

## **MEMORANDUM**

**To:** Justin Bruno, FAMU Student Body President

**From:** Joanne Desile, Nominee for SGA Attorney General

**Date:** March 21, 2017

**Re:** Student Body President's ability to assume an appointed position within the J- Branch

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### **Issue Presented**

Whether it is permissible for the President of the Student Government Association ("SGA") to assume an appointed position within the Judicial Branch of SGA.

### **Background**

The Chief Justice position on the Student Supreme Court is currently vacant. Pursuant to Chapter 102 of the Student Body Statutes ("Student Statutes"), the SGA President shall assume all duties and responsibilities of vacant appointments. This provision of the Student Body Statutes is unconstitutional and should not be enforced because it violates separation of powers.

### **Discussion**

Preemption refers to situations in which a law passed by a higher authority takes precedence over a law passed by a lower authority. In the event of a conflict, the higher authority will prevail. For example; if a provision in the Legislative Rules of Internal Procedure is in conflict with a provision in the Student Statutes, the Student Statutes will prevail. If a provision in the Student Statutes is in conflict with the Student Body Constitution ("Student Constitution"), the Student Constitution will prevail. However; if two provisions in the Student Statutes or Student Constitution are in conflict, the provision that can be applied in harmony with the other provisions of the document must prevail.

In addition, Separation of Powers is a constitutional doctrine in which the three branches of government (executive, legislative, and judicial) are kept separate to prevent abuse of power.

The doctrine provides for a system of checks and balances. Each branch is given certain powers to check and balance the other branches.

Article III, §2 of the Student Constitution provides that “all legislative powers of SGA shall be vested in the Student Senate”; Article IV, §2 of the Student Constitution provides that “all executive powers of SGA shall be vested in the SGA President, assisted by the Vice President, Cabinet Officers, and other executive appointees”; and Article V, §1 of the Student Constitution provides that the “Judicial power of SGA shall be vested in the Student Supreme Court, the Student Traffic Court, and such other inferior courts as the Student Senate may ordain and establish as needed.” Implied in the Student Constitution is the intent of the framers to govern in accordance with the separation of powers doctrine. It is a clear violation of the separation of powers doctrine for the President of SGA, an executive branch official, to serve as Chief Justice, a judicial branch official.

Additionally, section 500.3 of the Student Statutes states that “no student shall hold two elected, two appointed and confirmed offices by the Student Senate, or a combination of an elected and an appointed confirmed office of the Student Body concurrently.” This is another indication that student government officials must govern in accordance with the separation of powers doctrine.

Chapter 102 of the Student Statutes is in direct conflict with the Student Constitution; thus, the Student Constitution preempts this Student Statute. It should be noted that Chapter 102 of the Student Statutes is also in conflict with section 500.3 of the Student Statutes which prevents a student from holding an elected position and an appointed position concurrently. Because Chapter 102 of the Student Statutes is in conflict with the Student Constitution and section 500.3 of the Student Statutes, Chapter 102 of the Student Statutes should be struck down

as unconstitutional and the President of SGA should not be required to assume any position within the Judicial Branch of SGA.

### **Recommendation**

The Senior Associate Justice should assume the duties of the Chief Justice until one is appointed by the President of SGA and confirmed by the Student Senate. Under section 403.4 of the Student Statutes, the Senior Associate Justice is empowered with the duty to “preside over all meetings in the absence of the Chief Justice” and perform “any duty deemed necessary by a majority of the Student Supreme Court.” Because the Student Supreme Court has established quorum, a majority vote can be ascertained to determine what duties the Senior Associate Justice may perform. Moreover, the criteria for the Chief Justice’s “absence” as well as the criteria for who can be recognized as a “Senior Associate Justice” are not specified in the Student Constitution or the Student Statutes; therefore, we must look at the common meaning of the terms.

“Absence” is an extremely broad term and may include suspension, temporary leave, vacancies, sick leave, etc. A Senior Associate Justice commonly refers to a Justice who has served for the longest time on a given court. Thus, section 403.4 of the Student Statutes deems it proper for the Senior Associate Justice to undertake the duties of the Chief Justice in his/her absence. The reason for the absence is irrelevant. Therefore, the Senior Associate Justice has the authority to assume the duties of the vacant Chief Justice position and the Student Supreme Court has the authority to determine the duties he/she may perform.