Legal Opinion (C) (55-017)

Subject: Non-degree seeking students voting rights

Date: January 17th, 2015

SGATO Director Gary Manka requested a legal opinion on January 17th, 2015. SGATO Director Manka asked if non-degree seeking students have the right to vote in Student Government Elections?

Article I, Section I of the Constitution states the following:

All students by virtue of their active registration at the University of South Florida, Tampa Campus are members of the Tampa Campus Student Body and are granted all the rights and privileges of this Constitution. The Student Body shall establish a Student Government Association which shall govern and represent the interest of the Student Body. The Student Government Association which shall be governed, accountable to and maintained by the Student Body. The Student Government Association hereinafter may be referred to as “Student Government”, “SG” or “SGA.”

Furthermore,

Article I, Section III of the Constitution states the following:

The differential treatment of a student based on factors including, but not limited to, race, creed, religion, sex, age, sexual orientation, national origin, marital status, parental status, disability, personal wealth, or any combination thereof, is deemed unacceptable. The denial of due process or the infringement of the substantive rights of any student will not be tolerated.

Furthermore,

Article I, Section IV of the Constitution states the following:

All undergraduate members of Student Government shall be enrolled for a minimum of six credit hours as degree seeking students and all graduate members shall be enrolled for a minimum of four credit hours as post-baccalaureate students during the fall and spring semesters unless otherwise provided by the Constitution or Statutes. Summer semester requirements shall be provided by Statutes. The members of Student Government must be students in good academic standing, according to the University Code of Conduct, and may not be under disciplinary probation, suspension or expulsion.
Furthermore,

Article V, Section I of the Constitution states the following:

All student enrolled at the University of South Florida, Tampa Campus shall be entitled to vote in the general, mid-term, and interim elections of the Student Government Association. All students enrolled in the University of South Florida system may vote for the Student Body President and Student Body Vice-President. Any student has the right to call for a University-Wide initiative/referendum election provided that a petition signed by at least 20% of the number of students that voted in the most recent general election is submitted as specified by Statutes. Any student has the right to call for a University Wide Senatorial recall election provided that a petition signed by at least 10% of the number of students that voted in the most recent general election is submitted as specified by Statutes; the students that sign the petition must be from the respective college of the Senator. Additionally, any student has the right to call for a University-Wide Presidential recall election provided that a petition signed by at least 10% of the Student Body is submitted as specified by Statutes. Student Body enrollment figures shall be determined by the Registrar's Office at the time of the initiative/referendum/recall.

Furthermore,

Amendment VII of the Constitution states the following:

Any student has the right to call for a University-Wide initiative/referendum election provided that a petition is signed by at least 5% of the USF Tampa campus student body and is submitted as outlined in statutes.

Furthermore,

Amendment VIII of the Constitution states the following:

Any student has the right to call for a college-specific Senatorial recall election provided that a petition signed by at least 60% of the number of students that voted for Senate within that respective college in the most recent general election in which ballots were cast is submitted as specified by Statutes. Any student has the right to call for a University-Wide Presidential recall election, provided that a petition signed by at least 60% of the total number of votes cast for president in the general election is submitted as specified by statutes.

Furthermore,

Amendment IX of the Constitution states the following:

The members of Student Government must maintain a 2.5 cumulative, institutional GPA. Any Student Government member serving at the time of the adoption of this language shall not be held to these criteria until the end of their respective term.

Furthermore,

Statute 703.5.4 states the following:

703.5.4 Any student or non-student may engage in active campaigning

Furthermore,

Statute 705.2.3 states the following:

705.2.3 Any student enrolled at the University of South Florida, Tampa Campus, can initiate a recall petition in accordance with the Student Body Constitution.
Furthermore,

Statute 705.3.1 states the following:

705.3.1 Any student enrolled at the University of South Florida, Tampa Campus, can call for a Student Referendum in accordance with the Student Body Constitution.

Furthermore,

Statute 705.5.1 states the following:

705.5.1 Any student may propose a Constitutional Amendment. The Amendment must be approved by a supermajority vote of Senate and be signed by both the Senate President and the Student Body President before being placed on the ballot to be voted upon by the Student Body at the next Mid-Term or General Election held within the Fall and Spring academic semesters.

Furthermore,

Statute 701.6.4 states the following:

701.6.4 Students who have declared a major shall vote for Senators in the college in which they are majoring, as well as Senators At Large during the midterm elections. Students, who have not declared a major or have not been accepted to the program they are majoring in, shall vote for Senators in the college of their choice. Students that have declared two or more majors in two different colleges may only vote for Senators from one college and may choose the college in which they wish to vote for.

Therefore, it is the opinion of the Attorney General that it is very clear that non-degree seeking students have the right to vote in Student Government elections. The Constitution has only placed restrictions on the membership of Student Government, and there are very small statutory limitations of who may vote for whom (only in the instance of Senatorial races, per each college). The language provided in our guiding documents has ensured that all students may vote, put forward referendums, Constitutional Amendments, and recall petitions, regardless of any factor other than the statutory procedures involved with several of the petitions to get them on a possible ballot.

The only complication I see as Attorney General is who non-degree seeking students would be able to vote for in Senatorial races. During the mid-term election I believe it would be easy to say non-degree seeking students would be able to vote for Senators At-Large because there is no associated college with those seats. However, since in the General election every Senator running must associate with one college, I do not believe at this time it would be appropriate for non-degree seeking students to vote in the General Election Senatorial race. Statute 701.6.4 has provided that students who have selected their college to vote in may only vote in that college, and students who have not declared a major, or have multiple majors in different colleges, must select one college to vote in. However, the language in 701.6.4 makes it clear that you need to be degree seeking to vote in Senatorial races, even though you may not have selected a major (the University would denote these students as “undeclared”, but technically degree seeking). Non-degree seeking students would not fall under the clause of 701.6.4 because they have no ability to declare a major, therefore at this time, as the Attorney General, I would advise not to have non-degree seeking students to vote in the 2015-2016 General Election Senatorial race because it would be dangerous to assume they may associate with a college when they are not seeking a degree.
CC:

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