

IN THE  
**REVIEW BOARD OF THE STUDENT ASSEMBLY**  
OF THE COLLEGE OF WILLIAM AND MARY

CASE # 315-002

*Allan Kennedy-Shaffer*, law student and SBA member,  
and  
*Joe Luppino-Esposito*, Class of 2008 Senator  
*Petitioners*,

v.

*The Student Bar Association*, as represented by Sarah Fulton  
in her capacities as SBA President,  
and  
*The Student Assembly Senate, Graduate Council, Arts and Sciences Graduate Student Association, MBA Association, Graduate Education Association, VIMS Graduate Student Association,*  
*Respondents.*

Argued: October 3<sup>rd</sup>, 2007

Decided: October 4<sup>th</sup>, 2007

In the case concerning the College of William and Mary Graduate Schools' method of selecting Student Assembly Senators, the Review Board finds that the present interpretation of the Constitution supports the ability of the Graduate Schools to designate their own methods of selection.

## I

### Facts

The present case involves a dispute over the interpretation of the College of William and Mary's Constitution and whether its language may be construed as to insist upon direct elections for all members of the Student Assembly Senate (Senate). Petitioners Alan Kennedy-Shaffer and Joe Luppino-Esposito charge that a correct interpretation of the Constitution, particularly Article V dealing with elections, does not support the Graduate Schools' practices of selecting Student Assembly Senators by means other than by direct elections. While the methods of selection differ between each Graduate School (enumerated above among the Respondents), many schools do not hold open and direct elections by their student bodies. The original petition cites an instance where a Senator, appointed by the Law School, failed to attend any of the regular meetings of the Senate during the spring semester.<sup>1</sup> Beyond this instance, there are no other undisputed facts giving rise to this case. The issue then remains one of simple interpretation.

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<sup>1</sup> Petitioner, "Student Assembly Constitution Election Requirement For All Senators," at 1.

The Petitioners assert that the absence of the appointed Senator from the Law School reveals the present failure to enforce the democratic guarantees already existent within the Constitution. The response from the Law School's governing body, the Student Bar Association (SBA), emphasizes the needed ability of the Graduate Schools to designate their own methods of selection to best represent their distinct student communities.

## II

### **Procedural History and Issues of Standing**

The present case was originally petitioned by Will Coggin on May 2, 2007. During that time, Mr. Coggin served as a Senator in his senior year and went on to graduate with his class that spring. Unfortunately, the case was filed too late for any action to be taken before classes ended, and the matter was left to the following semester's review board for consideration.<sup>2</sup> The petition was again renewed, this time by Law School student and SBA member Alan Kennedy-Shaffer, on September 2, 2007.<sup>3</sup> Though labeled as co-Petitioner, the Review Board subsequently ignored Mr. Coggin's involvement due to concerns over his standing as a non-student.<sup>4</sup> The Review Board found that Mr. Kennedy-Shaffer had sufficient standing to alone petition this case, even with the later inclusion of Class of 2008 Senator Joe Luppino-Esposito.<sup>5</sup>

Though the Petitioner originally listed only the Student Bar Association as a respondent, the SBA saw it necessary to join representatives of all of the Graduate Schools of the College to their side. This effort was sanctioned by the acting Chair of the Review Board, and every Graduate School added their support to the response brief filed by the SBA over no objection by the Petitioner.<sup>6</sup> The case was then eventually heard by the full membership of the Review Board on October 3, 2007.

## III

### **Plain Reading and Reasonable Interpretation**

The Petitioner's arguments center on an interpretation of several clauses within the College's Constitution, ratified in 2003.<sup>7</sup> In short, they argue that the overriding intent and

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<sup>2</sup> Andrew Costello, "RE: Review Board Petition," email correspondence between then Chair of the Review Board Andrew Costello and Senator Will Coggin, May 3, 2007.

<sup>3</sup> It should be noted, when considering questions of standing, that membership in the Student Bar Association, as claimed by Petitioner Kennedy-Shaffer, does not suggest an office-holding role within the organization. Membership in the Student Bar Association is extended to every student of the Law School, and this matter should not be narrowly viewed as one argued between exclusive members of a smaller organization. The issue, at least upon its inception, is between a law student and the governing body of that school.

<sup>4</sup> Will Angley, "RE: A reply to a response," email correspondence between now acting Chair of the Review Board Will Angley and Will Coggin, September 10, 2007.

<sup>5</sup> Joe Luppino-Esposito, "Add to suit," email correspondence between Senator Joe Luppino-Esposito and the full Review Board, September 12, 2007.

<sup>6</sup> Will Angley, "Case Status Update," email correspondence between acting Chair of the Review Board Will Angley and Alan Kennedy-Shaffer, September 8, 2007.

