

Advisory Opinion of the Supreme Court

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

SUPREME COURT OF THE STUDENT GOVERNMENT OF THE UNIVERSITY OF HOUSTON

No. Fall 2021 – 002

Delivered October 11, 2021

Summary: This advisory opinion seeks to clarify the rules governing a recall election, and discuss the constitutionality of retroactive application of amendments to election procedure.

I. Background

An Advisory Opinion was petitioned by Attorney General, Nadiia Hutcherson to the Supreme Court concerning the special call senate meeting for Monday, October 11th, with a piece of legislation known as Student Government Association Bill 58008, “A Bill to Amend The Recall Special Election Code.”

II. Questions Before the Court

- A. Is the Attorney General correct in the assumption that based off the Constitution and Bylaws at the time she presented the final document, she is in her right to do so, and the Legislative Branch is not allowed to attempt to amend it because it was never a piece of legislation, but simply a guide on how she intended to conduct this Special Election?

- B. Can the court block this attempt by the legislature to amend the Special Election code for the recall that has already been planned for October 26th?
- C. Since this [proposed amendment] was not in place prior to the recall resolution, is any update through an election code constitutional? There is no reference to the code in the constitution which designates the Attorney General as the manager of the process.

III. Court Analysis

- A. **Is the Attorney General correct in the assumption that based off the Constitution and Bylaws at the time she presented the final document, she is in her right to do so, and the Legislative Branch is not allowed to attempt to amend it because it was never a piece of legislation, but simply a guide on how she intended to conduct this Special Election?**

Article IV of the Student Government Association Constitution outlines the general legislative powers of the Legislature. Specifically, § 4.07, clause 3 grants the legislature the power “[t]o prescribe the times, place and manners of holding elections.” ‘Election’, is interpreted to mean the *general* election occurring on the University of Houston Campus during the school term wherein candidates run for vacancies in the organization in the Executive and Legislative Branches.

This is distinguished from § 7.02, clause 8 which addresses specific procedures for Recall Elections including that “[t]he Attorney General of the Student Government Association will conduct and schedule any recall elections.” ‘Recall’ is defined in § 7.02, clause 1 as “a special election where eligible voters decide whether or not to remove an elected official from office.”

The Court must read these provisions together and assume that the Constitution does not, by these provisions, contradict itself. Therefore, the place and manner of holding an *election* (as defined above) is under the powers of the legislature, but the power to conduct and schedule a recall election lies solely with the Attorney General of the Student Government (hereinafter referred to as “A.G.”). The A.G. is permitted to define the rules governing the conduct of a recall election, as they see fit, within the bounds of the Student Government Constitution and Bylaws. Notably, rules issued by the A.G. under the authority of § 7.02 of the Constitution are not considered legislation subject to legislative amendment or repeal. Attempts to amend the governing rules of the recall election established by the A.G. impermissibly transgress on the allocation and separation of powers under the Constitution.

The legislative branch may propose a constitutional amendment under Article VIII of the Constitution to re-allocate powers related to a recall election. Such a constitutional amendment would be the proper method for enacting the proposed amendment or addressing the current powers granted to the A.G. under § 7.02.

The Court finds that the legislative branch shall not amend any rules, guidelines, restrictions, or other guiding documents governing a recall election and any attempt to do so are considered unconstitutional legislative action.

B. Can the court block this attempt by the legislature to amend the Special Election code for the recall that has already been planned for October 26th?

Yes, the Supreme Court has the original jurisdiction to declare legislation, including proposed legislative amendments, unconstitutional and therefore impermissible. For the reasons explained above, the Court has found the proposed amendment to the Special Election Code for the Recall Election to be unconstitutional. For clarity, those reasons include the allocation of constitutional powers under § 4.07 and § 7.02, and the sole authority of the A.G. to govern the procedures of a recall election.

Attempts by the legislature, or any members thereof, to engage in unconstitutional action may be blocked by the Supreme Court to uphold the Constitution of the Student Government Association.

C. Since this [proposed amendment] was not in place prior to the recall resolution, is any update through an election code constitutional? There is no reference to the code in the constitution which designates the Attorney General as the manager of the process.

The Court finds the proposed amendment is unconstitutional for the reasons stated above. However, on the presumption that a future amendment may be constitutional on its face, it would still be impermissible under these facts because the amendment has been brought before the legislative branch after the recall resolution has already passed. Prudential concerns prevent retroactive application of an election code amendment to election proceedings already conducted or currently in progress.

An amendment to election or recall procedures should be proposed and voted on prior to an election or recall process. To retroactively apply an amendment that would change the regulations for an election or recall already in progress is unprecedented. To protect the facilitation of a free and fair recall election, retroactive application of such an amendment cannot be permitted.

The Court finds that any amendments to the rules governing an election, or the election code itself, that is proposed *after* a recall resolution is passed will be considered unconstitutional as it relates to the recall proceedings already in progress or already completed. The Court refrains from addressing whether such an amendment is constitutional as it relates to future recall proceedings as that issue is not presented in this case.

It is so ordered.