



*The* UNIVERSITY of OKLAHOMA.

*Student Government Association  
Office of the General Counsel*

**General Counsel Opinion**

**GC 2020-002**

**August 16, 2020**

**Questions Presented**

- Whether the makeup election for Campus Activities Council Chair should be restricted to the two original candidates or whether filing shall be opened back up to the general student body;
- If filing is opened back up, whether the signature requirement can be forgone due to the pandemic; and
- Whether any additional legislation is required beyond the passage of an Act authorizing the special election.

**Short Answer**

- The election shall be restricted to include only the two candidates running before the election was invalidated. Despite the unorthodox timing of the new election, it should in all respects be treated as part of a conventional CAC election.
- Due to the answer to the previous question, it is not necessary to address the second question.
- The legislature should pass legislation explicitly allowing for the CAC election to be held in the Fall, since the Code Annotated dictates that the election should be held in the Spring. This authorization can be included as part of the Act authorizing a special election, but must be explicitly stated somewhere in the legislation.



## **Background**

This question arises out of an unusual situation that occurred following the Spring 2020 CAC Chair Election. The Superior Court voted to invalidate the results of the CAC chair election, citing an extensive list of intentional rule violations by both candidates. Under ordinary circumstances, the election would have occurred during the same semester immediately following the Superior Court's decision. However, this particular election became even more peculiar due to the global pandemic. With in-person classes being suspended, the original Spring 2020 election was moved so far back that it would not have been possible to hold an additional election during the Spring 2020 semester. With multiple members of the Superior Court and the Election Board graduating and becoming ineligible to certify the results of a new election, coupled with decreased student engagement for an election after the end of the semester, it became clear that a makeup election could not fairly be held during the summer months.

Following a meeting with SGA Advisor George Ahmadi, we concluded that the Spring 2020 CAC Chair election should be held as a Special Election during the Fall 2020 semester. We additionally concluded that logistical details of the election would be determined closer to the new semester since no clear precedent for this situation had been established in previous years, and since an interim chair was already determined to be available to perform the duties of CAC Chair until the election could take place. Congressman Foster Hillis requested a formal opinion answering the questions listed in the previous section.

## **Analysis**

### **First Question**

It is my opinion that due to the unique circumstances of this election, filing shall remain closed and the election shall be limited to the original two candidates. Despite the timing of this election, the CAC Chair election is not formally part of the Fall 2020 election cycle. In fact, the Code Annotated dictates that the CAC Chair election must occur during the Spring election cycle.<sup>1</sup> It is not feasible to postpone the election to the spring, since the Code Annotated mandates that the CAC Chair be selected "by majority vote."<sup>2</sup> Further, it would – in fairness – not be proper for the interim CAC Chair to hold that position longer than necessary, since the

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<sup>1</sup> SGA Code Annotated, Title VI, Chapter 1, Section 30.

<sup>2</sup> SGA Code Annotated, Title V, Chapter 1, Section 3(a).

position is unelected. Therefore, it is clear that SGA must depart from the mandates of the Code Annotated in order to rectify this situation.

A special election must be called to resolve the results of the pending CAC election since the makeup CAC Chair election is separate from the rest of the Spring 2020 general ballot. In any ordinary situation, the election would have been held during the same semester and with the same candidates as the original CAC election.<sup>3</sup> This election is no different. The upcoming CAC Chair election should be treated just as it would have if the election had taken place in the Spring – merely a “do-over” for the original two candidates since the results were invalidated.

This appears to be consistent with previously invalidated elections, where the re-election following invalidation was limited to only the original candidates. For example, in 2009, the Superior Court invalidated the CAC Chair Election in the case of *Kely Van Eaton v. Tyler Nunley*.<sup>4</sup> The student legislature then passed an accompanying Act establishing a special election to remedy the errors of the previous election.<sup>5</sup> The Act and its provisions were limited only to the special election for CAC Chair. The Act explicitly states that only the two original candidates (preliminarily eligible due to having already completed the requirements) would be on the ballot for the election.<sup>6</sup> To be consistent with prior invalidated elections would promote fairness and equity despite the changes in circumstances due to the unorthodox situation that occurred during the Spring 2020 election cycle.

Therefore, it would be wise to follow precedent in administering the second 2020 CAC Chair election. The fact that the CAC election was postponed to the fall semester does not override the principles of fairness underlying the Code Annotated and Title VI’s election provisions. The election should be treated as normally as possible, which includes limiting the candidate selection to the two original candidates running before the election was invalidated.

## **Second Question**

Based on the above conclusion, it is unnecessary to determine the answer to the second point at this time.

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<sup>3</sup> See Senate Bill No. GS09-40, Congressional Bill 820601.

<sup>4</sup> UOSASC 2009-02.

<sup>5</sup> Senate Bill No. GS09-40, Congressional Bill 820601.

<sup>6</sup> *Id.*

### **Third Question**

It is my opinion that legislation regarding the special election should include a separate provision explicitly allowing for variance from the Code Annotated due to unforeseeable circumstances of global importance. The Code Annotated mandates that the CAC election be held during the Spring semester.<sup>7</sup> For reasons discussed in the analysis to previous questions, however, it would not be feasible to postpone the 2020 CAC election to the spring. Therefore, the legislature must ensure that any legislation regarding the special election includes verbiage explicitly authorizing the election to be moved.

To be clear, it is not enough to draft an Act authorizing a special election for the 2020 CAC Chair. The special election itself only allows for a do-over of the previously-invalidated CAC Chair election.<sup>8</sup> It does not – on its own – allow for a variance from the provisions of the Code Annotated in other respects. This means that any legislation must explicitly allow for the Code to be defied and the election to be moved due to unforeseeable circumstances. While this variance is impliedly allowed due to the circumstances surrounding this special election, it would be most beneficial to openly authorize the change to avoid any future conflicts or appeals. This verbiage may be included in the general act allowing for a special election, or may be separate. Either way, it should be included.

While the legislature is not required to pass any additional legislation beyond that stated above, the legislature is encouraged to consider drafting legislation to amend or add to the election procedures already included in the Code Annotated. With the uncertainty regarding the Fall 2020 and Spring 2021 semesters due to the ongoing pandemic, it is not clear that these issues will not arise again very soon. Additionally, it would be wise to add an emergency provision allowing for variation to the election schedule and cycle due to changes or circumstances that may not yet be foreseeable. Such changes would be beneficial to future legislators, Generals Counsel, advisors, and SGA leaders, and would allow them to determine an appropriate course of action in a timely manner. In pursuing such legislation, I would caution the legislature to define the terms of the emergency provision as narrowly and carefully as possible to avoid abuse or overuse of the provision in future years. It should be clearly stated that

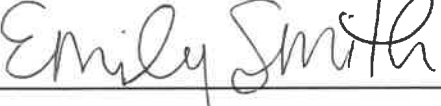
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<sup>7</sup> SGA Code Annotated, Title VI, Chapter 1, Section 30.

<sup>8</sup> SGA Code Annotated, Title VI, Chapter 2, Section 36(d).

conventional election methods are to be followed wherever possible, and that emergency provisions are appropriate only when there is no reasonable alternative.

**This is the opinion of the General Counsel.**

  
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Emily Smith  
SGA General Counsel