

Majority Opinion

Weisman et al v. Brunetti et al

Heard April 25, 2016

Chief Justice Dana Raphael

Justice Dean Ischiropoulos

Justice Andrew Distell

Justice Analese Bridges

On April 23, 2016, Petitioners Ilana Weisman, Riyanka Ganguly, and Josh Curtis filed a formal petition with the Judiciary regarding the “PASH Reform Bill” passed on April 20, 2016. Petitioners named the sponsors of the PASH Reform Bill as respondents: Michael Brunetti, Sean Gilbert, Will Hardee, Kayla Thompson, Eddy Torgas, and Alex Yearley. Petitioners claimed the PASH Reform Bill was invalid because it did not explicitly overturn the previously passed “PASH Responsibility Act.”

Statement of Fact

On April 13, 2016 the Duke Student Government Senate voted in favor of Ms. Ganguly and Ms. Weisman’s Budgetary Statute to fund the Peer Advocacy for Sexual Health Center \$17,252 with a roll-call vote of 24 “aye” to 18 “nay” votes. The statute may be found [here](#) and the relevant voting record [here](#).

On April 20, 2016 Senator Josh Curtis and Senator Jackson Dellinger introduced the “PASH Responsibility Act,” which added conditions to the sum of \$17,252, requiring a line-by-line review of the budget by the Senate, adding in definitions of sexual health and sexual pleasure products, and including a ban on future funding requests for sexual pleasure-related items. Section 5 of the PASH Responsibility Act stated, “This statute may only be declared null and void by a statute of the Senate whose explicit, sole purpose is the repeal of this statute.” The PASH Responsibility Act passed via hand-raise vote, and can be found [here](#). A video recording of the meeting on April 20 demonstrating the vote may be found [here](#).

On April 20, 2016 Mr. Brunetti, Mr. Gilbert, Mr. Hardee, Ms. Thompson, Mr. Torgas, and Mr. Yearley introduced the “PASH Reform Bill,” which reduced total PASH funding to \$12,762, added conditions for funding use, and altered line-item allocations. After two roll-call votes, the PASH Reform Bill passed with a vote of 18 “aye” to 17 “nay” votes. The PASH Reform Bill can be found [here](#).

On April 23, 2016 Ms. Weisman and Ms. Ganguly filed a challenge to the Chair during PASH Reform proceedings and the sponsors of the PASH Reform Bill the grounds that the PASH Reform Bill did not explicitly and solely repeal the PASH Responsibility Act and is thus null and void.

Section 5 of the PASH Responsibility Act reads:

“This statute is effective immediately. To the extent possible under the Constitution and By-Laws, all laws and regulations in conflict with this statute are hereby declared null and void. All laws and regulations previously passed pertaining to the PASH are hereby declared null and void. This statute may only be declared null and void by a statute of the Senate whose explicit, sole purpose is the repeal of this statute.”

Relevant Law

Duke Student Government Constitution

[Duke Student Government Senate By-Laws](#)

[PASH Responsibility Act](#)

[PASH Reform Act](#)

Summary of Petitioners’ Argument

The petitioners contend that the PASH Reform Bill does not successfully repeal or replace the PASH Responsibility Act and is thus null and void. Because Section 5 of the PASH Responsibility Act requires that the “statute may only be declared null and void by a statute of the Senate whose explicit, sole purpose is the repeal of this statute,” the PASH Reform Bill cannot overturn the PASH Responsibility Act, since the PASH Reform Bill’s “explicit, sole purpose” was not to repeal the PASH Responsibility Act. In order to repeal the PASH Responsibility Act, petitioners contend, the Senate must first approve a statute whose “explicit, sole purpose” is to repeal the PASH Responsibility Act. Then, the Senate would be free to take up new budgetary statutes governing PASH funding.

In oral argument on April 25, 2016, the petitioners contended that the “explicit, sole purpose” provision of the PASH Responsibility Act was a “clever” and “creative” method governing the repeal of the statute and could be considered a form of entrenchment.

Summary of Respondents’ Argument

Respondents during oral argument on April 25, 2016 agreed that Section 5 of the PASH Responsibility Act constituted a form of entrenchment and argued such entrenchment provisions

are unenforceable. While the respondents did not contend that the supposed entrenchment clause in Section 5 of the PASH Responsibility Act was unconstitutional, they did contend it was unenforceable because of an argued conflict with Title IV, §2.B and §3.A of the Senate by-laws, requiring that statutes and budgetary statutes must pass with a “simple majority vote.” According to the respondents, the PASH Reform Act was passed by a simple majority vote and thus it supersedes the previously passed PASH Responsibility Act.

Decision

Much attention in oral argument was devoted to what, exactly, constitutes entrenchment. Neither the Constitution of the Duke Student Government nor the Senate by-laws provide any clarification as to what would constitute entrenchment, and whether such action would be constitutional.

