

**RE: STUDENT ASSEMBLY CONSTITUTIONAL ELECTION REQUIREMENT FOR ALL SENATORS**

**RESPONDENTS:** Student Bar Association; Student Assembly Senate; **Graduate Council; Arts & Sciences Graduate Student Association; MBA Association; Graduate Education Association; VIMS Graduate Student Association**

**PETITIONERS:** ~~Will Coggin, Class of 2007 Senator~~; Alan Kennedy-Shaffer, SBA Member; **Joe Luppino-Esposito, Class of 2008 Senator**

**SUMMARY:**

The Student Bar Association of the Law School has been acting in compliance with the Student Assembly Constitution. The Senate Internal Affairs Committee of the Student Assembly was correct in striking the language of the Petitioner's amendment. The Student Assembly was correct in passing the amended constitutional amendment. The Student Bar Association is granted the right to appoint Student Assembly senators by the Student Assembly Constitution through the framer's intent and the language of the Constitution. When a later section of the Constitution explicitly grants the right to appoint Senators, a general provision contained in the beginning of the Constitution does not erase the later section. A single clause must not be read apart from the entire document. Further, language or intent mentioned in the Student Assembly Constitution that would require *every* Student Assembly position to be elected. The Student Assembly Constitution explicitly requires that certain positions be elected—graduate senators are explicitly left out of this list of elected positions.

**DISCUSSION:**

**I. THERE IS PRECEDENT REGARDING THE CONSTITUTIONALITY OF THE GRADUATE SCHOOLS' ABILITY TO CHOOSE HOW STUDENT ASSEMBLY SENATORS ARE SELECTED IN THE SENATE INTERNAL AFFAIRS COMMITTEE.**

The Petitioners have previously attempted to evade the Student Assembly Constitution's ("Constitution") explicit provisions by putting forth a baseless due process argument. The due process argument has continually been Petitioner's last resort, because the Constitution explicitly grants all graduate schools the right to appoint senators to the Student Assembly.

On April 29, 2007, the Student Assembly Senate Internal Affairs Committee ("Committee") met in the Student Assembly House and discussed a constitutional amendment sponsored by Senator Coggin, and co-written or inspired by Mr. Kennedy-Shaffer. The new Student Bar Association President inadvertently found out about this proposed amendment the day before. The proposed amendment's effect would have given the power to run all law school elections to the undergraduate elections committee, as well as altered and destroyed the law school's time-honored policy of allowing the elected Student Bar Association officers and representatives to appoint the law school's Honor Council and Student Assembly Senators.

Upon learning of the proposed amendment, with the support of the law school Dean, W. Taylor Reveley III, the law school sent the two student Assembly Senators and three student

leaders from the law school to amend and or defeat the bill in committee. Not surprisingly, after hearing the arguments of the law students as well as Mr. Coggin and Mr. Kennedy-Shaffer, a committee member made a motion to strike the entire amendment and amend the constitutional amendment. The amended language allowed all graduate schools to continue appointing Senators, and allowed them to send alternate Senators in place of the appointed Senators, in case the appointed Senators could not attend certain Student Assembly Senate meetings. The changed amendment passed with unanimous consent of the committee.

Two nights later, on May 1, 2007, a law student suspended writing a timed take-home final exam in order to attend the meeting of the entire Student Assembly Senate to protect the amendment from any re-amendment and to vote in favor of the changed amendment. It should be noted that even though Mr. Coggin and Mr. Kennedy-Shaffer purport to consider this issue important, neither bothered to attend the full meeting of the Student Assembly Senate that night. After spending three hours away from the final exam in the Student Assembly meeting, the law student finally made a motion to move the amendment up the agenda for discussion and a definitive vote. The motion received a second, and at this point Chairman of the Student Assembly Senate Matt Beato, stood up to speak in favor of the changed amendment, and urge all senators to vote in favor of the changed amendment. The Senate passed the amended version of the constitutional amendment by unanimous consent, the version that the Internal Affairs Committee passed which did not contain Mr. Coggin and Mr. Kennedy-Shaffer's original proposals. Again, neither Mr. Coggin nor Mr. Kennedy-Shaffer were present when the Student Assembly convened to hear this business. It is clear from the actions of the Student Assembly Senate and its Internal Affairs Committee that they support the Law School and other Graduate Schools' intentions to maintain the current process of appointing Graduate School Senators.

