

THE CONSTITUTIONAL COUNCIL OF EMORY UNIVERSITY

2019 – 01

COHEN, Justin v. MA, Dwight

Argued February 13, 2019

Decided February 17, 2019

I. SYLLABUS

On January 26, 2019, Petitioner Justin Cohen, Chair of the Board of Elections (“Board”), challenged the decision of Student Government Association (“SGA”) President Dwight Ma to remove Cohen from his post. In his notice of termination, Ma cited Cohen’s alleged failure to properly consult relevant stakeholders over the timing of 2019-2020 elections, justifying Cohen’s removal under Article V, Section IV (“Executive Authority Clause”) of the Student Constitution of Emory University (“Constitution”). The Petitioner contends that a) he made a good-faith effort to consult with relevant stakeholders, including members of the Legislature, Board of Elections, Divisional Councils, and Executive Branch; b) Ma overstepped the limits of his delegated executive authority; c) in doing so, Ma usurped delegated authority of the Legislature; and d) Ma undermined the independence of the Board, therefore undermining the integrity of the forthcoming election cycle.

We rule in favor of the Petitioner, Justin Cohen, and order his immediate reinstatement to his post as Chair of the Board of Elections.

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ASSOCIATE JUSTICE MATTHEW RIBEL 19C, ASSOCIATE JUSTICE SAMUEL BRANSON 20C, and ASSOCIATE JUSTICE JANE WANG 22C delivered the unanimous decision of the Council.

II. CONSTITUTIONAL COUNCIL AUTHORITY

Prior to the beginning of the February 13 hearing, Ma voiced concerns that any opinion rendered by the Constitutional Council (“Council”) would be illegitimate, and therefore unenforceable. We would like to address this claim proactively.

Ma alleges that the current composition of the Council—three Emory College of Arts & Sciences students—is in violation of Article VI, Section 4, Subsection 4 of the Constitution, which states that the Council shall “consist of the same number of Members (the Justices) as there are Academic Deans of the various schools of Emory University,” as well as Article VII, Section 2, Subsection 4, Clause B, stating that “at no point shall a majority of the Justices have been enrolled in the same division.” However, the responsibility to nominate justices to the Council falls solely on the SGA President; these justices are then confirmed by the Legislature (*Regulations of the Judiciary*: Part VI, Regulation 10, Clause A). It is not lost on the justices that Ma had nearly five months to remedy any representational issues on the Council, yet this only became a salient concern for Ma once he faced judicial scrutiny from said Council. On February 11, 2019, the Legislature made the deliberate decision to table the nomination of a new justice until the conclusion of Ma’s pending case, citing the potential for a conflict of interest and implicitly affirming the legitimacy of the Council. This situation has placed the Council in an impossible bind: If we accept the aforementioned argument against this Council’s legitimacy, then Ma would need to appoint at least one new justice before the Council renders this opinion. However, the Legislature has deemed it a conflict of interest for Ma to appoint a new justice before the Council renders this opinion. Given the significance of the issue before us, we have opted to move forward with the case.

We note that any claims that the current composition of the Council will bias the outcome of this case ring hollow when given even the most cursory critical consideration. Ma himself is also a student of the College of Arts & Sciences, and it is wholly unclear what sort of bias three of his College peers would harbor against him on that basis alone. Further, this case does not pertain to any specific divisional council; rather, it is an issue of university-wide significance, and the academic affinity of justices therefore has no bearing on the outcome of this case. We contend that the ensuing opinion of the Council is valid, legitimate, and must carry all the weight which is ordinarily conferred to it by the Constitution.

III. FACTUAL BACKGROUND

As Chair of the Board of Elections, Cohen retained ultimate authority in the scheduling and regulation of SGA elections (*Code of Elections*: Part II, Articles 1 and 3). As such, his

responsibilities included developing the timeline for the upcoming elections for the 2019-2020 academic year. Cohen maintains that he made repeated good-faith efforts to consult with other members of the Board, as well as representatives from the Bachelor of Business Administration (BBA) Council, Residence Hall Association (RHA), College Council (CC), and SGA Legislature. He offered four possible timelines for the election process, with a majority of stakeholders favoring one option; however, he was not able to secure unanimous consent from *all* stakeholders.

Ma argues that due to this lack of unanimous consent, Cohen did not fully and adequately consult the Board of Elections or representatives from the aforementioned divisional councils. Accordingly, Ma did not support the elections timeline that garnered the support of the majority; however, Ma maintains that his removal of Cohen was not motivated by a disagreement over policy. Rather, Ma purportedly removed Cohen due to a) a perceived failure to adequately consult others; and b) because Ma feared an imminent announcement to the student body regarding the elections schedule. Ma was concerned that such an announcement would trigger confusion and would be difficult to reverse if the timeline was altered at a later date.

Approximately one hour prior to this hearing, Ma sent an email to the three members of the Council, the Speaker of the Legislature, and Cohen stating that he wanted to immediately reinstate Cohen as Chair of the Board of Elections. In the email, Ma claimed that Justin had “done a phenomenal job of handling the election outside of the timeline” and that he saw “no reason for Justin to not continue serving as the Elections Board Chair.” Ma therefore contended that, because Cohen’s proposed remedy had been granted, there was no reason to proceed with a hearing. Given the unresolved constitutional questions at hand, the Council maintained that a hearing was still necessary, especially given that Cohen had not withdrawn his petition and still sought judicial clarity on the issues pending before the Council.

