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NOTICE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared for the convenience of the reader.

SUPREME COURT OF THE STUDENT BODY

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DEAN PEARCE, ET AL. *v.* RESIDENCE HALL ASSOCIATION EXECUTIVE BOARD

ORIGINAL

No. 22–007 Orig. Argued November 18, 2022—Decided December 19, 2022

On September 13, Dean Pearce, the Connor Community Governor, submitted a notice of intent to file three separate actions against the Residence Hall Association's (RHA) governing officers. Pearce alleged that the officers' actions had unduly encumbered him in the performance of his duties as Community Governor. Furthermore, Pearce asserted that the RHA had illegally suspended, and later expelled him, from office. A fourth notice was submitted by Pearce and Andrew Gary, Chair of the Undergraduate Senate Rules and Judiciary Committee, naming the RHA Executive Board as defendants and stating that the RHA failed to adequately comply with Open Meeting laws. All of the complaints were filed on September 19, 2022, and summons were promptly delivered to the defendants who did not respond. On September 22, 2022, the Director of Student Life and Leadership (SLL), Dr. Bobby Kunstman, sent an email to the Chair of the Joint Governance Council (JGC), to this Court, and to the Speaker of the Undergraduate Senate stating that the institutions could have no further direct communication with RHA Officers unless sent through their Staff Advisors, Erin Carter or Ashley Gray. Through Carter, the RHA was able to retain counsel. We consolidated the cases, granted the parties leave to amend their filings to correct deficiencies in the complaint and the answer, and dismissed the motion for summary judgement. We held trial on November 19, 2022, and addressed four main "counts"; the allegations from the original complaints. First, whether or not the RHA Vice President possesses the authority to prevent the Community Governors from sending a communication from their office, directly relevant to their constituents, to those constituents. Second, whether or not the RHA President or Executive Board possess the authority to suspend an RHA officer before an ethics hearing has been held, and whether or not the RHA's Ethics Hearing itself is illegal. Third, whether or not the Oath of Office is a requirement to

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exercise the powers of Community Governor. Fourth, and finally, whether or not the RHA is both subject to and in violation of Open Meetings Laws. The plaintiffs requested declaratory and injunctive relief on all counts, but we dismissed Count III (relating to the oath of office) at trial since the defendants had conceded to the plaintiffs' interpretation. We further dispensed with oral arguments on Count IV since the facts and legal arguments were adequately presented in the parties' briefing.

Held: The Court exercises original jurisdiction in this matter since Independent Agencies are constitutional creatures. The Court makes findings of fact, and concludes that the Vice President did not have the authority to block the communication or so structure the external appointments process; the RHA Executive Board did not have the authority to suspend Pearce and violated Pearce's right to due process; and the RHA, as an Independent Agency is subject to the North Carolina Open Meetings Laws since those laws are one in the same with the Joint Code's Open Meetings provisions for Independent Agencies. Relief is entered in the Court's decree.

(a) The Court possesses jurisdiction, and the plaintiffs both have standing, and have named all necessary defendants. Pp. 4–6.

(1) The Court possess "original jurisdiction in cases and controversies concerning executive or legislative action raising questions of law under the Student Constitution and laws enacted under its authority." Student Const. ch. 1, art. IV, §5. The parties agree that this Court has jurisdiction under relevant provisions of the Joint Code enumerating the RHA as an Independent Agency of Student Government, *e.g.*, I J. C. S. G. §121(B)(8). But the Court also possesses jurisdiction as a constitutional matter which also enumerates the RHA as an Independent Agency. See Student Const. ch. 1, art. V, §1. The Court also notes that it possesses jurisdiction of the open meetings claim under I J. C. S. G. §141(A) which explicitly requires that the RHA conduct itself in accordance with the text of N. C. Gen. Stat. §§33C–143, *et seq*. Pp. 6–8.

(2) The parties did not contest whether the plaintiffs have standing to bring this action as to Counts I, II, and IV. The Court dismissed Count III at trial since the concession of defendants rendered the matter moot. p. 8.

(3) The Court rejects the defendants' contention that the plaintiff improperly omitted the RHA Executive Board as a named defendant since the consolidation of the cases resolved the issue. The Court rejects the RHA's argument that the general "RHA" is an inappropriate defendant in the case since the plaintiffs, in fact, filed the case against the RHA Executive Board. Moreover, because, the Court held in *Project Dinah* v. *Student Cong.*, 1 S. S. C. 239 (2009), and *USG Senate* v.

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Grodsky, 2 S. S. C. ____ (2022), that organizations could have broad standing to sue, organizations and agencies may similarly be named as defendants. The defendants' argument is also grounded in the Joint Code's standing clauses which do not possess valid constitutional authority to bind the Court. That authority is delegated to the Court's Bylaws and the Constitution alone. See Student Const. ch. 1, art. IV, §5. Pp. 9–11.

(b) The parties were informed at the pretrial conference that their filings should presume a preponderance evidentiary standard. That standard is supported by the Court's precedents. The findings of fact are listed by the Court as to Counts I, II, and IV, since Count III was dismissed at trial. Pp. 11–12.

(1) Then-RHA Vice President Miller sent an email to all Community Governors asking them to submit a "Meet the Governor Email" to bolster recruitment since Community Governors must appoint their staff with constituents. Pearce sent Miller a draft, linking the RHA's Application and containing a hard-copy of an application to Connor Community Government. Miller did not respond for a week when they informed Pearce that they had an "edit", namely that Pearce could not use the attach hard-copy application form. The response to Pearce was sent less-than twenty-four hours before the application deadline. The evidentiary record was sparse as to whether there were, as Miller's email stated, "high quality applicants." Pl.'s Ex. 1, at 8. Miller's actions interfered with Pearce's ability to effectively advertise the positions. Pp. 12–14.

(2) The defendants agreed with the facts listed in the Plaintiffs' complaint as to Count II, including Pearce's assertion that their initial suspension by then-President John Doe was illegal. That first suspension was "rescinded." Doc. No. 13, at 12. The Executive Board then suspended Pearce pending an Ethics Hearing on September 13, 2022 during which time Pearce could not be in any "RHA spaces" and required Pearce to halt "any community government formation-related projects." Pl.'s Ex. 3, at 22. Pearce was not permitted to attend the hearing, and the outcome was emailed to Pearce notifying him of the Ethics Board's decision to expel him from the RHA. Pearce appealed to Allan Blattner, the Executive Director of Carolina Housing who overturned the Ethics Board's decision on October 25, 2022. Pp. 14–16.

