

Monday, October 16, 2017

TO: Krista Schmidt, MMC SGA President

FROM: Larry Lunsford, Ph.D.,
Vice President for Student Affairs

SUBJECT: Writ of Certiorari

Krista Schmidt (Schmidt), the SGA President, appeals *Mandall v. Schmidt*, the Majority Opinion of the Supreme Court of the Student Government Association of Florida International University's MMC Campus (the SGC-MMC Supreme Court), dated August 24, 2017 (Mandall v. Schmidt Opinion).

In *Mandall v. Schmidt*, The SGC-MMC Supreme Court relies on its prior ruling of *Ex Parte Mandall*. The *Ex Parte Mandall* opinion was issued on July 12, 2017 by the SGC-MMC Supreme Court, holding that the SGA President did not have the authority to appoint a Vice President if the Vice Presidential vacancy was not caused by a resignation and/or removal. The SGC-MMC Supreme Court also ruled that composition of the Executive Cabinet and appointments to it must be made by the President and the Vice President together, and could not be made by only the President or only the Vice President. However, *Ex Parte Mandall* suffers from both procedural and substantive deficiencies as discussed in this opinion, and therefore, is overturned.

In *Mandall v. Schmidt*, the SGC-MMC Supreme Court interpreted the Modesto A. Maidique Campus Statutes (the SGC-MMC Statutes) and considered whether Schmidt, as the SGA President, was guilty of nonfeasance and/or malfeasance for: (i) failing to comply with the *Ex Parte Mandall* ruling; (ii) appointing Jose Sirven as Vice President, (iii) appointing the Executive Cabinet without a Vice President, (iv) misrepresenting facts pertaining violations of the SGC-MMC Statutes and Constitution, and (v) knowingly providing false information in her

capacity as a Student Government Official. After hearing the case, the SGC-MMC Supreme Court concluded that Schmidt was guilty of all alleged violations, except for the allegation described in (ii).

After the issuance of *Mandell v. Schmidt*, Schmidt timely filed a Writ of Certiorari. In her Writ of Certiorari, Schmidt claims that *Ex Parte Mandall* was overturned by the Vice President for Student Affairs and seeks to have the SGC-MMC Supreme Court members removed and her pay reinstated.

Review

As the Vice President for Student Affairs, I have the authority to review the Writ of Certiorari filed by Schmidt. *See* Article VIII, §8.04 of the SGC-MMC Statutes.

I. *Ex Parte Mandall*

A review of *Ex Parte Mandall* is necessary because it served as the basis for the SGC-MMC Supreme Court in *Mandall v. Schmidt*. *Ex Parte Mandall* ruled that the President does not have the authority to appoint a Vice President when the Vice President vacancy was not caused by a resignation and/or removal. *Ex Parte Mandall* further ruled that the vacant Vice President position should be filled using the procedure set forth in the SGC-MMC Statutes Article VI Section 6.04(b)(i)(3)(a)(ii). This provision states:

In the event that the **Presidential candidate** has not qualified or is disqualified two (2) weeks or less **from the start of voting**, both the Presidential and Vice Presidential candidates on the ticket will be declared disqualified but shall remain on the ballot pending any appeals to the Elections Board, Court, or Vice President of Student Affairs. If the disqualification stands, the President/Vice President ticket with the second-most votes in the Election shall be declared the winner. (Emphasis added.)

The Elections Code makes a clear distinction between Presidential and Vice Presidential candidates.¹ The cited provision unequivocally states that it applies to the **Presidential candidate** being disqualified, making it inapplicable to the qualification of the the Vice President candidate. Furthermore, a plain reading of the statute makes it clear that this procedure applies **before** the election. In this case, the Vice President candidate was

¹ See, e.g., Article VI, Sec. 6.04(a)(vi) of the SGC-MMC Statutes; Article VI, Sec. 6.04(b)(i)(3) of the SGC-MMC Statutes

disqualified after the votes have already been cast.² Thus, the only provision that can apply is FIU SGA Constitution Article IV(5)(D) which states:

In the case of resignation or removal of the Vice President, the President shall appoint a Vice president to be confirmed by the Senate. This appointment must be confirmed by a two thirds (2/3) vote of the Senate.

Therefore, Schmidt had the authority to appoint a Vice President to be confirmed by the Senate. Until confirmed by the Senate, the person serves in the position as an interim with the rights and responsibilities of the office.³

Having determined that the President lacked the authority to appoint the Vice President, the SCG-MMC Supreme Court in *Ex Parte Mandall* then ruled that the President acted alone in appointing the Executive Cabinet members, violating the SCG-MMC Statutes.⁴ While I agree with the SGC-MMC Supreme Court that the SGC-MMC Statutes require appointment of Executive Cabinet members by both the President and the Vice President,⁵ there is no record evidence in *Ex Parte Mandall* to suggest that Schmidt did not act without the Interim Vice

² While removal and disqualification are different, in this case, the effect is the same, i.e., there was no Vice President candidate.

