

**THE JUDICIAL BRANCH OF
THE STUDENT GOVERNMENT ASSOCIATION OF
THE UNIVERSITY OF TENNESSEE-KNOXVILLE**

Case No. 2019-03

The University of Tennessee, Knoxville Undergraduate Student Senate Executive Committee, Plaintiff

v.

Kassandra Wolfe, Defendant

JUSTICE BRYANT delivered the opinion of the Court.

This case arises from a student Senator leaving the University to study abroad without requesting a leave of absence, as is required by Senate Bylaws Article IV, Section 3. The context surrounding this dispute, however, is much more hopelessly entangled than initially meets the eye. For the following reasons, Senator Wolfe is hereby reinstated to the Undergraduate Student Senate. However, since the Senate Executive Committee failed to follow proper procedures in both the attempted removal of Senator Wolfe and the appointment of her replacement, the replacement Senator is considered illegitimately appointed, and all of said replacement member's votes are hereby deemed invalidly cast and must be stricken from the senatorial record.

I

This situation should serve as the preeminent example of the perils of ineffective communication. Kassandra Wolfe ("Wolfe") was elected to the Undergraduate Student Senate ("Senate") in the Spring of 2018 after joining the Imagine UT campaign. At the time, Wolfe was entertaining the possibility of studying abroad and had mentioned it to several fellow campaign members. However, she was not entirely sure as to her status for financial reasons. Wolfe alleges that she asked members of her campaign as to what she needed to do but never received an answer. Wolfe alleges that she was never made aware of either the Senate's attendance policy or the leave of absence option at any point.

After the first Senate meeting during the Fall 2018 semester, the Senate Executive Committee met to discuss vacant seats. Senate Parliamentarian Mary Beth Nehls ("Nehls") noted that one of the seats that was empty at this meeting belonged to Wolfe. The Committee never received any indication prior to Wolfe's departure that she would be studying abroad, despite an email allegedly being sent to the entire incoming Senate

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class asking for notification of those who would be studying abroad. Nehls further alleges that, after learning of Wolfe's *grand voyage* via social media, both she and Jasmine Wilcox, the Senate Secretary, made attempts to contact Wolfe via phone, text, and email. Conversely, Wolfe alleges that Nehls never contacted her while abroad.¹ As a result of Wolfe missing three Senate meetings and violating Senate Bylaws Article III, Section 5(a), as well as fears that the Senate needed warm bodies in order to meet quorum, the Senate Executive Committee filled her seat.

When Wolfe returned stateside, she resumed her duties as a Senator. She attended the Student Government retreat in January, where no mention of her replacement was made. It was not until the Senate's special meeting on February 6 that Wolfe learned of her dismissal. In a scene that Wolfe describes as "very embarrassing," the Chair of the Senate, Nick Mucci, announced to the entire room that Wolfe had been dismissed. This appeal followed.

II

Article IV, Section 6 of the Senate Bylaws provides that all Senators "shall be permitted absences for three regular Senate sessions during their one-year term." In the event that a Senator will be absent from campus for an extended period of time, they may request a leave of absence, wherein the Senate will vote on approval and subsequent replacement for the Senator on leave. Senate Bylaws Art. IV, § 3. Absent this process, any Senator accruing three absences "shall be automatically referred to the Judicial Branch." *Id.* Art. III, § 5(a). In this instance, Wolfe did not take any of the required steps to maintain her good standing.

However, there is no evidence that Wolfe was ever made aware of the procedures necessary to request a leave of absence, or of the Senate attendance policy at all. Nehls and other members of the Senate Executive Committee were asked to provide evidence to support their claim that such alerts had been distributed. None was produced. Typically, the burden of proof in any given adjudicatory hearing belongs to the party seeking the relief requested. *See, e.g., Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). In this instant case, the Senate Executive Committee bears responsibility for showing that they provided Wolfe with adequate notification of her duties as a Senator.² This they have not done. Accordingly, there is no evidence that Wolfe was aware that she needed to request

¹ This Court has, regrettably, had to relegate every potential factual dispute to the realm of being "alleged," as no actual evidence (other than testimony) has been put forth by either party. In addition to failure to properly file this action, *see* note 3, *infra*, neither party produced any evidence to support their claims. While evidence is not required to be presented, it no doubt would have helped resolve what is essentially a "they said, she said" dispute.

