

**MEMORANDUM**

**To:**  Maureen Wetta, Chief Justice, Supreme Court

Gigi Guzman, Chief Elections Commissioner

**From:** Vishnu Avva

**CC: Advisors Gabe Fonseca**

**Subject:**  Constitutional AmendmentLegality

**Date:** 01/25/2024

Members of the Court and Elections Commission,

On January 24th, 2024, SGA Chief Elections Commissioner Gigi Guzman declared passage of the Senate Seat Reapportionment Act by a simple majority vote. It was also reported that only 2.5% of eligible voters participated in the special election.

We contend that the passage of the Senate Seat Reapportionment Act is plainly unconstitutional under Article IX of the Constitution and Article IX Chapter 9 Section 1 Clause 3 of the bylaws.

We would like to begin by saying it is unclear which body, the Elections Commission or Supreme Court, has the authority to hear this claim as election appeals go to the Elections Commission, but constitutional suits go to the Supreme Court. For that reason, we submit this to both bodies and ask the Supreme Court to clarify jurisdiction for future cases. We are not submitting an argument on this point and are willing to engage with whatever the Court decides on this opinion.

Article IX of the Constitution states “This Constitution shall be deemed amended if any proposed amendment receives a simple majority of the votes cast at any election. The Senate must call said special election if it is presented with a petition signed by seven percent (7%) of the Association’s members proposing a specific amendment. An Amendment to the Constitution submitted in a referendum shall become effective only upon receiving a positive vote in a referendum participated in by at least seven percent (7%) of the Association’s membership.”

Article IX of the Constitution creates three clauses:

1. Constitutional amendments require a simple majority vote of an election to pass;
2. Constitutional amendments may be submitted by the student body if it receives seven percent (7%) Association membership signatures;
3. Constitutional amendments require seven percent (7%) turnout to be subject to clause 1 and be passed.

Article IX. Chapter 9. Section 1. Clause 3 of the Bylaws states that “Any constitutional amendment that receives a simple majority vote in the affirmative shall be considered adopted and enacted, provided that the minimum number of votes outlined in Article VIII of the Constitution is achieved.”

Article IX Chapter 9 Section 1 Clause 3 creates two components:

1. Constitutional amendments shall be adopted and enacted with a simple majority vote;
2. All constitutional amendments are subject to the minimum number of votes (seven percent) as set forth in the constitution.

The first route to understanding the unconstitutionality of this Act is found directly in the Constitution under Article IX. “An Amendment to the Constitution submitted in a referendum shall become effective only upon receiving a positive vote in a referendum participated in by at least seven percent (7%) of the Association’s membership” clearly and plainly states that constitutional amendments submitted in a referendum (an election) ***must*** be passed in an election participated in by at least **seven percent** of the student body. Seven percent is larger than two-and-a-half percent, and thus, the amendment should be prevented from being adopted and enacted.

While the term “referendum” is used here, it is necessary to argue that this means “election” in this context. While “constitutional amendment” and “referendum” are used in different contexts throughout the Constitutional, the usage of “referendum” in an article solely dedicated to the purpose of constitutional amendments means the two terms are synonymous for this purpose. Further, there is no basis for arguing that Article IX of the Constitution only applies a seven percent turnout requirement to constitutional amendments submitted via petition. First, the term “petition” is not used in the third and final clause identified, should that have been the intent of the framers, “petition” would be clarified here. Second, it would be redundant to require a seven percent turnout on a vote for a petition already having been verified to have been signed by seven percent of the Association membership. The framer’s intent here is clear, all constitutional amendments require a seven percent turnout threshold.

Even if the Court rejects our previous claims, we still find a violation ithrough Article IX of the Bylaws. The Bylaws *more clearly and plainly* state that **all** constitutional amendments are subject to the seven percent threshold. “Any constitutional amendment… shall be considered adopted and enacted, provided that the minimum number of votes outlined in Article VIII of the Constitution is achieved.” While either a typo exists or either document was not updated after an amendment, “Article VIII” of the constitutional is clearly meant to refer to Article IX.

Merriam-Webster defines “any” as “as in *every*.”

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**EVERY** constitutional amendment only passes if the minimum number of votes (seven percent) is achieved. This does not create a requirement for votes in favor, but “minimum number of votes” in the entire election. If the Court does not believe that the Constitutional provision itself applies to this election, the Bylaws very clearly provide guidance that *all* constitutional amendments, including those submitted in a special election, must reach the seven percent threshold. Even if the Court believes that the Constitution itself only applies a seven percent threshold to petition amendments or uses some other definition of “referendum,” the Bylaws *still* apply, even if just to hijack a separate clause to be used for its own purposes.

In closing, democracy is the pure embodiment of our shared aspirations for a just and free society. It is the bedrock on which our government can exist, function, and draw its legitimacy. In our democracy, each citizen holds the power to shape the destiny of our Association, but to ensure that it is a collective Association determining our future and not just a select oligarchy, 65 years of framers have collectively worked on our Constitution and settled on a clause to ensure no tyranny of the minority. That clause requires seven percent (7%) of the Association membership to participate in an election in order to change the Constitution. If this Court allows the constitution to be amended by any less, let alone 2.5%, it sets a dangerous precedence that allows quick power grabs. A small group of senators and one president would be allowed to pass an amendment that drastically alters the course of the Student Government Association, and consider it adopted by an electorate that does not represent the student body. While it may seem drastic to compare Senate Reapportionment to tyranny and power grabs, that is the exact purpose of the Court. To test scenarios and determine if they are constitutional in order to create doctrines and tests which future scenarios can be applied to.

**Request to the Court:**

I, Vishnu Avva, do hereby request the Court intervene and provide the following relief:

1. Declare passage of the Senate Seat Reapportionment Act illegal due to failure to achieve the required 7% turnout; AND
2. Declare the Elections Commission cannot adopt and enact the Senate Seat Reapportionment Act; AND
3. Clarify which body has jurisdiction over elections appeals directly relating to the constitutionality of such elections, be it the Elections Commission or Supreme Court; AND
4. Request the Elections Commission place the Senate Seat Reapportionment Act on the 2024 General Election ballot.