Entrenchment is generally conceived of to be the passing of laws that contain provisions that make the ability to change such laws either impossible or significantly more difficult. An infamous example of entrenched law would be the United States Constitution’s prohibition on eliminating the slave trade in the Americas prior to the year 1808. Amendments to that provision prior to 1808 were impossible.

The respondents argue that Section 5 of the PASH Responsibility Act constitutes a form of entrenchment because it adds additional burdens on the Constitution’s and Senate by-laws’ standard of a “simple majority vote” and is thus unconstitutional. The majority might be inclined to agree with the respondents if Section 5 of the PASH Responsibility Act had raised the vote threshold from a “simple majority vote” to a “two-thirds vote” or a “ninety percent vote.” Raising such vote thresholds directly contravenes the “simple majority vote” required by the Constitution and Senate by-laws and would make the changing of the statute significantly more difficult, and would, thus, likely be unconstitutional.

Similarly, the majority might concur with the respondents had Section 5 of the PASH Responsibility Act created numerous and undue obstacles to passing new legislation to supersede the PASH Responsibility Act. Provisions that require legislation to be overturned on a specific day, at a specific time, require a long series of votes, or other requirements not reasonably related to the statute and that significantly hamper the ability to change the statute would likely be deemed unconstitutional.

However, Section 5 of the PASH Responsibility Act neither raises the voting threshold beyond a simple majority nor places unreasonable obstacles that could significantly hamper the ability to change the statute. Section 5 of the PASH Responsibility Act simply requires that the “statute

may only be declared null and void by a statute of the Senate whose explicit, sole purpose is the repeal of this statute.” A statute whose “ explicit, sole purpose” is to repeal the PASH Responsibility Act can be voted on and enacted by a simple majority vote at any time, and then a new budgetary statute regarding PASH funding could be enacted by a simple majority vote at any time. The PASH Reform Act clearly does not meet the “explicit, sole purpose” outlined in Section 5 of the PASH Responsibility Act; the PASH Reform Act never uses the word “repeal” and one of the stated purposes is to change the allocation of funds awarded to PASH.

While requiring that a statute with the “explicit, sole purpose” of overturning the PASH Responsibility Act be implemented prior to the adoption of a new budgetary statute regarding PASH funding may present a small obstacle in reform in that it requires a two-step process, it in no way prohibits nor significantly hampers the PASH Responsibility Act from being overturned. The Senate often creates rules and statutes that govern future rules and statutes; as long as they do not present serious obstacles or significantly hamper the ability to change the statute, they must be deemed constitutional until clauses like those in Section 5 of the PASH Responsibility Act are duly declared otherwise, either through constitutional amendment or through revisions of the Senate by-laws.

Furthermore, the respondents’ claims that Section 5 of the PASH Responsibility Act is “unenforceable” as opposed to “unconstitutional” creates a slippery slope; it would be asking the Judiciary to become the sole arbitrators of what is and is not an enforceable statute, removing that decision from the rightful party: Senate. Senate duly passed the PASH Responsibility Act with all of its components, and since no statute with the “explicit, sole purpose” of overturning the PASH Responsibility Act was subsequently passed, the PASH Reform Act is invalid.

It is important to note that the majority’s decision in Weisman et al v. Brunetti et al is in no way either an endorsement of nor a rejection of the allocation of funding for PASH. The issue at hand was the procedure outlined within the PASH Responsibility Act, not the subject the legislation governed. The issue of PASH could be replaced by any other budgetary issue; the majority’s decision would remain the same.

Summary

Since Section 5 of the PASH Responsibility Act does not present a serious obstacle nor significantly hampers the ability to change the statute, nor does the Constitution or Senate by-laws provide any evidence in favor of striking Section 5 of the PASH Responsibility Act, the PASH Responsibility Act is upheld in full. Since no statute with the “explicit, sole purpose” of overturning the PASH Responsibility Act was subsequently passed, the PASH Reform Act is

invalid, does not supersede the PASH Responsibility Act, and therefore, according to Section 5 of the PASH Responsibility Act, is “null and void.”

It is so ordered.

Dissenting Opinion

Weisman et al v. Brunetti et al

Heard April 25, 2016

Associate Justice Devavrat V. Dabke
Associate Chief Justice J. Ross Winston

Overview

The main conflict in this case revolves around the statutory power of the Senate. In short, the Senate passed the PASH Responsibility Act (PASHRA), which allocates funding for Peer Advocacy for Student Health (PASH). Section 5 of PASHRA declares that “This statute may only be declared null and void by a statute of the Senate whose explicit, sole purpose is the repeal of this statute.” Some time later, the Senate passed the PASH Reform, which amends the budgetary allocation of PASHRA. However, because of Section 5 of PASHRA, the petitioners would like to argue that the PASH Reform (which does include in its own Section 5 that “All laws and regulations previously passed pertaining to the PASH are hereby declared null and void.”) is invalid because it does not follow the conditions set forth in Section 5 of PASHRA.

