

Supreme Court opinions

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no reason to believe that specific errors took place. We therefore permanently enjoin publication of the results of the election of Oct. 27, 1971, and hold that the election is void for having not been conducted in accord with the clear intent of ... the Constitution of the Student Government.

We recognize the difficult position in which the Government now finds itself, having candidates eager to fill vacant seats and having issues worthy of referral to the student body as a whole for consideration. We wish to make clear that nothing in this Opinion affects the nominations made prior to the election of Oct. 27, 1971; contrary evidence absent, we presume the nominations were valid and hence remain viable. It is ordered, therefore, that a new election be held no later than 14 working days from today with appropriate procedural changes being made beforehand to prevent a repetition of the errors noted in the first election."

The second petition, brought by candidate James H. Lengel, was also upheld by a vote of 5-3. The minority opinion is also given here.

James H. Lengel v. Elections Committee of the Student Government, and Marsha Mottell, chairman of the Elections Committee of the Student Government.

"The Petitioner in this case alleges that the elections of October 27, 1971, which were challenged in the related case of Stoudemire, et al -vs- Elections

Committee of the Student Government, were invalid for being held outside the time limit prescribed in ... the Constitution. Petitioner also alleges that the appointment of Miss Marsha Mottell, a Senator, to be Chairman of the Committee, was invalid as contravening the prohibition against dual office holding set out in ... the Constitution.

Article V. Section 3, Paragraph B of the Constitution states that, "The Fall election is to be held within six weeks after the start of the fall term." We believe this means exactly what it says.

However, we believe it equally clear that the framers of the Constitution intended that Senators be elected rather than appointed so that the people of the student body are able to maintain a proper voice in a truly representative government. We do not believe that operation of this valued principle should be abridged by an Act which, by accident or design, fails to take a simple time requirement into account. While we do not ignore the plain language of the time requirement and do not approve its disregard by the Senate we give the democratic principle far greater weight. A new election should be held as ordered in Stoudemire.

Petitioner has asserted that the Chairman of the Elections Committee, Senator Marsha Mottell, was not a proper appointee to the Chairmanship because of the Constitutional prohibition against

dual officeholding. The pertinent section of the Constitution reads as follows:

Election officials will be appointed by the Student Government President and confirmed by a majority vote of the Student Senate. These officials shall not hold any other Student Government office or be a candidate for any other Student Government elective office.

The Attorney General, arguing in defense of the appointment, has expounded the view that this section merely operates to require that the officeholder resign one office upon confirmation to another. It is the government's position that the prohibition is simply directed against dual officeholding and has no restrictive effect on the power of the President to appoint or on the powers of the Senate in confirming or rejecting his appointments. We do not share this narrow view of the Constitutional directive.

Nominees to high office are "candidates" in the usual meaning of that word ... Certainly this description may be applied to a person whose name is presented to the Senate by the President for confirmation in the important office of Elections Committee Chairman. Under the clear guidance of the Constitution, then, the nomination should not have been made.

Responsibility for determining that officers being appointed meet

Constitutional qualifications is shared, however. While the appointing officer has a particular obligation to determine that his nominees are qualified before submitting their names, the Senate and the nominees have a comparable duty to ensure that an error made in nomination is not compounded by ratification, as occurred in the case at hand.

We hold, therefore, that the appointment and confirmation of Senator Mottell to Chairmanship of the Elections Committee are null and void, and that the position of Chairman of the Elections Committee is vacant.

Kendrick A. Clements, Douglas F. Dent, Chester W. Bain, Brenda Haulbrooks, Cathy Carver, concurring."

Minority opinion

"I concur in the decision of the Court that the election was invalid because it was held beyond the time period established in the Constitution of the Student Government and because it was conducted by an Elections Committee whose Chairman held office in violation of the Constitutional prohibition against dual officeholding. I must dissent, however, from the Court's order that a new election be held. In my opinion, such election will be in direct contravention of a definite and unambiguous requirement of the Constitution, to wit: "The Fall election is to be held within six weeks after the start of the fall term." ...

I submit that allowing the application of the Constitution to be controlled by policy considerations defeats the purposes of constitutional government. Policy may be and should be considered in matters of interpretation but there is no question of interpretation in this instance; the question is merely whether the Constitution is to be followed as written.