(3) The RHA's website includes governing documents and the minutes of Executive Board meetings. The Court defaults to the determination that defendants do not post written notice of meetings. SLL did inform the RHA that they were under no obligation to comply with North Carolina's Open Meetings Laws, and while SLL's

conclusion misses the point, the Court does determine that the RHA acted in good faith. Pp. 16–18.

(c) The Constitutional jurisdiction of the Court is important to the Court's legal analysis and resolution of each of the three Counts. This case marks the first time since the 2016–2017 Constitutional Split that the Court has had occasion to resolve a legal question concerning the authority of Independent Agencies. Independent Agencies are not completely sovereign, as the defendants represent in their filings. Their governance is a "joint" issue for purposes of Student Law. Because the Constitution is the ultimate source of an Independent Agency, it supersedes all Agency governing documents. Though the RHA Constitution declares independence from Student Government, see VIII RHA Const. §2(B), it both lacks the authority to make such a pronouncement and contradicts its supersession clause declaring itself subject to the Student Constitution. See *id*., at §2(A). Pp. 18–22.

(1) While the RHA's Constitution and Bylaws lay out guidelines for disciplinary proceedings, the RHA's authority to dictate those procedures is not unbounded. The Court has held that the Student Constitution protects a right to due process since *Welfare* v. *U. N. C. Student Body*, 1 S. S. C. 30 (1972). The same constitutional language cited by Welfare is present in the current *Instrument of Student Judicial Governance*. Because the Constitution requires that exercises of judicial authority be constrained by the protections afforded by the Instrument, the same rights and procedural protections continue to bind students and student organizations. See Student Const. ch. 1, art. IV, §2. And the *Instrument*, by its plain text, does not purely guide the procedural safeguards of the Honor Court but ensures that individuals be "fairly treated." I I. S. J. G., Prmbl. Pp. 22–25.

(i) At minimum, the due process right enshrined in student law requires the right to information and informed choices, the right to the presumption of innocence, the right to counsel, the right to a fair hearing, the right not to incriminate one's self, the right to be proven responsible by clear and convincing evidence, and the right to appeal decisions and petition for rehearing. See IV I. S. J. G. §§A(1)–(8). Pp. 22–24.

(ii) In any context where an accused student will suffer an injury to their personal liberty at the hands of student organizations, or Student Government and its agencies, at least these minimal protections apply. The rights enumerated are not exclusive, but ones not reached by this case. Pp. 24–25.

(iii) The RHA's Ethics Board, possessing and exercising the power to expel members of the agency exercises a judicial authority since that process is adjudicatory in nature, applies relevant laws and rules, and applies facts with fairness to reach the judgement that

quells a controversy. All student contexts involving the administration of punishment of liberty-restrictions are subject to these standards. Pp. 24–25.

(2) In the course of their interventions, the University administration has noted that the RHA Constitution was approved by SLL under the University's due process requirements. While even a brief side-by-side comparison demonstrates that RHA's Constitution does not comport with those standards, that question is wholly irrelevant to the Court's inquiry. The due process considerations at the center of the University's concern regard matters of federal law under the Fourteenth Amendment, where the protections are thin. See, *e.g.*, *Hamdi* v. *Rumsfeld*, 542 U. S. 507 (2004). This Court's due process doctrine is much stricter. And our due process right exists under a separate source of sovereignty than the University, so this Court may enforce due process protections that are protected under Student Law, but which the administration regularly side-steps. Pp. 25–27.

(3) The RHA Bylaws facially violate the Court's due process standards. They do not allow the accused to face one's accuser. The provision of the bylaws preventing individuals from entering "RHA spaces," VII RHA Bylaws §1(A), is extremely vague and the statute provides no clarification. Because it is impossible for a reasonable reader to understand and obey its particularities upon reading the statute, the law is also insupportably vague. Pp. 27–30.

(4) Pearce's as-applied challenge under Count II succeeds in part. The defendants cite to VII RHA Bylaws §4 for the proposition that the Executive Board lawfully possesses the authority to suspend members. The defendants failed to cite the prefatory clause of the statute which states that the authority exists "if" the accused has been "found in violation of an ethical standard." *Ibid*. So their reading failed. The findings also indicate that Pearce's rights were violated insofar as he was presumed guilty, punished before adjudication, and deprived (as a matter of fact) of the right to confront witnesses and speak in his own defense. Pp. 30–32.

(5) The Vice President is charged with an oversight capacity when it comes to the activities of Community Governments. Miller's rejection of Pearce's request to disseminate the "Meet the Governor Email" was not 'oversight.' Because the RHA's governing documents delegate the authority to set the manner in which Community Government appointments will be filled to the Community Governments themselves, it is the Community Government Constitutions that determine the standards for applications and appointments. And the defendants' claim that they were merely suggesting an edit, is untrue. Miller explicitly stated that the RHA "could not send out external applications". Pl.'s Ex. 1. Pp. 32–37.

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(6) Because the RHA is explicitly bound to abide by I J. C. S. G. §140(A), it is therefore required to abide by the referenced text, *i.e.*, N. C. Gen. Stat. §33C–143, *et seq*., applied as a student law. The "people" for purposes of the text, are fee-paying students bound to the authority of the Student Constitution which gives the Joint Code force. See Student Const. ch. 1, art. IV, §1. We do not touch the matter of State law as a result. RHA also possesses no special immunities from these claims. Because fact-finding demonstrates a failure to post notice of meetings in its offices and failure to post notice of Executive Board meetings, the RHA has violated its statutory duty under I J. C. S. G. §140(A). See also RHA Const. art. VIII, §2(A) (supersession clause). Pp. 38–41.

(d) Pearce's requests for declaratory judgement are granted in part and denied in part. Pearce's request the order the RHA to provide commensurate officer trainings and to no longer encumber Pearce's communication with their constituency is granted. The request to annul all proceedings of the Board of Governors during their absence since the demanded relief as filed is extreme and would interfere with the rights of other Communities and their government. It is therefore denied. Because Pearce does not make a particularized factual demonstration that their presence at the listed Board of Governors meetings, we cannot determine whether more tailored relief would be appropriate. The request for declaratory judgement as to the open meetings question is granted. Because the RHA acted on the good-faith belief that they did not need to abide by the particular dictates of the open meetings laws, the request to install an independent monitor is denied. The Court retains jurisdiction to enforce its decree and refer violations to the Honor System for contempt of this Court's order. Pp. 41–46.

Decree entered by the Court. *Post*, at 47–49.

EWINGTON, J. delivered the opinion of a unanimous Court. SHUE, J. filed a concurring opinion.