Questions Raised

There are several interesting ideas of judicial importance raised in this case:

1. Can a Senate statute proscribe further actions by the Senate?
2. To what extent does a new statute on a particular matter constitute an amendment or rather a complete departure from the original?
3. Insofar as the Constitution permits, what are the absolute privileges of the Senate in budgetary allocations and what are the privileges that can be constrained?

Amendment vs. “Null and Void”

There are several ways of answering this question, but the in the spirit of judicial restraint, it seems prudent to adopt the tact that will least perturb the legal landscape of DSG.

The most expedient resolution of this issue that applies here is the consideration of the language “null and void.” While PASH Reform does unyieldingly declare the original PASHRA “null and void” by implication, frankly, it simply amends the original budgetary allocation. Thus, since the legal challenge here is that the PASH Reform cannot pass because it “nulls and voids” PASHRA is moot. The PASH Reform is a legitimately passed act of the Senate, and thus should stand. The legal intent of amending previous budgetary allocations is infinitely clear to any reader, and although the petitioners tried to argue that this is a whole new law, this is simply untrue. Of course, they begin to poke at another interesting idea as to what “counts” as a singular, atomic piece of legislation, but again, this question was not directly raised and need not be answered for

this opinion.

Questions of Privilege

In all, it seems readily evident that under Section 1.1.C and Section 4.4.A of PASHRA that the Senate retains control over budgetary allocations of PASH. Furthermore, the Senate By-Laws under Title V, Section III unequivocally states that the “Senate can amend any part of the budget [of the budgetary statute] and pass it with a simple majority vote.” Finally, Article IV, Section 4 of the DSG Constitution declares that the Senate has the power “to allocate and authorize the expenditure of any and all funds received by the DSG from whatever source.” Given this provision in triplicate that the Senate has a fairly strong prerogative to budgetary allocations, it seems logical that the Senate does retain such power. Plus, in terms of the order of precedence, the Constitution supersedes all law, then the Senate By-Law, then the House rules, then individual statutes of the Senate. Furthermore, the Senate cannot arbitrarily abrogate or arrogate powers by statute. For example, if the senate promulgates a statute that all statutes must pass with a unanimous vote, this would be superseded by the House rules, the By-Law, and the Constitution. This rule could not and would not stand. Since this is not a question of whether or not a statute *per se* conflicts with the Constitution, By-Law, House rules, etc., but is actually a question of whether or not the Senate has the *privilege* or passing this law, we must defer to the actually authoritative corpus that dictates what this privilege is. Since the Constitution, By-Law, and House rules define what that privilege is, we must refer to them. In short, we need two particular privileges in this case: 1). The Senate cannot redefine or update its own privileges without modifying the Constitution, By-Law, or House Rules, and 2). The Senate has the power to make budgetary allocations by a *simple majority*. As a logical consequence of 1). and 2). we see that in this case, the PASH Reform could legitimately be passed (as it was).

Although we can debate what “entrenchment” is and is not (n.b. this absolutely is an example of entrenchment), the Constitution and By-Law are quite clear on the matter here, whatever we may choose to call it: they require budgetary allocations by a “simple majority vote,” and any procedural obstacles, no matter how slight, do indeed interfere with this mandate. Although the Senate can indeed change its House rules, which may dictate how the Senate comports itself, it must modify with the approval of the student body through Constitution its ultimate privileges. Furthermore, this line of progression continues, in that the Senate, to change its inner-workings, must modify the Senate By-Law, and then the House Rules. The body cannot arbitrarily invoke and dispel privileges through budget allocations, as this is not a particular power vested through the law.

It may also be prudent to note that the majority opinion has opened a dangerous precedent. Now, the Senate may start declaring future rules, and it will be up to the whim of the Judiciary to determine how far is entrenchment allowed to go. How far will the majority allow the Senate to

continue enacting unconstitutional and undemocratic regulations without at least the farce of the rule of law? With all due deference, I must say that I at least admire the audacity of the majority to invent new legal principles without bothering to be hindered by the legitimate trappings of democracy.

Conclusion & Final Thoughts

Modifying the privilege in enacting future laws (like prohibiting further laws from declaring a previous one “null and void”) are simply impermissible as the current Constitution and By-Law stand. In conclusion, the PASH Reform should stand and supersede PASHRA.

I would like to also discuss some of the political implications of this statute, as well. In this highly contentious case, I arrived at my decision focused solely on the legal issues presented. I would like to disavow any idea that this decision rendered heretofore somehow considered PASH and its funding as an idea. As mentioned by the majority, this issue was settled as any, perhaps less sexy, budgetary matter.

I respectfully dissent.