³ . See also Florida Statutes Section 114.04 regarding appointment of vacancies in public offices). The SGA governing documents are silent as to when the confirmation is to take place

⁴ The SCG-MMC Supreme Court cites SGC-MMC Statutes Section 4.03(iii)(1), and (2) as the controlling sections. However, the citation should have been SCG-MMC Statutes Section 4.02(c)(iii)(1).

⁵ While the SGC-MMC Statutes require both the President and Vice President to act regarding the Executive Cabinet, the University-wide Constitution rests the authority in the President alone. See SGC Constitution 3(D)(2).

President in making the referenced appointments.⁶ Therefore, the appointments of the Executive Cabinet were authorized.⁷

II. *Mandall v. Schmidt*

Given that the ruling in *Ex Parte Mandall* was erroneous, Schmidt cannot be found to be guilty of malfeasance in failing to follow its rulings. Therefore, the first, third and fourth rulings of *Mandall v. Schmidt* are overturned.

As a result of the foregoing, we are left with the SGC-MMC Supreme Court's fifth ruling that Schmidt was guilty of malfeasance for knowingly providing false information in her capacity as a Student Government Official, violating SGC-MMC Statutes Article VIII Section 8.02(i). In arriving at its ruling, the SGC-MMC Supreme Court examined screen shots of text messages to conclude that "Schmidt acknowledge[s] that there were irregularities in the appointment of her executive cabinet...." The record does not support the SGC-MMC Supreme Court's conclusion. Schmidt stated in her text message:

"Hey guys to be transparent about the appointed cabinet members and VP, they have been helping me with organizing ourselves for the fall. They have not been making decisions nor spending money on their own. We should have communicated better but again there would be a speaker by now that would be the one to send all this info to the senate. I NEED help. There's a lot to be done and I can't continue to do things by myself. Yes the senate confirms the cabinet but that doesn't mean that they do not work until they are confirmed. We have been working on a newsletter style document with bios to send to you all that says who they are. We have been waiting for the last ones in order to introduce them to you all."

⁶ In fact, the record of *Schmidt v. Mandall* contains screen shots between Schmidt and Mandall in which Schmidt indicates that she worked with Jose Sirven in the cabinet appointments.

⁷ In addition to the substantive problems with *Ex Parte Mandall*, the opinion suffers from a number of procedural due process deficiencies. First, there is no provision in the SGC governing documents (i.e., the University-wide Constitution and SGC MMC Statutes) that allows an *ex parte* proceeding to occur in the first place. *Ex parte* proceedings, by definition, exclude all parties from participating, and thus, benefit one party. See *Black's Law Dictionary*. *Ex Parte Mandall* questioned the bounds of the authority of the SGC MMC President. Given this, at a minimum, Schmidt should have been notified and had an opportunity to defend her actions. Second, there was insufficient notice for the hearing. As noted in *Mandall v. Schmidt*, Schmidt did not learn of the issuance of *Ex Parte Mandall* until after the time to appeal had passed. When she was informed about the hearing, she questioned whether it had been appropriately noticed. While there had been a posting of the *Ex Parte Mandall* hearing, it was insufficient because it merely stated that there was to be a public hearing with the date, time and location. As noted in the appeal of *Santi v. Hernandez*, an effective notice must give the public sufficient information to understand the nature of the hearing. The *Ex Parte Mandall* notice fails to meet that standard.

Schmidt was accurately stating the process to be followed (i.e., the confirmation by the Senate of the interim Cabinet members). Until the SGC-MMC Senate confirmation, the cabinet members are appointed on an interim basis (much like the Vice President position). There is no clear and convincing evidence to support a finding that Schmidt knowingly provided false information in her capacity as a Student Government Official. This ruling, like the others, is overturned. Therefore, *Mandall v. Schmidt* in its entirety is overturned.⁸ As a result, any pay that was withheld from Schmidt must be reinstated.⁹

III. Conclusion

The SGC-MMC rulings of *Ex Parte Mandall* and *Mandall v. Schmidt* are overturned. The appointments of the Vice President and the cabinet members were duly authorized.

Cc: Sergio Molina, Former Chief Justice
Valorie Weldon, Former Justice
Magner Tiuso, Former Justice
Hayed Kure, Former Justices
Gabriela Menendez, Former Justice
Cooper Eisenger, Chief Justice
Joshua Mandall, Senator
Jose Toscano, Director

⁸ Schmidt states in her Writ appealing *Mandall v. Schmidt* that *Ex Parte Mandall* was overruled by the Vice President of Student Affairs. This is an erroneous statement. There was not an opportunity to review *Ex Parte Mandall* until now due to the noted procedural irregularities.

⁹ The SGC-MMC Supreme Court does not have the authority to withhold the pay of a Student Government Official. The SGC-MMC Statutes give the SGC-MMC Supreme Court the following authority: “Rule to censure or remove SGC officials and/or group(s) of officials upon the outcome of a hearing.” SGC-MMC Statute Section 5(A)(6).