SUPREME COURT OF THE STUDENT BODY

No. 22–007

DEAN PEARCE, ET AL. *v.* RESIDENCE HALL ASSOCIATION EXECUTIVE BOARD

ORIGINAL

[December 19, 2022]

JUSTICE EWINGTON delivered the opinion of a unanimous Court.

The Residence Hall Association (RHA) is an Independent Agency of Student Government (a governing body that serves a specific student interest) and a University Sponsored Organization (USO) charged with exercising a portion of the Chancellor's administrative authority as an agent of the State.[1] Each Independent Agency is governed by its own bylaws which may—with some exceptions—be amended by the Joint Governance Council (JGC).[2] The RHA is tasked with handling matters of student life in University housing through a governing body composed in a manner of the RHA's own design.[3] The RHA has accepted that duty and is organized through a constitution and by bylaws that provide for a centralized President and Executive Board along with a sprawling system of Community

[1] See Student Const. ch. 1, art. V, §1, I J. C. S. G. §121(B)(8), and University of North Carolina at Chapel Hill, *Statement Regarding University Sponsored Groups* (December 11, 2020), https://tinyurl.com/2uhe3r84.

[2] See Student Const. ch. 1, art. V, §2.

[3] *Id.*, at §10.

Governors representing the interests of particular residence halls, buildings, or residential communities.[4]

The lead plaintiff in this case is Dean Pearce, an undergraduate student residing in Connor Community and elected as their Governor in August (which represents Alexander, Connor, Joyner, and Winston Residence Halls). Pearce alleges that after his election, defendants engaged in a campaign to impede and frustrate the duties of his office and his efforts to accomplish his agenda. Pearce brought suit in two separate complaints against then-President John Doe and Vice President Mary Miller for unduly depriving him of the powers of his office and illegally suspending him as Governor.[5] Pearce also filed suit with the other plaintiff in this case, Undergraduate Rules and Judiciary Chair Andrew Gary, alleging that the RHA disregards the State of North Carolina's Open Meetings Laws.[6] All complaints in this case were originally filed on September 19, 2022, and the Defendants were summoned to defend.

The procedural posture in this case was heavily complicated by administrative intervention shortly after the summons for this case were issued. Writing with no rationale, Student Government Advisor Dr. Bobby Kunstman emailed a notice to this Court, the JGC, and the Undergraduate Senate (UGS), that we were to cease all direct communication with the RHA by the decree of the Dean of

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[4] See RHA Const. art. I, §§1, *et seq*., and art. V, §§1, *et seq*. Additionally, a constitution is required since the RHA is also a Registered Student Organization ("RSO").

[5] See generally First Amended Complaint ("Compl."), Doc. No. 11.

[6] See Gary v. *RHA Exec. Bd*., S. S. C. No. 22–005, Doc. No. 3, ¶8 (citing N. C. Gen. Stat. §§33C–143, *et seq*.), and I J. C. S. G. §121(A) (describing the "Composition of Student Government": "Independent Agencies shall fulfill specific directives and responsibilities as established in the Student Constitution and Code."), §121(B)(8) (establishing the RHA as an Independent Agency), and §140(A) ("Student Government organizations shall be subject to the laws pertaining to the Meetings of Public Bodies (Article 33C of Chapter 143 of the North Carolina General Statutes).").

Students.[7] That injunction (for lack of a better term) was not only an undue obstacle to this Court's process, but also caused excessive delays in the adjudication of this matter. Even during deliberations, the administration communicated to this Court that there were certain results it found acceptable. Both of these interferences are unwarranted. Moreover, the administrative effort to influence our decision-making in this case is unwarranted. We understand that University Policies may sanction certain recommendations, but this Court analyses questions under the separable body of student law; and the obligations imposed under our schema are often stricter and tailored to protect the rights of students. At times in the past this Court has protected certain student rights and at other times it has folded to the administrative pressure. We make our decision purely as a matter of student law, the result be what it may. Fundamentally, it is the University's administration that will have to decide whether or not rights protected on paper are real, or whether to do away with the last vestiges of student self-governance and keep only the free administrative labour.

The RHA was eventually able to retain counsel, and filed their answer (which included an appended motion to dismiss).[8] We denied that motion for several reasons. We construed the motion broadly as a motion for summary judgement since—as we noted in our order denying the motion—the entire purpose of a motion to dismiss is to avoid the necessity of answering the complaint.[9] The factual disagreements present in this case also rebuked any entitlement to summary judgement.[10] We scheduled trial and the parties were granted leave to amend their filings to answer

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[7] See App. A.
[8] See Doc. No. 6, at 4.
[9] See Doc. No. 8, at 1.
[10] See *id*.

factual and legal issues and to enter evidence into the record.

At trial, we dismissed the third count alleging failure to administer an oath of office without prejudice and dispensed with oral arguments on the question of Open Meetings Laws presented in the fourth count. The facts and legal arguments on Count IV were adequately presented in the parties' briefs. We now issue our judgement and decree on Counts I, II, and IV.

I

We begin our analysis with our determination of jurisdiction, standing, and necessary defendants. See *USG Senate* v. *Grodsky*, 2 S. S. C. ____ (2022) and R. 12–22 and 28 (rev. 2022). Analyzing each category separately, we resolve each of the counts filed in the plaintiffs' First Amended Complaint. See Doc. No. 11, at 3, 6, 10, and 13.

Count I refers to Pearce's allegation that then-Vice President Miller's refusal to promulgate an email violated Pearce's rights established under the RHA's Constitution and Bylaws. *Id.*, at 3–4. Pearce contends that this action was not only illegal but actively impeded on the operation of Connor Community Government (CCG), prevented Pearce from completing external appointments, and has led to lasting vacancies. *Id.*, at 5. Pearce requests that this Court enjoin Miller from any such future activities and order the RHA to provide "fully equivalent events to the RHA Community Governor officer trainings". *Id.*

Count II, filed by Pearce against John Doe and the RHA Executive Board, alleges that Doe's notification that Pearce would be suspended from exercising the powers of their office, pending an Ethics Hearing, was both illegal and a violation of Pearce's rights as Community Governor. *Id.*, at 7.[11]

[11] Though we note that Doe has been dismissed as a defendant since they are no longer the President of RHA, see Doc. No. 9, for the reader's

Compounding the procedural issues, Pearce alleges similar material harms as in Count I, see *id*., at 8, but requests broader injunctive relief as to this Count. They request that "[a]ll business of the RHA Board of Governors from September 13 to October 25, 2022 be annulled", and that the same trainings be held as requested in Count I. *Id*.

