Grievances with the Recall Special Election Code

It is the opinion of a number of Senators that the Recall Special Election Code is unconstitutional, specifically in provisions regarding budget, prescribable campaigning behavior, and an overreach of constitutional powers vested in the Attorney General.

Pursuant to § 3.06 and §3.07 of the SGA constitution; no temporary powers can be afforded to any branch of government that is not EXPLICITLY stated by the constitution. Any action taken by the Attorney General to insinuate that the Recall Special Election Code can act outside the scope of the constitution, bylaws, or other governing documents should be considered "temporary powers". The ability for the Attorney General to be able to create the Recall Special Election Code is not unconstitutional in it of itself, however, this is not a temporary power. This is an explicitly granted power to "schedule and conduct a recall election". A power that is consistently held by the Attorney General, to insinuate otherwise would mean that any power that is not being exercised constantly by a branch would equate to being temporary. Thus, the Recall Special Election Code must act within the scope of the constitution as well as the other governing documents and strictly adhere to their principles. Furthermore, outlined within Title 5 Article 1 Section 2 Clause 1 of the SGA bylaws is the rule of law that SGA recognizes as governing documents. In order for the court to be able to consider the constitutionality of the Recall Special Election Code, it must consider it a document that can be defined through Title 5 Article 1 Section 2 Clause 1 of the SGA Bylaws. Any such document would be able to be amended through legislative action in order to honor the spirit of democracy, it would be unprecedented to have any governing document that is not able to be amended or discussed. The following three categories exemplify our grievances with the Recall Special Election Code:

1. Budgetary Concerns
2. Prohibition on Campaigning
3. Recall Special Election Code General Vagueness

Budgetary Concerns

As previously stated the Recall Special Election Code does not supersede the constitution, bylaws, or other governing SGA documents. With this in mind, we question the legitimacy of article 6 §1 clauses 2 and 3 of the Recall Special Election Code. § 4.07 of the SGA constitution outlines powers that are explicitly granted to the legislative branch including the ability to " amend and approve the budget of the Student Government Association". With regards to the Recall Special Election Code, there is no process in which election finances and funds can be approved by the Senate despite being taken from the senate's operating budget. Moreover, Article 3 section 4 of the SGA bylaws outlines that "The Speaker of the Senate will have authority over the entirety of the Student Government Association controllable budget (not

including stipends) set aside each year for the Senate.". The Recall Special Election Code not only is overstepping the powers granted to the Senate but also the Speaker of the Senate. Our concern lies with the lack of oversight and accountability the Attorney General has with this Recall Special Election Code. To take election finances from the Senate's budget and deny approval from any part of the legislative branch, including the Speaker of the Senate, is in our opinion infringes on powers that are explicitly vested in the legislative branch.

Prohibiting Campaigning

Article 4 of the Recall Special Election Code addresses campaigning. In it, it defines campaigning as *"the intentional direct or indirect solicitation of votes, the purposeful bolstering of one's personal brand and/or name, and/or any form of personal, group, or mass advertising initiated by the candidate or involved parties with the purpose of effecting the Recall Election outcome."*. Upon questioning, it has been stated by the Attorney General that this includes discussing the Recall Election in any way, shape, or form. This includes any corrections to misconceptions about the election itself, or to defend oneself against harassment or slander. This violates the First Amendment of the US Constitution and is in practice, an order of censure. As an organization which models itself after the US Government, the decision to prohibit campaigning as it has been defined by the Attorney General and the Recall Special Election Code is a deep violation of America's democratic tradition and chills the first amendment freedom of speech by punishing objective speech.

Recall Special Election Code General Vagueness

An election code requires clarity and specificity to ensure a fair and democratic election. The Recall Special Election Code is generally vague. Under Article 4, Section 2, Clause 1, the Recall Special Election Code bars members of the SGA from campaigning. However, the code does not specify the extent to which senators and other SGA members can inform their constituents about the election. The code enables only the Attorney General to provide details about the election. The AG, however, is a member of the SGA. The SGA constitution also designates every enrolled student at the University of Houston as a member of the SGA. The clause presents a contradiction that questions the clarity of the election code. If a member of the SGA does violate Article 4, Section 2, Clause 1 of the Recall Special Election Code, the code does not explicitly state a standard set of violations nor the classifications of severity. Clause 1 vaguely reads, *"If the Attorney General has evidence of an involved party or candidate campaigning, an investigation will take place and be presented to the Supreme Court."* The Supreme Court does not have the sole authority to impeach senators or reprimand SGA members. Impeachment proceedings must be initiated first in the Senate. Furthermore the Attorney General has no power in regards to removing Senators. Considering such vagueness,

the code must be amended to explicitly outline any sanctions or punishments to avoid any confusion. Furthermore, the general SGA Election Code, under Article 7 titled "Violations", outlines procedures to handle election violations. The general Election Code also details time constraints regarding the reporting and deliberation of complaints. For example, according to Article 7, Section 1, Clause 6 of the general election code, The Attorney General must *"decide within one (1) class day whether a complaint has merit."* The proposed Recall Special Election Code lacks such time restraints. These time restraints are essential considering the short duration of the recall election. The Attorney General should incorporate these clauses from the general Election Code to provide clarity. Lastly, Article 7, Section 1, Clause 1 designated the Special Recall Election Code *"as a guide for all Recall Elections, as needed."* Immediately following the presentation of the Recall Special Election Code, Speaker David Paul Hilton requested the Attorney General to add "or until the Senate passes legislation creating a code." Speaker Hilton was referring to the Final clause as he expressed his concerns about the precedence that the Recall Special Election Code would set. The Attorney General responded that Speaker Hilton's suggestion was implied in the final clause. We believe this sets a dangerous precedent of deriving meaning from laws with language that does not explicitly state the full extent of its meaning. Furthermore, Speaker Hilton, through official email communication with the AG, reiterated their concern that "allowing new code, which has not been approved by any elected body, to supersede existing code is not allowed and would be a dangerous precedent to set..." The Attorney General responded saying, "The Code is final and will not be amended." The Attorney General stated that the interpretation of the final clause is "until Senate passes a Recall Special Election Code." However, the Advisory Opinion delivered by the Supreme Court of the SGA on October 11, 2021, directly contradicts the AG's written and recorded statements. orders that "*an amendment to election or recall procedures should be proposed and voted on prior to an election or recall process*." As the legislative branch did not vote nor formally approve the Recall Special Election Code, the code and these statements are vague and contradictory. All governing documents must have the ability to be amended and changed. Hence, the AG's actions lack precedent. The constitution is amendable, and the Recall Special Election exists only because it is prescribed in the constitution.

With this said, this document will serve as our filing of a Notice of Complaint to the Supreme Court regarding the Recall Special Election Code.