IV. CONSTITUTIONAL CLAIMS

Petitioner Justin Cohen claims that he, as Chair of the Board of Elections, serves at the direction of the Legislature. Further, he asserts that the Board of Elections, in order to remain legitimate and independent, must be insulated from undue interference by the Executive Branch. According to Cohen, Ma abused his power by removing him and irreparably tainted the process of establishing a free and fair election process for the 2019-2020 cycle.

Respondent Dwight Ma claims that the SGA President retains irrefutable authority to remove any non-elected member of SGA. He supports this argument by claiming that in October 2018, the Council established a precedent that justified Cohen’s removal. Here, Ma is referencing the aftermath of his decision to remove then-Chief of Staff Ben Palmer. To be clear, Palmer never

filed a claim with the Council, no official hearing ever took place, and no ruling was rendered on the constitutionality of that termination. During the hearing, Ma requested that justices consider the fact that Ma consulted with his Chief of Staff, Luis Ochoa, prior to removing Cohen, though neither Ma nor Ochoa provided a constitutional basis for weighing this fact in the Council's ultimate decision.

V. CONSTITUTIONAL QUESTIONS

- A) Under the Executive Authority Clause, who qualifies as a *non-elected member and officer* who is to *serve at the pleasure of the President*?
- B) To what branch of SGA, if any, does the Board of Elections belong?
- C) Which branches of SGA, or officials within SGA, maintain oversight powers over elections and the Board of Elections?

VI. HOLDING

The Constitutional Council first wishes to reemphasize the scope of this decision. Cohen challenged the constitutionality of his removal by Ma; therefore, the Council will only consider whether Ma had the constitutional power to remove Cohen. In this opinion, the Council will offer no official recommendation on whether Cohen *should* have been removed from a normative perspective.

A. LIMITS OF EXECUTIVE AUTHORITY

To determine the constitutionality of Ma's firing of Cohen, the Council must first examine the Executive Authority Clause cited by Ma: "All non-elected members and officers serve at the pleasure of the President of the SGA" (*Constitution*: Article V, Section IV). This raises the question of who is classified as a "non-elected member [or] officer." Ma has previously assumed that all non-elected members and officers—of all branches of SGA—serve at his pleasure. However, this undermines Article III, Section 1 of the Constitution, which states that "the undergraduate Student Government Association shall consist of three separate and equal branches." It would be impossible for appointed justices or interim legislators to keep their roles separate from and equal to the executive if they have to serve at the pleasure of the President. Therefore, the Council concludes that the executive authority power to remove non-elected members may only be exercised within the executive branch; in other words, the President may only remove other members of the executive branch. This interpretation is necessary to affirm the "separate and equal branches" that our Constitution requires.

Given this interpretation of executive authority, the Council must then answer the following question: to which branch of SGA does the Board of Elections belong? If it is classified under the Executive Branch, then Ma does, in fact, possess the power to remove its members; if this is not the case, then Ma overstepped the bounds of his authority by removing Cohen.

B. LEGISLATIVE PROXY

Regarding this matter, Cohen offers a compelling argument. The Constitution states explicitly that the SGA Legislature has the power “to oversee all elections,” a power which “may be proxied to a board of elections...” (Article IV, Section 3, Subsection 14). This plainly suggests that the Board of Elections is a part of the legislative branch and not the executive. Therefore, based on our aforementioned interpretation of Article V, Section 4, the President’s executive authority does not extend to the Board of Elections. Cohen was thus wrongfully fired.

C. LEGISLATIVE OVERSIGHT AUTHORITY

Article 9, Section 2, Subsection A of the University Code of Elections states that “An officer of the Board, once confirmed by the Student Legislature or appointed by the Divisional Council, may be removed by impeachment by the Student Legislature.” At the same time, our Constitution holds that the Student Government Association must be composed of “three separate and equal branches” (Article III, Section 1). Therefore, if the power to remove Board of Elections officers already falls to the legislature, it cannot be shared with the President. Furthermore, shared power would threaten the independence of elections, as Board of Elections members would need to satisfy the demands of the sitting President in order to retain their job.

D. INDEPENDENCE OF ELECTIONS

When created, the Board of Elections was meant to exist as an independent and impartial entity, while still falling under the official jurisdiction of SGA. This is intuitive enough—democratic elections must be free, fair, and immunized against undue influence from present officeholders. In keeping with this philosophy, the Constitution (Article IV, Section 3, Subsection 14) delegates authority over the Board of Elections to the Legislature, which—unlike the office of the President—is composed of multiple members.

Ma asserts that he, as a senior, has no personal stake in the upcoming election cycle and thus poses no threat to the Board’s independence; however, the Council is concerned with far more than the possible conflicts of interest that may or may not arise in this specific case. Irrespective of Ma’s particular situation, it is our duty to ensure that the Constitution is correctly interpreted

to prevent future abuses of power. If an SGA president were to run for re-election as a junior, executive influence over the Board could absolutely interfere with the independence and integrity of our elections process. Likewise, if a future president had a close associate running for a high-profile SGA position, the same danger could arise. Similar hypotheticals abound. It therefore remains far wiser for the Constitution to vest the Board's power in the Legislature, which is composed of multiple members rather than one unitary decision-maker.

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For the reasons expounded upon above, the Council orders the immediate restoration of Justin Cohen to his post as Chair of the Board of Elections.

It is so ordered.