Count III was also filed by Pearce alone and brought against defendants Doe and Miller, then-acting in their official capacities as RHA President and Vice President, respectively. Pearce alleged that the defendants failed to administer the Oath of Office on Pearce in the time prescribed by law. *Id*., at 11 (citing III RHA Bylaws §3). Pearce contended that not only was the failure to administer the oath unlawful, but the illegal action renders the activities of the Governors illegal. *Id*., at 12. Pearce requested that we enjoin the RHA from conducting any ethics hearing that would punish officers for illegally performing the duties of their office as a result of the failure to administer an oath, that Governor actions prior to the appointment process be nullified, and an "alternative" request for declaratory judgement that the RHA Bylaws override an oath of office requirement. *Id*. at 14 (citing III RHA Bylaws §4). Pearce also notes that Count III is mooted if the Court finds that the Oath of Office is not, in fact, required for a Community Governor to exercise the powers of their office. *Id*. At oral argument, the Court dismissed Count III since the parties and the Court concluded that an active controversy was no longer present—the RHA having conceded the plaintiffs' propositions and arguments. As far as RHA does not run afoul of that agreement, no active controversy exists, and so we dismissed Count III without prejudice.

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ease, we still refer to the actions of the RHA President as those done by Doe since then-Vice President Miller now serves as RHA President and the clarity of the opinion would be sacrificed by references to Miller as distinct entities. However, this opinion should be construed to apply abstractly to the office of the RHA President, not John Doe in a personal capacity. See *id*.

Count IV is brought by both Pearce and Gary and is not specific to the sequence of events surrounding Pearce's suspension and reinstatement as CCG. Instead, plaintiffs contend that the Residence Hall Association Executive Board failed to adhere to the requirements of North Carolina's Open Meetings Laws in at least five separate aspects: "failure to have an up-to-date website", failure to keep minutes of Executive Board meetings, failure to post notice of Executive Board meetings, failure to post notice of its meetings on its website, and barring members of the public from attending open meetings. *Gary* v. *RHA Exec. Bd.*, S.S.C. No. 22–005, Doc. No. 3, ¶8 (citing N.C. Gen. Stat. §§33C–143, *et seq*.). Plaintiffs request declaratory and injunctive relief stating that all business conducted outside the scope of the Open Meetings Laws is illegal and void and ask "that an independent monitor be installed with the responsibility of monitoring the RHA's compliance". *Id*., at ¶¶13, 14. At trial, we concluded that the arguments and facts were adequately presented in the briefs and therefore declined to hear oral arguments on Count IV.

A

The Student Supreme Court has "[o]riginal jurisdiction in controversies concerning executive or legislative action raising questions of law arising under [the Student] Constitution and laws enacted under its authority". Student Const. ch. 1, art. IV, §5. See also *Undergraduate Senate* v. *Grodsky*, 2 S.S.C. ___ (2022). The defendant concedes that this Court has subject-matter jurisdiction since the RHA "is established as an independent agency under I J.C.S.G. §121(B)(8)." Doc. No. 13, at 8. Despite this agreement, the parties do not note the most obvious authority for this Court's jurisdiction over the RHA: the Student Constitution.

An independent agency is established by the Constitution, and consequently, questions of their law are "questions of law arising under the Student Constitution and

laws enacted under its authority." *Supra*, at 7. The Constitution does not make a mere passing reference to the RHA (and even if that were the case, its mention in the text would still require scrutiny). See generally ch. 1, art. V, §1. Instead, it delegates the authority of JGC to legislate for it, see *id.*, §2, and grants the RHA the unique authority to determine its "composition". *Id.*, §10.[12] Our jurisdiction over the RHA relies on a higher authority than the one cited by the parties (the Joint Code)[13] because RHA is fundamentally a creature of the Constitution.

But this case does present a jurisdictional issue we will consider, and which certainly raises an eyebrow in the parties' pleadings. Under what authority does this Student Court have the right to ensure that an Independent Agency of Student Government abides by a North Carolina Statute? In other words, under what possible authority could this Court evaluate a question of State Law?

That question is certainly an obvious one, but the parties are not asking us to resolve an issue of State Law, nor are they asking that we enforce a State Law, as such. Organizations and agencies of Student Government are bound by the text of the North Carolina Open Meetings Laws because the Joint Code incorporates that law by reference: "Student Government Organizations shall be subject to the laws pertaining to the Meetings of Public Bodies (Article 33C of Chapter 143 of the North Carolina General Statutes)." I J.C.S.G. §140(A). The Joint Code states explicitly that this

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[12] Unique for an independent agency since such a cutout is not generally proscribed. See Student Const. ch. 1, art. V, §1.

[13] There are many examples of the Joint Code's authority over the RHA (other than the clear textual determination that it is a part of Student Government I J.C.S.G. §121(B)(8)). The Joint Code defines the RHA President's Constituency, see II J.C.S.G. §211(G)(3), delegates the authority to elect the Residence Hall Association President, see *id.*, at §310(A)(3), the eligibility to run for RHA President, see *id.*, at §510(7), appropriates Student Government money for RHA Presidential Candidates to campaign, see *id.*, at §713(E)(3).

rule applies to Independent Agencies since their duties are enumerated under Title I, Article II of the Joint Code entitled "Composition of Student Government". See also *id.*, at §121(B)(8), and §141(A) ("[t]he minutes of all meetings. . . passed by Student Government Bodies and *Agencies* shall be considered public record." (emphasis added)). Because the Joint Code cites N.C. Gen. Stat. §§33C–143, *et seq.*, explicitly by citation rather than copying and pasting the entire statute, we treat its language as the Student Law, not as a North Carolina Law. See also *USG Senate* v. Grodsky, 2 S.S.C. ___,___ (2022) (slip op., at 2) (announcing that the Court will incorporate text referenced by Student Law as a matter of Student Law). We still cite the North Carolina General Statute for ease of reference, but there should be no mistake, that the true source of the authority lies with the "Student Constitution and laws enacted under its authority," namely, the Joint Code. *Supra*, at 7.

B

1

The standing question is undisputed on Counts I, II and IV since both parties concede that Pearce possesses standing to bring those claims. See Doc. No. 13, at 8, 9, 13 and 22. Count III was dismissed without prejudice, and therefore, we need not inquire into the question of standing any further.