<sup>7</sup> "The Constitution of the Student Assembly of the College of William and Mary," found at <http://sa.wm.edu/other/aia/constitution.php>, every further quotation from the Constitution is found from this document, unless otherwise noted.

instruction of the Constitution can be found in Article I, Section I, Clause II, which reads “The Senate shall be composed of members chosen in election every year by the students of the College.” Such intent, the Petitioners claim, is that a democratic appeal be understood throughout the rest of the document. The Petitioner’s rely upon this clause when interpreting the Constitution’s instructions for Senatorial elections found in Article V of the document. Article V, Section III, Clause IV (hereafter referred to as Clause IV) more specifically states:

Graduate Senators shall be sent, and Graduate School Officers chosen, as the Graduate Council shall designate, provided that Senators and Officers are selected no later than the last Tuesday of the following September.”

The Petitioners would argue that the clause, when read under the shadow of Article I, Section I, Clause II, is simply meant to indicate that Graduate Schools still determine their representatives in the Senate via a direct election, only in a manner more suitable to their needs.

The problem with such an interpretation is that it disregards markedly dissimilar language throughout the rest of the document. The argument of the Petitioners presupposes that there is no meaningful difference between the language in Clause IV and any other clause dealing with elections. This is simply not the case. Of the four clauses in Article V, Section III titled “Elections,” three involve explicit references to “elections” as methods of selecting Senators. Clause I of Section III states that “Senators and Undergraduate Class Officers... shall be *elected* in the General Election...”<sup>8</sup> Clause II states that “Freshman Senators and Officers shall be *elected* during Freshman *Elections*.” Clause III explains that “Undergraduate Senatorial *Elections* shall be by plurality... [and] Undergraduate Class Officers shall be *elected* by the Instant Runoff System.” In total, the word “elections” appears five times. The following clause, Clause IV (quoted above), specifies elections nowhere. The Senators may be sent, designated, or selected, depending on one’s interpretation, but nowhere in the text of Clause IV does the word election appear in any form.

The Petitioners build their case around the idea that the Constitution maintains a need for elections across the board, indicated by their use of Article I, Section I, Clause II. Upon a plain, straightforward reading of the text, however, such an interpretation cannot be shared by the Review Board. When first reading Clause IV in isolation, one is never instructed to follow a particular method of selection of Senators. Yes, the Constitution designates that the Graduate Council itself be elected, but the Senators that the Council sends to the Senate share no such responsibility. On its face, Clause IV reveals no explicit democratic value as claimed by the Petitioner, but rather exhibits an interesting distinction when it is read in concert with the rest of the Constitution. If the terms “sent” and “selected” are truly meant to suggest election, then why is there a need for distinction between the Graduate Schools and the rest of the College? The appearance of Clause IV itself indicates a differing plan for the methods employed by the Graduate Schools. Moreover the very lack of the word election, after appearing five times prior, appears to send a clear signal to those reading the document that elections are not enforced upon the Graduate Schools. This absence of “election” establishes a clear distinction, a winnowing of the Petitioners’ democratic appeal, and allows for a reasonable individual to infer greater flexibility in the methods of selection for Graduate School Senators. Simply put, on its face,

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<sup>8</sup> Emphasis added.

Clause IV allows any reasonable person to interpret its meaning in just the way that the Graduate Schools have been doing for the past several years.

## IV

### Reading with Intent

During the hearing, a major point of contention developed over how to interpret the intent of Article V, Section III, Clause IV.<sup>9</sup> The Petitioners argued that the intent of the Constitution itself was to apply these democratic principles of direct election to every Senator, regardless of the specific language that was actually used in the document. The existence of Clause IV, said the Petitioners, was simply to eliminate the frequent confusion over the dates of the elections for Graduate Schools with sometimes inconsistent calendars. It may be presumed that the immediately preceding section in the Constitution, Article V, Section II concerning election dates, may have explicitly preempted this argument. The larger issue, though, is whether the drafters of the current Constitution intended to provide as much leeway for Graduate Schools as is currently supported by a reading of Clause IV. The Petitioners again argue that pre-2003 Constitution and its first re-draft fail to include a clause similar to that of Article V, Section III, Clause IV. This absence, they argue, is the result of specific intent on the part of the drafters: The drafters simply did not see a need to distinguish the method of election between the Graduate Schools and the rest of the College. The Petitioners argue that the actual existence of Clause IV and its non-specific language was the result, then, of poor or sloppy drafting.

Those who interpret the United States Constitution by its intent (original or otherwise) would recoil at the proposition of making any claim based on “sloppy drafting.” When arguing over intent, one must begin with the premise that the words are written as they were intended by the people who wrote them. In short, the words are there for a reason. The final draft of the William and Mary Constitution, the one that currently holds in this case, includes the clause distinguishing the methods of selection for Graduate School Senators. The fact that its presence was added in between drafts suggests not that it serves no purpose or that it equates to the other clauses in enforcing direct elections, but that it too appears for a reason. The Respondents argued in the hearing that the Graduate Schools would have never ratified the Constitution in its previous incarnations because of the very lack of Clause IV. Further, in their brief, the Respondents relied upon David Solimini, one of the original drafters of the current constitution, in arguing for their interpretation of Clause IV. “Generally speaking,” said Mr. Solimini, “the intent of the language in the Constitution was to allow Grad Schools to determine the best way to select senators.”<sup>10</sup> Mr. Solimini continues in saying:

the [C]onstitution is explicit for elections for undergrad senators but vague when it comes to graduate senators. Furthermore, there are a number of areas where graduate bodies are

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<sup>9</sup> It should be noted that the question of intent ought to be treated with extreme care. Just as with the United States Supreme Court, determining the intent of the drafters of the Constitution can be an inexact science. Nevertheless, the argument in the hearing over intent highlights several key deficiencies in the Petitioners’ approach to reading Clause IV, and thus warrants analysis.