The Student Assembly Senate has resoundingly supported the law school and other graduate schools' right to appoint Senators and general interpretation of the Student Assembly Constitution. Further, the Internal Affairs Committee unanimously rejected Mr. Coggin and Kennedy-Shaffer's proposed amendment, which would have destroyed the autonomy of the graduate schools' senator appointment process. Finally, with the Senate's choice to allow the law school to file this joint response on behalf of both Respondents, it is clear that the Senate would like the graduate schools to continue the current process. Chairman Beato has stated as much, noting that he would like the law school to handle this issue, because the Undergraduate Senate does not have such a vested interest in the Graduate Schools' Senator appointment process as to alter it. Therefore, with the support of the Undergraduate Student Assembly Senate, Respondent Student Bar Association requests the Review Board maintain the current appointment process explicitly granted in the Student Assembly Constitution.

## **II. THE FRAMER'S INTENT AND THE LANGUAGE OF THE STUDENT ASSEMBLY CONSTITUTION ALLOWS THE GRADUATE SCHOOLS THE ABILITY TO CHOOSE HOW STUDENT ASSEMBLY SENATORS ARE SELECTED.**

Petitioner alleges that "letter and spirit of the Student Assembly Constitution and Code favor the interpretation that all senators must be elected, including senators from the graduate

schools....” Complaint. at 2. Petitioner’s opinion in this matter is incorrect based upon the framer’s intent and the explicit and implicit language of the Student Assembly Constitution.

In Respondents research of the issue at hand, contact was made with Mr. David Solimini who was on the Constitutional Review Committee during the later half of 2002 and took on the role of the principal author of the Student Assembly Constitution in question. Mr. Solimini responded that “[g]enerally speaking, the intent of the language in the Constitution was to allow Grad schools to determine the best way to select senators.” Mr. Solimini went on to state that “[i]n any number of areas, 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 allowed flexibility, often by omission from requirements, which undergrad bodies are not.” As the Graduate Schools approval was required for the drafting of the Student Assembly Constitution, there was considerable flexibility and a general grant of autonomy to the various Graduate schools in order to ensure their support. The Student Assembly Constitution drafter’s intent to allow the Graduate Schools to determine the appropriate method of selecting and sending Student Assembly Senators could not be more clear. Mr. Solimini has offered to write an *amicus* brief in support of the Respondents if the Review Board should so allow.

The Constitution of the Student Assembly of The College of William & Mary in Virginia explicitly grants the Graduate Council the discretion to decide how Graduate Senators are sent. Canons of Statutory Interpretation require that a more specific provision trump one that is more general. Article I, Section 1.2 of the Student Assembly Constitution states that, “The Senate shall be composed of members chosen in election every year by the students of the College. There shall be sixteen Undergraduate Senators... There shall be six Senators from the Graduate Schools, apportioned among the Schools as the Graduate Council shall designate, provided every School is represented by at least one Senator.” This is a general provision. The authors of this document, however, continued in more detail to establish how Graduate Senators are to be chosen. Therefore the general provision does *not* imply that elections are required for Graduate Schools and the next sentence states *explicit* rules of election concerning Undergraduate Senators. This is just one example of where there are clearly defined explicit instructions for the Undergraduate. This specificity is *purposefully* lacking for the Graduate Schools.

Within the article that creates the College’s election process, Article V, section 3.4 of the Constitution states that “Graduate Senators shall be *sent*... as the Graduate Council shall designate, provided that Senators and Officers are *selected* no later than the last Tuesday of the following September.” (emphasis added). This is a specific provision trumps the previous general provision. This provision applies solely to Graduate Senators and no one else. There is no mention of election, only *selection*. Moreover, this is a very specific Article within the Constitution. Other provisions, such as Section 2.2 specifically regulate the schedule of Freshman Elections.

Statutory documents frequently begin with broad assertions. Then, as the document proceeds, its provisions become more specific. The Constitution of the Student Assembly of The College of William & Mary in Virginia is no exception. Thus, Article V, section 3.4 of the Constitution of the Student Assembly trumps Article I, Section 1.2. When construing statutory documents or constitutional documents where two provisions seemingly contradict or differ from

each other, the two provisions must be read *in pari materia*, which means they must be construed together as one. The Student Assembly Constitution is a classic case of when provisions should be read *in pari materia*. Although the general provision of Article I, Section 1.2 uses the term *election* for all senators, Article V, Section 3.4 states that Graduate Senators shall be *sent*. The later provision in Article V, Section 3.4 clearly explains, and elaborates on a specific exception to the general provision of Article I, Section 1.2. It should be noted that *in pari materia* is a concept courts follow every day:

In construing statutes and determining legislative intent, several provisions of an act or acts, *in pari materia*, must be construed together with a view of reconciling and bringing them into workable harmony if possible. Effect must be given, if possible, to the entire act and every part thereof. To this end, it is the duty of the court, as far as practicable, to reconcile the different provisions so as to make them consistent, harmonious, and sensible. The court must give effect to the legislature's intent even though words, phrases, or clauses at some place in the statute must be omitted or inserted.