Defendants raise some objections to the plaintiffs' choice of named defendants while conceding others. On Count I, the defendants concede that "Mary Miller is a necessary defendant in this matter." Doc. No. 13, at 9. But in response to Count II, defendants contend that John Doe is not the only necessary defendant because "[t]he RHA Executive Board made the decision to suspend the Plaintiff". *Id.*, at 13 (citing VII RHA Bylaws §§1, *et seq.*). But the RHA Executive Board is a named defendant in this case, so we see no reason to accept this argument as a basis to hold that the

plaintiff has failed to name all necessary defendants. Cf. R. 28(a) and R. 30(a). Doe is named in this action only as far as they acted in their official capacity as President of the RHA. We acknowledge that the office is now occupied by Miller, but for the ease of the reader, we still use Doe to refer to Doe's actions as Presidents during the relevant time period of this case.

2

Defendants believe that the "RHA" itself is an inappropriate defendant to be named for Count IV. See Doc. No. 13, at 22 ("[t]he Plaintiff may not simply name the organization, RHA, as a Defendant, but should have named officers involved in the alleged action" (citing III J.C.S.G. §716(B)(5))). We reject this argument on multiple grounds. First, we observe that the plaintiffs did not file Count IV against the "RHA", but instead the "RHA Executive Board", see generally Doc. No. 11, which includes the "officers involved in the alleged action" III J.C.S.G. §716(B)(5).

Notwithstanding this factual dispute, we doubt it would make a material difference if the plaintiffs filed suit against the "RHA", the "RHA Executive Board" as opposed to all of the officers and members comprising each of those bodies. As we have previously noted, we are "reluctant to impose harsh rules that serve to practically limit organizations' access to this Court," *Project Dinah* v. *Student Cong.*, 1 S.S.C. 239, 241 (2009), and for that reason, we established that despite the obvious constrictions of the Joint Code, we would grant leniency in the context of an organization serving as a plaintiff. See *USG Senate* v. *Grodsky*, 2 S.S.C. ___, ___ (2022) (slip op., at 8) ("the line between allowing an organization itself to sue, represented through its counsel, versus requiring a member or officer to sue on behalf of the organization is notably thin. . . The Undergraduate Senate's capacity to sue as an inanimate object is even less tenuous" (citing *Sierra Club* v. *Morton*, 405 U.S. 727, 741 (1972) (Douglas, J., dissenting) (internal quotation marks

omitted))). Consequently, in *Grodsky*, we determined that we would observe an organizational standing doctrine. See 2 S.S.C. ___, ___–___ (slip op., at 7–8). On the same rationale as our holding in *Grodsky*, we see no reason the RHA itself cannot be a defendant in a case when all the constituent officers might be defendants. Such a rule would indeed serve to "practically limit" not only organizations' access to this Court, but also individuals registering a complaint against organizations—an arguably more compelling interest. *Dinah*, 1 S.S.C. 239, 241 (2009). And it is not unprecedented, especially in this context. The Court has, on numerous occasions, held that the RHA (and Independent Agencies more broadly) are acceptable defendants or respondents in a case. See *Gaskill* v. *Granville Residence Coll.*, 1 S.S.C. 126 (1975); *Buttner* v. *Campus Governing Council*, 1 S.S.C. 148 (1976); *Hancock* v. *UNC Elections Bd.*, 1 S.S.C. 151 (1989); and *Carolina Athletics Ass'n.* v. *Student Cong.*, 1 S.S.C. 195 (2007). Therefore, we dismiss the defendants' objections to the naming of the RHA Executive Board as a Defendant.

Finally, Title III of the Joint Code exercises no valid authority over the Court. The Constitution details that such authority may be granted only to the Constitution, Bylaws, or in the more general case of outlining judicial principles and authority, the *Instrument*. See Student Const. ch. 1, art. IV, §§1, 2, and 5. Therefore, we do not entertain the RHA's contention that the failure to name the defendant, as outlined under the Joint Code, is a salient issue here. Indeed, the Bylaws of this Court are not worded so strictly. Though the Bylaws require that if the "suit is based on the act of an officer, official or agent of the Residence Hall Association, [. . .] the necessary defendants shall include officers of the group and any other affected students" R. 28(b)(6), that list is "not exclusive", see R. 28(c), and we again note the principle of *Dinah* that we will not throw unnecessary procedural roadblocks in the way of plaintiffs' case. But beyond the question of the Joint Code's authority

this procedural issue matters little since we have determined that the "RHA" is, in fact, a necessary defendant in actions taken by the RHA's highest governing board.

II

A

We move next to our findings of fact and evidentiary standards. On November 10, 2022, the Court held a pretrial hearing to consider various administrative issues. See Doc. No. 9, at 2 (citing R. 44). No discussion of the merits was allowed, but during that hearing the parties requested clarification on the evidentiary burden the Court would suppose for the purposes of our fact-finding endeavours. JUSTICE CONWAY, JUSTICE SHUE, and I informed the parties to presume a preponderance standard absent any common law authority contradicting such a standard. Our common-law authority does in fact support that standard. Most recently in *Nichols* v. *Raynor*, 1 S.S.C. 226 (2009), we held that in elections cases, a plaintiff would have to refute the presumption of validity "by a preponderance of the evidence. . . [a] speculative conclusion as to impacts of asserted violations is insufficient as a matter of law." 1 S.S.C., at 232 (2009).

The Court has also previously employed a "clear inference" standard in approaching claims of ballot box stuffing. *Dunn* v. *King*, 1 S.S.C. 18 (1972). *Dunn* is also a useful case for our present purposes since the Court was also operating in the absence of clear evidentiary rules. See 1 S.S.C., at 19 (1972) (citing *Dorrol* v. *Oliver*, 1 S.S.C. 261 (1969)). As the Court noted then, "in the absence of other controlling rules, the General Elections Laws should serve as a guide to the Court in determining the policy of the common law of elections." 1 S.S.C., at 19 (1972). But the Court did not go beyond that proposition deciding that the presence of an "alternative forum" was sufficient reason to defer a ruling on the case, and instead retained jurisdiction as a Court of

appeal. *Id.*, at 20. Therefore, the general principle animating the evidentiary understanding in *Dunn* does not prove concretely useful beyond its abstract guidance for the Court to function as a Court at common-law in these situations.

The Court has, however, reached rulings on similar cases. *Crawley* v. *Gordon*, 1 S.S.C. 25 (1972), was another ballot-box stuffing case in which we found that the extraordinary relief of voiding the results of an election "without other supporting affirmative evidence of actual compromise," was unwarranted. 1 S.S.C., at 26 (1972). Some factual determinations and weighing arguments are treated not purely as matters of fact-finding, but also as matters of law since the requested relief serves a role in the weight the Court grants to its treatment of the evidence. Our analysis here is limited to evaluations of fact. We do not yet import the applicable law onto the facts. See Part III, *infra*, at 16–35.

B

1

Count I. Factual Findings.

