine of separation of powers is clear, each branch divides the power amongst themselves to ensure the operation of a free republic. The foundation of such a political system is to allow the public voice and vote to prevail, absent extraordinary circumstances. We do not think the circumstances presented today reach such a level. Under Article VII, § 7.02, Clause 2 of the Student Government Association Constitution, a Recall Election to recall President Arsalan Darbin was duly initiated by the Legislature per their constitutional authority. This very court also upheld the authority of the office of the Attorney General (hereinafter referred to as “A.G.”) under Article VII, § 7.02, Clause 8, to “conduct and schedule” this recall per the Student Government Association Constitution, which gives original jurisdiction to the office of the A.G. to create a Recall Election code consistent with all applicable laws that will guide the recall as noted in Advisory Opinion No. Fall 2021 – 002, and affirmed in No. Fall 2021 – 003. In both of these opinions the court affirms the overreach of the Legislative branch in attempting to amend or repeal the Recall Election Code contrary to this court's declaratory judgement. Despite this, members of the legislature have taken upon themselves to subvert this coequal branch of government and introduced a bill titled, Student Government Association Bill 58-008 “A Bill to Amend The Recall Special Election

Inclusion. The Court recommends President Darbin provide the actions moving forward based on the learnings in these trainings.

Code” on Monday, October 11th. This action was in direct contradiction to No. Fall 2021 – 003. The senators found in contempt have received their sanctions according to the recall election code outlined by the A.G. and affirmed by this court in No. Fall 2021 – 004. Based on the blatant disregard of Constitutional limitations, we agree that the individuals who directly acted to subvert the Recall Election Code should be subject to repercussions. We dissent however, as to the second question addressed by the majority in No. Fall 2021 – 005.

Dissent:

The A.G. Poses the question: “Given the complete disregard of the special election code’s provisions on campaigning, can the recall be invalidated after a judicial review of the evidence that proves an undue influence of the election?” This dissent voices a very clear no. It is clear that the behavior of the Senators who violated the Special Election Code and Constitution should not be justification for the nullification of an entire Recall Election. Politicians, judges, and many other hopeful elected officials inevitably violate campaign laws on occasion. The repercussions of such violations fall on them, not the voters they represent. To throw out an election circumvents the election process and student body opinion; students who have no involvement in SGA are being punished for exercising their constitutional right to vote in this election process. Sanctions for Candidates, Politicians, and Judges are applied to the individual(s) who commit them but to the fullest extent possible, elections are to continue so that the voice of the public remains heard. We do not believe that the evidence presented leads to an unavoidable conclusion that any sway or influence the senators may have had when unconstitutionally campaigning influenced the recall to such a point where the integrity of the election is jeopardized so severely, or excessively, that the court must nullify the results. This would bring us to another moot point of the majority, which falsely asserts that the mere fact that multiple instances of unauthorized campaigning occurred automatically leads to the conclusion that the entirety of the election must be compromised. Again, that assertion is conclusory and makes sweeping presumptions. Although the decision to continue campaigning on the part of SGA senators was reckless and unconstitutional, the simple occurrence of these instances does not present sufficient necessity to silence the voice of the entire student body. The burden of proof lies with the A.G. and we are of the opinion that they have not presented compelling evidence to warrant such a

radical action by this court. Such an act, to nullify a duly initiated process, should be considered incompatible with the original jurisdiction of this court as outlined in Article VI, §6.03 of the Student Government Constitution, and Article III of the United States Constitution. Concurrently, nowhere in said Constitution(s), Bylaws, Election Code, or Recall Election code is this power delegated to any branch. We cannot interpret the constitution's silence to mean that the power suddenly belongs to the judiciary; nor do we believe that this is an opportunity to create such a power. The Student Government's Election Code, Article VII, Section II, Clauses 1-16 outlines all potential violation classifications that could be committed during an election, and the potential ramifications for such violations. Although the court has made the distinction between the Recall election and the General election, this court established that anything not assumed or implied within the Recall Election Code, could be referenced within the General election code. Nowhere in this area has the Court been mentioned as having the power to nullify results. If the Court does not have the power to do so in a General election, there is no possibility one could suggest the court could do so in a special recall election if not mentioned within any governing document. This court cannot also be allowed to violate separation of powers as outlined above in the interest of election integrity. Powers of election integrity are specifically given to the A.G. within Article VII, § 7.02, Clause 8 and as affirmed in No. Fall 2021 – 003. Although it is especially Lamentable, Distasteful, and Repugnant that the Legislature continued to ignore the repeated warnings from this Court, the decision of the Senate to ignore Decision No. Fall 2021 – 003 does not constitute a compelling enough interest to nullify the Recall Election set in motion and duly voted on by the larger student body. During deliberation of this complaint reference to the Supreme Court election complaint 57-002 the RiseUp party campaign where the majority used it as a precedent applicable to this case. However, it should be acknowledged that Fall 2021-003 was written and made a significant distinction between the special election recall process that allowed freedom of speech to be limited, and a general election cycle. To decide to treat the Special Election Recall as if it was similar to the RiseUp cases in 2020 would overrule this distinction that was recently formed between the recall election process and general student body elections. RiseUp took direct unconstitutional action which led to their disqualification, and unfortunately, votes were impacted because student votes were inextricably tied to those individuals. RiseUp required us to

unfortunately impact those votes in order to apply repercussions to the responsible individuals. Here, we are not required to nullify the recall to punish the Senators involved, as the A.G. has already suspended the Senators that are involved in violation, and other sanctions can be brought against those same individuals. We disagree that the RiseUp case presents any precedent which demands we nullify this recall election which is premised on entirely different circumstances. If the appropriate parties can be sufficiently sanctioned without nullifying the votes of the student body, we believe such an outcome should prevail. Ultimately, the party involved suffering the most damages will not be the Legislature, the President or his Cabinet, or even this court; but rather the student body, whose vote and trust was betrayed and whose grievances and votes should be heard. We respectfully, and in good faith, dissent.

2. The University of Houston Student Government Association Supreme Court finds that the Attorney General cannot revise their Special Recall Election Code after the process has already started. The Supreme Court has previously ruled in No. 58-003 that

“If the senate wishes to use the special election recall to remove an elected official when deem constitutional issue, they should be the ones to finance out of their own budget.”

While the University of Houston Student Government Association Supreme Court can see the reasoning why the Attorney General wants to split the cost between the Legislative and Executive Branch budgets due to them violating the Special Election Code and University of Houston Constitution, unfortunately it cannot be retroactively refinanced through offending parties. Each offending party will incur their appropriate sanctions through the Attorney General channels.

It is so ordered.

****Chief Justice Muñoz took no part in the consideration or decision of this case.****