*State ex rel. Morrison v. Oshman Sporting Goods Co. Kansas, 275 Kan. 763, Syl. ¶ 2, 69 P.3d 1087 (2003).* The *in pari materia* concept explicitly rejects Petitioners' claim that the "first" provision trumps the "later" provision. It is not only contrary to universal law, but Petitioners' position flies in the face of common sense and basic logic. If the writer of the Student Assembly Constitution intended for Graduate Senators to be *elected*, he would have included a specific election provision in that section, as is contained in other sections for elected positions. Also, if he did not intend for Graduate Senators to be *sent* or *appointed*, he would not have included the later exception for Graduate Schools.

In Article V, Section 3.1, the general requirements for selecting senators are listed in the same language as Article I, Section 1.2. Following Section 3.1 in Article V, Sections 3.2-3.4 lay out specific exceptions to Article V, Section 3.1. There is a purposeful distinction of wording. Article V, Section 3.1 uses the terms "shall be elected" while Article V, Section 3.4 states that "Graduate Senators shall be *sent*, and Graduate School Officers *chosen*, as the Graduate Council shall designate...." This distinction within the same Article is controlling. The only explicit requirement to the Graduate Schools under Article V is that their Senators be *sent* the last Tuesday of September after the general election. More specific provisions, elaborations and a *clear absence of directives to certain groups*, in all constitutions, including that of the Student Assembly, are indicative of a purposeful differentiation in treatment of separate groups.

Further, the Student Assembly Constitution does not provide for the replacement of a vacant Graduate Senator seat. This indicates a reliance upon the Graduate Council to determine the means in which the seat should be filled. This is in complete contrast to the specific election instructions and vacancy policies that are laid out for Undergraduate Senators.

Finally, the method of selection of senators for all of the Graduate Schools vary and often center around an appointment process. The tradition of this has been unquestioned up until this petition by a single student. *See infra* Section IV. of this Response.

### **III. THE GENERAL AUTONOMY OF THE GRADUATE SCHOOLS HAS BEEN PROTECTED THROUGH HISTORY AND THE STUDENT ASSEMBLY CONSTITUTION.**

The autonomy of Graduate Schools is evidenced through the general dynamic of the William & Mary community. Graduate Schools determine what to do with the funds that they are granted, are subject to different rules, have their own deans, and the decisions made by their governing bodies rarely, if at all, affect the undergraduate population. The student that attends the William & Mary Undergraduate is a very different person, both in age and stage of life, from many of the Graduate students. The schools normally allow each other the room to grow, put on programs, and deal with issues that are pertinent to their respective communities. The Law School in particular values its participation in the Student Assembly process, but is also proud of its successful history as a largely self-governing body.

The Petitioner makes reference to the fact that last year's Law School senator did not attend all meetings of the Student Assembly. Not only has that issue been dealt with by the Law School's new Student Bar Association President and her new Senator(s), but that problem is in no way indicative of appointment or election. The absence of a senator is the problem of the president of the school who sent that senator and of the Student Assembly in their possible decision to remove said person from their seat. One of the *many* reasons that the Law School opts to appoint their senators is because this better enables the elected members of the Student Bar Association the ability to control the attendance of the Senator and mandate a reporting requirement of that Senator. As the Graduate Schools are not only physically, but communicatively, separate from the Undergraduate, the Law School Senator serves a heightened role of being the liaison between the Law School and Undergraduate governments. The relationship between the Student Bar Association and the Law School Senator is thus of significant importance and often requires extensive collaboration.

### **IV. THE PETITIONER'S SHOWING OF CONTINUOUS VINDICTIVE SELF-INTEREST IS THE DRIVING FORCE BEHIND THE ORIGINAL CONSTITUTIONAL AMENDMENT AND THE CURRENT COMPLAINT BEFORE THIS BOARD.**

The underlying constitutional amendment lacks validity because of Mr. Alan-Kennedy Shaffer's involvement. Mr. Kennedy-Shaffer has been removed from two Student Bar Association elections last year. Mr. Kennedy-Shaffer has signed the Petition as a "SBA Member." Let it be abundantly clear that every single law student is a member of the SBA. Mr. Kennedy-Shaffer is not an SBA officer or SBA representative, who are elected by the Law School student body. Mr. Kennedy-Shaffer's intentions in this amendment are further called into question by the fact that he raised no objections to the Law School's process of appointment, rather than election, of Student Assembly senators, until after he was not appointed as Senator. Mr. Kennedy-Shaffer was fully compliant with the application and the interview process and only raised objections following the appointment of others to the position he desired for himself.