On August 28, 2022 at 2:25 p.m., then-RHA Vice President Miller sent an email to the RHA Board of Governors linking to a list of "all of the current Community Government applicants broken up into tabs by community." Pl.'s Ex. 6, at 37. She noted that "[t]he application officially closes on September 2nd at 11:59PM" after which she would "send the updated list". *Id.* Miller's email further encouraged Community Governors to promote the application to members of their community, saying that "I highly recommend promoting Community Government applications to students you see in the halls, lobby, etc." *Id.* The next day, August 31, 2022, at 1:03 p.m., Miller sent an email to the RHA Board of Governors stating that "Community Government Applications close at the end of the week" and requesting that governors who were "interested in sending an email to [their] community" do so by 3 p.m. on September 1

(the next day). Pl.'s Ex. 1, at 9. On September 1, 2022, at 1:35 a.m., Pearce sent an email to then-RHA Vice President Miller asking that she promulgate his "letter to the Connor Community" and an attached Connor Community Government Application. Pl.'s Ex. 1, 2. Miller did not respond directly to Pearce for another week. They sent all Community Governors an "updated sheet of CoGo [Community Government] applications", Pl.'s Ex. 7, at 42, on September 3, at 11:28 a.m., but they wouldn't email Pearce directly until September 8, at 8:06 a.m. notifying Pearce of an "edit". This "edit" was a refusal to "send external applications or extend the deadline out of fairness to the other communities". Pl.'s Ex. 1., at 8. Miller did let Pearce know that "Connor received a great group of applicants through the Google form" and encouraged Pearce to reach out if they had questions. Pl.'s Ex. 1, at 8.

Neither Pearce nor the defendants entered any evidence into the record showing whether or to what extend Miller's assertion that "Connor received a great group of applicants" was in fact true. *Ibid*. Still, Pearce shows that their "letter to the Community" links to the RHA Application, see Pl.'s Ex. 2, at 15 ("To apply *via the RHA*, use the following form. . ." (emphasis added)). Pearce's letter also states that he will accept applications sent directly to him by September 10, 2022. See Pl.'s Ex. 2, at 14. We find that the window of time between Miller's solicitation of "Meet the Governor Emails" and the termination of the application window would allow fewer than twenty-four hours for applicants to apply through the RHA's online form. Compare Pl.'s Ex. 1, at 9 ("please send me your draft *by tomorrow* [September 1] *at 3PM*") with Pl.'s Ex. 2, at 14 ("Community Government elections conducted via the RHA will end at end of day 2nd of September").

Despite the question of the timeframe itself, the evidence entered into the record by the parties supplies no insight on whether there was a "lack of applicants for Connor Community Government," Doc. No. 11, at 5, "a lack of quality

applicants for some positions," *id.*, nor whether or not there was "a complete lack of applicants for the position of Social Justice Advocate." *Id.* This finding eliminates three of Pearce's arguments for why he has suffered a material harm. We therefore agree—as to these three points—with the defendants' assertion that Pearce's claim "is not supported by any evidence or substantive fact." Doc. No. 13, at 10.

Pearce's fourth claim of material injury that "[t]he barring of 'external applications' prevented the Plaintiff from advertising directly to students," *id.*, is belied by Miller's August 28th email recommending that Governors promote the applications "to students you see in the halls, the lobby, etc." since "word of mouth is so impactful!" Pl.'s Ex. 6, at 37. Though Miller's express communication left available certain alternative means for Pearce to promulgate his message (in person communication), it is clear that Miller deprived Pearce of the possibility to effectively advertise the availabilities through electronic means, namely the letter explaining the extension of time that he would be affording as Connor Community Governor.

2

Count II. Factual Findings

The Defendant notes that they "agree with the facts listed in the [sic] section II.1 of the Plaintiff's complaint", Doc. No. 13, at 12 (cleaned up), including Pearce's characterizations of the factual events as "illegal." Doc. No. 11, at 7; see also Doc. No. 13, at 12 ("The Defendant agrees that there was an illegal suspension of the Plaintiff's position as Community Governor"). But as Defendants note—and plaintiffs' exhibits make clear—the first illegal suspension was "rescinded." *Id.*, see also Pl.'s Ex. 4, at 27. We briefly recite the factual findings as to this Count.

On September 13, 2022, at 8:00 a.m., then-RHA President John Doe, acting in his official capacity, emailed

Pearce to let him know that the RHA Executive Board decided to "temporarily suspend [Pearce] as Connor Community Governor following multiple reports of disrespectful and hostile behavior." Pl.'s Ex. 3, at 22. According to Doe's email, Pearce would be suspended for "three weeks, starting. . . September 13, 2022", "disinvited from RHA spaces", and that Pearce was ordered to halt "any community government formation-related projects." *Id.* That email cited no statutory authority for the suspension other than reporting that the RHA Executive Board had voted. Ten hours later, Doe emailed Pearce again to "reach out and notify [Pearce] of an update concerning the email notification of [their] temporary suspension." Pl.'s Ex. 4, at 27. Doe explained that the suspension enacted by vote of the Executive Board was not in compliance with the most recent version of the RHA Bylaws, and therefore, Doe "formally rescind[ed] that suspension." *Id.* Doe went on to notify Pearce that "an ethics hearing is to be called" on the charges of Harassment and Hostile Behavior. *Id.* In the very next paragraph after enumerating the charges, Doe wrote that "per Article VII Section 1 of the Residential Hall Association bylaws [sic] we are notifying you of the prohibition of any participation in Residence Hall Association spaces". *Id.* Those spaces were ostensibly identical to those from which Doe had "disinvited" Pearce in the preceding email. Pl.'s Ex. 3, at 22. Doe also informed Pearce that he had the "opportunity to defend [himself] through written testimony under 20 pages." *Id.*

The defendants contend that "[i]t is untrue that the Connor Community did not maintain representation during [Pearce's] absence as the RHA Executive Board stepped in until the conclusion of the Ethics Hearing." Doc. No. 13, at 14. That statement is in part question of law but also a question of fact. The defendants notably do not contend that Connor Community government was represented in the interim, but instead say that by 'stepping in,' the gap in representation was filled by the RHA Executive Board. We do

not find that the overhanging governing body's decision to patch-up a momentary vacuum in leadership constitutes representation in fact. To that end, we hold that during the term of Dean Pearce's suspension, Connor Community was not represented. That vacuum also shows that Pearce was "unable to name a proxy", "deprived of their ability to continue the appointment process of members of the Connor Community Government", and therefore "deprived of their ability to formally appoint" those members. Doc. No. 11, at 8.