² Curiously, there is no requirement in the Senate Bylaws or elsewhere in the statutes governing SGA that Senators are required to read and understand the duties that are required of them. The Senate Executive Committee may wish to create a requirement like this in order to prevent future confusion.

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a leave of absence form before studying abroad. She must therefore be allowed to retain her seat, effective immediately. Unfortunately, the remedying does not end here.

III

“It is emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). This principle, which is a foundational underpinning of the very branches of government after which this institution models its own, was wholly disregarded throughout this process.³ Indeed, the Vice President in her own words admitted that at no point did the Senate Executive Committee “even think about following our own bylaws.” This kind of egregious deviation from the norm has no place in a properly-functioning organization and should not be tolerated. It is clear that a Senator is not officially removed from the Senate until a proper hearing before the Judicial Branch has occurred. Therefore, Senator Wolfe could in no way be removed until an action was brought before this Court. This, in turn, renders the Senator who the Executive Committee picked to fill Wolfe’s seat in the Fall semester has been acting illegitimately and in direct contravention to the procedures outlined in the Senate Bylaws. Worries of keeping quorum, while an understandable apprehension, are nonetheless no justification for failing to follow proper procedure.

Accordingly, the individual who was selected to fill Wolfe’s seat was never properly appointed as a Senator.⁴ Therefore, that individual is not a member of the Senate unless and until properly appointed to an otherwise open seat. This reality also raises one more unfortunately inimical roadblock for the Senate: if the replacement Senator was illegitimately seated, it follows that each vote cast by that Senator was illegitimate, as well. As such, the remedy that must be undertaken necessarily involves reviewing every vote taken from the day Senator Wolfe’s seat was filled until the present day and striking the replacement Senator’s vote from the record. Subsequently, in the (albeit unlikely) event that the passage of any bill or measure is adversely affected by the deletion of the replacement Senator’s vote, the Senate must take appropriate action to either, in the event of the matter being defeated, bring it back for further deliberation or, in the event of the matter passing, declare the action null and void. The Court recognizes the rather tedious and arduous nature of this effort, but it must nevertheless be done to restore order and integrity to the Senate body as a whole.

³ Additionally, the Senate completely ignored the proper procedure for filing this removal action. “All hearings and complaints will be initiated by the plaintiff and shall be filed using the Judicial Branch hearing form located on the SGA website.” Judicial Bylaws Art. IV, § 2(A)(1). It is imperative that for any tripartite form of government (even at a collegiate level) to function properly, respect for each coordinate branch of government must be duly recognized.

⁴ The Vice President also indicated that it was unclear which current Senator specifically filled Wolfe’s seat, as many Senators were apparently sworn in at the same time to fill a whole slate of empty seats. As our bodies of law do not suggest a specific remedy in this situation, we feel the determination of which Senator should vacate Wolfe’s seat is appropriately left to the Senate Executive Committee.

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IV

Going forward, the Senate Executive Committee would do well to abide by Justice Frankfurter's classic advice on divining the functioning of their own bylaws: "Step one, read the statute; step two, read the statute; step three, read the statute." Today's ruling will no doubt lead to some administrative difficulty and frustration, but our job is to determine what the law is and whether it has been properly applied, not whether a decision will create additional work. Additionally, the Court hopes that this decision will also benefit all parties involved by making absolutely clear the proper rules and procedures that must be followed to keep the Senate functioning according to its bylaws. Senator Wolfe is hereby restored to her position as an Off-Campus Senator. The replacement Senator, as determined by the Senate Executive Committee, shall no longer be treated as a member of the Senate. All of that replacement member's votes made under the same pretense shall immediately be removed from the Senate's records.

It is so ordered.

DAVIS, C.J., and COOK, PAWLACZYK, MARSH, and HOPKINS, JJ., join the majority opinion.

BEDFORD, J., took no part in the consideration of this case.