<sup>10</sup> Respondents’ brief, “Response to Coggin and Shaffer Petition,” at 3.

allowed flexibility, often by omission from requirements, which undergrad bodies are not.”<sup>11</sup>

This statement from Mr. Solimini proves exceedingly persuasive when considering intent. Different from the Petitioners’ largely speculative argument concerning pragmatic election dates or sloppy drafting, the Respondents counter with substantive evidence of how those writing the Constitution might have intended Clause IV. Compelling in this matter is the realization that the statements by Mr. Solimini fit snugly within the reasonable interpretation one would glean from simply a plain reading of the language itself. Ultimately, the Review Board is hesitant to support a holding that argues the drafters meant one thing and wrote something else.

## V

### **Precedent and Amending the Constitution**

The Petitioners claim that the Graduate Schools’ practices of selecting Senators are simply a mistaken interpretation gone unnoticed and uncorrected. Though the Review Board did grant a hearing of the matter, we are nevertheless uneasy to overturn so many years of unchallenged precedent. This hesitance is answered, rightly, by the Petitioners in that the United States Supreme Court is not bound by historical practice, and its most notable decisions have overturned years of entrenched tradition. The matter before the Review Board, however, is not one akin to what the Supreme Court faced in *Brown v Board of Education*, but more alike the debate over the 17<sup>th</sup> Amendment. One recalls that the United States Constitution provides for the indirect election of Senators, much like what occurs when the directly elected SBA appoints a Student Assembly Senator. It is important to note that a change in the election methods did not come via the US Supreme Court, but rather through the amendment process. While the Review Board is certainly granted the power to interpret the Constitution of the College, we would hope that such changes be made via the consensus of an elected legislative body and not by an appointed group of seven students.

Interestingly, the matter in this case has already arisen in a proposed bill before the SA Senate. Referred to in briefs from both sides and in the hearing on October 3<sup>rd</sup>, Senate Bill #315-011, “The Law School/Graduate Student Reform Act” explicitly involved the issues the Review Board is now adjudicating. The bill requested that the Senate amend Article V, Section III, Clause IV to read, “Graduate candidates for elected positions shall be bound only by the same elections rules as undergraduate candidates for elected positions.” The specific contents of this bill were not brought to light during the hearing, and one can see why. This bill specifically deals with the issue in our present case, and its subsequent rejection indicates that the Senate has already addressed this issue and discarded it.

More importantly, according to the argument of the Petitioner the Constitution is already written in a way that enforces direct election in every case. So why did the original petitioner feel the need to present bill #315-011 if the Constitution required no change? The bill #315-011 and the petition in this case appear in direct opposition and cause the Review Board to wonder whether the present petition is more a last resort and less an argument of complete soundness. Questions of authorship argued by both sides in the hearing are immaterial. What is important is

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<sup>11</sup> Ibid.

that the issue presently before the Review Board has already been addressed once by the Senate, and the directly elected body felt no need to act.

## VI

### Conclusion

In the hearing, argument arose over the relative importance of having a directly elected Senator represent the Graduate Schools. This argument is not necessary when deciding this case. In question is simply the *ability* of the Graduate Schools to determine the methods of selection, not which method is best. While the SBA and other Graduate Schools presented compelling reasons for why their selection methods work for them, the Constitution, its drafters and the current Senate explicitly grant them this capability. When reading the Constitution, it clearly emphasizes a democratic value of election. When reading the clauses dealing with such elections, however, it is clear that certain distinctions are made. The Graduate Schools are dealt with in a manner plainly distinct from any other group within the College, and it is clear that the difference in language infers an expanded ability to select Student Assembly Senators. While Article V, Section III, Clause IV may not appear in any earlier draft of the Constitution, its current presence is important. Rather than an example of poor drafting, Clause IV can easily be seen to grant Graduate Schools the ability to decide how to best represent their distinct interests in the Student Assembly Senate. Finally, the Senate itself has already dealt with this issue. There must be far more compelling arguments, then, for why the Review Board ought to overrule the clear intentions of the Senate in this matter. If, as the Petitioners argue, the Graduate Schools have been disenfranchising their own students, the Senate was already provided clear notice and ample opportunity to correct this problem. The Senate's failure to do so should ring loud and clear. While direct elections may in fact be an improvement upon the accountability of Graduate School representatives, this is not a matter for the Review Board to decide. The majority feels that a reasonable interpretation of the Constitution supports the ability of the Graduate Schools to determine their own method of selecting Student Assembly Senators, and thus rejects the challenge brought by the Petitioners.

Signed by Adam Clay Reeves and 4  
members of the majority in a 5-2 rule in  
favor of the Respondent.