The parties agree that Pearce has since been reinstated to his office. "On September 20, 2022, the final judgement of the Ethics Hearing of the RHA Executive Board was entered", and they "chose to expel [Pearce] from office and bar them from holding future RHA office." *Id.*, at 7. After a month, on October 25, the "judgement was overturned by Executive Director of Carolina Housing, Allan Blattner". *Id.*[14] The reversal reinstated Pearce as Connor Community Governor. *Ibid.*, see also Doc. No. 13, at 12 ("Defendant agrees with the facts listed in the [sic] section II.1 of the Plaintiff's complaint" (citing Doc. No. 11, at 7)). We note that neither party has supplied any copy of the proceedings of the ethics hearing or whether Blattner offered a rationale for reversing the judgement of the Executive Board.

3

Count IV. Findings of Fact

Plaintiffs incorporate by reference the complaint in *Gary* v. *RHA Exec. Bd.*, S. S. C. No. 22–005, Doc. No. 3 ("Doc.

[14] The parties make no allegations as to the authority of Director Blattner to issue a judgement in this matter. The normal process for the RHA would have been for the appeal to go before their Advisor (Erin Carter), but Carter—the Court has been informed—recused themselves.

No. 5–3").[15] We note that the defendants' responses to this Count are almost entirely procedural or legal in substance, and so the presumption falls heavily in favor of the allegations contained in the complaint. See generally Doc. No. 13, at 22–23. On examination of the record and *sua sponte* inquiry into the RHA's website, the Court has reached the findings below. The RHA does maintain an "up-to-date" website including up-to-date governing documents and minutes of executive board meetings. See *Governing Documents*, University of North Carolina at Chapel Hill Residence Hall Association, https://tinyurl.com/vrxuumpk; *Minutes*, University of North Carolina at Chapel Hill Residence Hall Association, https://tinyurl.com/3hnfuddx; cf. Doc. No. 5–3, ¶¶8(1–2). Because the defendants do not contest the allegation, we presume that the "RHA fails to post written notice of meetings of the Executive Board on the bulletin board of the principal office of the RHA" Doc. No. 5–3, ¶8(3). While the RHA does not post a notice of its meetings on its website, we do note that RHA posts electronic notice of its Board of Governors meetings on its Heel Life page. See *Residence Hall Association*, Heel Life, https://heellife.unc.edu/organization/residence-hall-association ("BOG meetings are every Tuesday evening at 7:30 pm in the Student Union."), cf. Doc. No. 5–3, ¶8(4). Finally, we do find as a matter of presumption that the "RHA bars members of the public from attending open meetings." *Id.*, at ¶8(5).

We note that no evidence was entered into the record on these matters beyond the Court's *sua sponte* inquiry and admonish the parties for their failure to adequately establish a factual basis for their claims. That said, the

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[15] We do not reach the legal question of whether or not this Count should be dismissed without prejudice for failure to comply with the Court's Order granting leave to amend and denying the parties' motion to dismiss. *See* Doc. No. 13, at 22 (citing Doc. No. 8.). That analysis is confined to our determinations of the merits as a matter of law. See *infra*, at ____.

defendant does contest this charge as a matter of law. For example, the defendants note that "[t]he RHA has consulted with Student Life & Leadership who has consulted with University Counsel and have been affirmed [sic] that RHA is not subjected [sic] to Article 33C of Chapter 143 of the North Carolina General Statutes." Doc. No. 13, at 22. Defendants cite no evidence for this proposition, and we hardly believe that second-hand communications on questions of law directed through Student Life and Leadership (SLL) would constitute a binding source of legal authority. Indeed, members of this Court have often been told by SLL that certain legal doctrines do or do not apply only to be told upon further examination that no memorandum or paper-trail certifying the veracity of SLL's statements actually exists. We would recommend that the RHA—and indeed all student organizations—to not so quickly trust SLL's legal acumen, especially when no documentation of the advice's authority (University Counsel, in this case) can be produced.

The record does seem to show that the RHA was working in good faith on the presumption that SLL and University Counsel had provided sound advice regarding their duty to follow North Carolina's Open Meetings Laws. See *ibid.* But this finding goes only as far as analyzing the defendants' intent and does not wholly cure what other factual findings reveal. We agree with the plaintiffs' contention that RHA has certain deficiencies in its open-meetings infrastructure.

III

Having resolved the factual questions, we now move to our legal findings. It is worth spending some time understanding the constitutional framework. Though the parties concur as to the jurisdiction of this Court, they do so on statutory grounds. But as we have already explained, *supra*, at 6–11, this Court possesses jurisdiction over the RHA as a Constitutional matter. Though this Court has had occasion

in the past to wade into disputes involving the RHA,[16] this case marks the first time we have been asked to do so since the 2016–17 Constitutional Split. Cf. *Russel* v. *Berger*, 1 S. S. C., at 255 (2016) (discussion of the "two contradictory constitutional referenda, 'Two for two' and 'Better Together'.). As noted above, authority flows from the Student Constitution, and we therefore have jurisdiction not only over questions of constitutional law, but also of "laws enacted under its authority." Student Const. ch. 1, art. IV, §5.

Under the new regime, the Court has only had occasion to establish that this jurisdiction extends as far as the GPSG Code, the Undergraduate Code, and the Joint Code. See, *e.g.*, *USG Senate* v. *Grodsky*, 2 S. S. C. ____ (2022). We have not, however, had the opportunity to consider how far that authority extends over Independent Agencies; though we note for the record that this vacuum in the Court's activity can be attributed to its four-year hiatus. Must we respect the constitutions of independent agencies as sovereign since the Student Constitution only explicitly mentions bylaws? See Student Const. ch. 1, art. V, §2.

No. Independent Agencies "exist to represent and serve specific interests of the entire Student Body." *Id.*, at §1. Therefore, their governance is a 'joint' issue for purposes of student law.[17] We may exercise jurisdiction on that fact

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[16] See *Gaskill* v. *Wrenn*, 1 S. S. C. 90 (1974) (entering injunction to preserve the jurisdiction of the Residence Hall Tribunal); *Gaskill* v. *Wrenn II*, 1 S. S. C. 100 (1974) (reversing the judgement of the Residence Hall Tribunal and remanding for appropriate proceedings); *Dalgleish* v. *O'Neal*, 1 S. S. C. 116 (1974) (defining 'house' for the purposes of §1 of the RHA Constitution); *Gaskill* v. *Wrenn III*, 1 S. S. C. 121 (1974) (ordering Granville College Elections Board to conduct new election); *Gaskill* v. *Granville Residence College*, 1 S. S. C. 126 (1975) (judgement of contempt); and *Reeves* v. *Coleman*, 1 S. S. C. 180 (1999) (ordering new election for RHA President).