...I feel the decision of the majority will be adding its precedent to that already established by the other branches of the Student Government: the Constitution is not given sufficient consideration in making decisions affecting the citizens of this University. In the petitions heard by this Court today, there were brought out three instances where

the Constitution was ignored or at least not considered: in the failure to provide secret ballots, in the appointment and confirmation of one to a position where it was obvious that it would constitute dual officeholding, and in the setting of an election date. Set for this election by last year's Senate, the date was changed to an even later date by the present Senate. It is obvious that disregard of the Constitution caused the error here, rather than confusion due to changes in the academic calendar as argued by the government.

It may not be wise for the Constitution to contain a strict time requirement for the holding of elections, but the remedy for such errors is found in the amendment process, not in the circumvention or disregard of such requirements. Regrettably, movements to amend such undesired or unwise requirements will receive no impetus from the Court's decision today.

The minority opinion was written by Richard J. Paul; Frank Caggiano, Lou A. Cecil concurring.

Miss G & B

The annual Miss Garnet and Black Pageant will be held Wednesday, December 8, at 8 p.m. The public is invited to the event which is to be held in the Campus Room of Capstone. Tickets are 50c for students and \$1.00 for non-students.

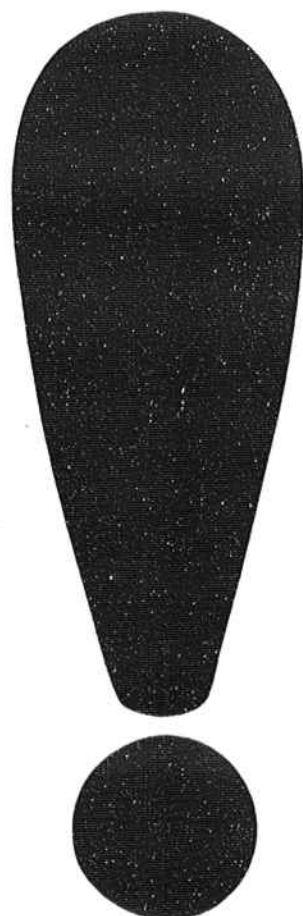
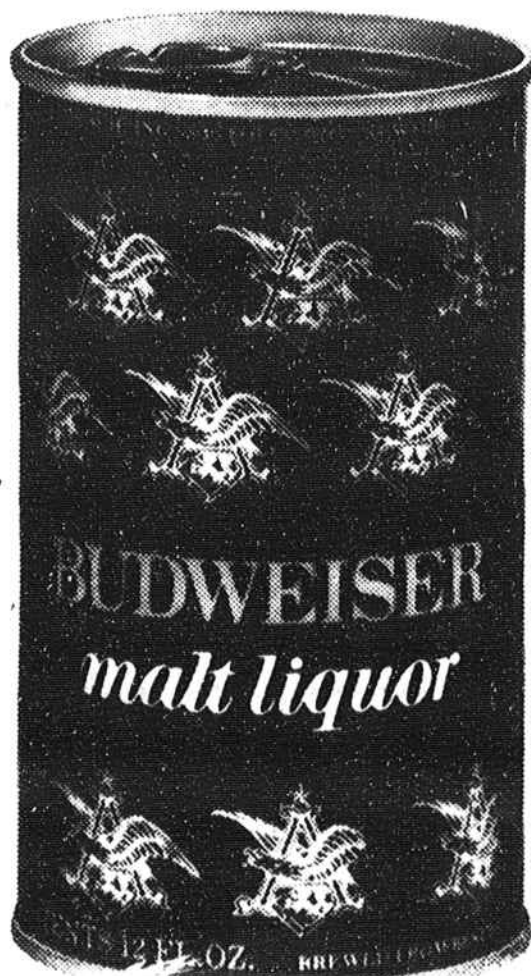
CHRISTMAS MAIL

Students are advised by officials of the Russell House Post Office to mail their out-of-town packages before Dec. 1, local packages and out-of-town cards by Dec. 10, and local cards by Dec. 15, to ensure that they will arrive by Christmas. Also, they are reminded to include the zip code in the address. Foreign students are especially urged to mail their packages early.

As the Russell House office is only a Post Office Sub-station, it is not authorized to handle any C.O.D. packages, nor any mail sent to Viet-Nam. Further information is posted on the Post Office bulletin board, or can be obtained at the window.

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