[17] "The term 'joint' shall refer to any piece of legislation that concerns both undergraduate and graduate and professional students." Student Const. ch. 1, art. II, §4.

alone, but we can go further because the Constitution's authority is 'supreme'. *Id.*, at art. IX, §1 (". . . Supreme power shall be vested in this UNC Student Government Constitution"). The combined supremacy clause along with the explicit enumeration of the RHA as an independent agency of student government, see *id.*, at art. V, §§1, 10, means that not only does the Student Constitution and Joint Code provide a basis for review of the RHA's Bylaws, but the RHA Constitution does not escape the same review simply because it masquerades by another name. Article V, Section 2 is not a lone source of this Court's authority to conduct judicial review, and so we do not treat the RHA Constitution as an "inexorable command." *Pearson* v. *Callahan* 555 U. S. 223, 233 (2009). We note this principle because many of the parties'—and especially the defendants' filings underscore a belief that the RHA Constitution ought to be employed here as the ultimate authority by which we conduct our review. See, *e.g.*, Doc. No. 11, at 8 (citing VII RHA Constitution §1(A)), and Doc. No. 13, at 3–5, 9–10, and 13. We shall not artificially constrict our inquiry.

The RHA Constitution itself justifies the claim. For example, Article VIII of the RHA Constitution provides for both the Supremacy and Supersession of its authority. In relevant part, while the RHA Constitution is the "supreme law of RHA", *id.*, at §1, it also provides that it "shall be superseded . . . by the Student Constitution of the University of North Carolina at Chapel Hill." *Id.*, at §2(A).

While the RHA Constitution does make a pronouncement of independence from Student Government, it lacks the authority to make such a declaration in a document granted authority by the Student Constitution. See *id.*, at §2(B) ("[t]he authority of RHA shall remain independent of Student Government or any other governing entity as provided

in the Student Constitution").[18] For starters, the RHA is described as an independent agency, see Student Const. ch. 1, art. V, §1, but that is its title, not its job description. Indeed, the RHA is permitted such independence only as far as it must carry out its duties to "handle all matters concerning student life in University-owned and approved housing and residence halls", and to determine the "composition of [the RHA]." *Id.*, at §10. And the RHA, as an organization whose existence as an independent agency is ordained by the Student Supreme Law, see *id.*, at art. IX, §1, cannot by the same authority shrug off the decrees of the document granting them that status. Finally, "it shall be the responsibility of every student. . . to obey the Honor Code, the Student Constitution, and the Student Code." *Id.*, at art. IV, §1. Since we have granted organizations and associations the capability to sue for their rights as an aggrieved association of students, they too are bound by the decree to abide by the dictates of these documents. See *USG Senate* v. *Grodsky*, 2 S. S. C. ____, ____–____ (2022) (announcing the "organizational standing" doctrine (slip op., at 7–8)), and *Project Dinah* v. *Student Cong.*, 1 S. S. C. 239 (2009); cf. III I. S. J. G. §C (describing sanctions for "Group Violations" of the Honor Code), and II I. S. J. G. §C(4) (describing "Group Offenses" under the Honor Code).

RHA is not exempt or subject to special immunities. We now turn to the specific legal questions. We analyze the disciplinary issue of due process on Count II, move to the narrower question of Count I, and then consider the issues raised under Count IV.

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[18] But this misunderstanding is, for lack of a better word, understandable. Though the Student Constitution deems organizations like the RHA "independent agencies", it still grants Student Government governing bodies the authority to legislate over them. They are not independent from Student Government. Rather the independence is from the normal flow of direct executive power in Student Government; for example, the office of the Undergraduate Treasurer. The independent agency designation is somewhat of a misnomer.

A

1

The RHA Constitution and Bylaws lay out a disciplinary process. But their authority to dictate the details is not unlimited. This Court has recognized a sweeping due process right for half-a-century. See *Welfare* v. *U. N. C. Student Body*, 1 S. S. C. 30, at n. 7 (1972) ("*Givens* v. *Poe* indicates something of an overlap of the fourteenth amendment and . . . the Student Constitution" (internal citation omitted)).[19,20] Since *Welfare*, the constitutional provision guaranteeing due process has been relegated to the *Instrument of Student Judicial Governance* (Compare Student Const. §1.1.2.14 (rev. 1972) with I. S. J. G. App. C, §E(6)(d) (rev. 2021)). Despite the substitution, the due process right has not lost any of its authority over proceedings that exercise 'judicial' power (the RHA Ethics Proceedings, for example). After all, the Constitution incorporates this right as a

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[19] "Not all school discipline due process cases have reached identical results. The Supreme Court has written no blueprint. However, where exclusion or suspension for any considerable period of time is a possible consequence of proceedings, modern courts have held that due process requires a number of procedural safeguards such as: (1) notice to parents and student in the form of a written and specific statement of the charges which, if proved, would justify the punishment sought; (2) a full hearing after adequate notice and (3) conducted by an impartial tribunal; (4) the right to examine exhibits and other evidence against the student; (5) the right to be represented by counsel (though not at public expense); (6) the right to confront and examine adverse witnesses; (7) the right to present evidence on behalf of the student; (8) the right to make a record of the proceedings; and (9) the requirement that the decision of the authorities be based upon substantial evidence." *Givens* v. *Poe*, 346 F. Supp. 202, 209 (W.D.N.C. 1972) (collecting cases).

[20] The history and tradition of the University also stress this fact. The records of our oldest student organizations indicate an insistence on due process in one form or another. Students of the Philanthropic Society in 1822 held a self-imposed Committee to determine sanctions for immoral conduct. See *Welfare*, 1 S. S. C. 30, at 48 (citing 3 Gadfly, No. 1, p. 2, c. 6 (November 27, 1972) ("one student was brought before the dreaded 'Committee' . . . ")).

judicial principle, noting that the "judicial power of the student body shall be vested in the process provided by the *Instrument*". Student Const. ch. 1, art. IV, §2.

Under the ordinary understanding, the *Instrument* applies only to Honor Court proceedings.[21] This notion is a common misconception. The *Instrument* applies more generally than the Honor System context. See, *e.g.*, I I. S. J. G., Prmbl. ("[t]hese goals can only be achieved in a setting in which . . . other individuals are trusted, respected, and *fairly treated*; and the responsibility for articulating and maintaining high standards is widely shared" (emphasis added)). The *Instrument* is not purely a punitive handbook for the Honor System, but also confers rights on students. The enumeration of certain rights explains the Constitution's delegation of judicial processes to the *Instrument*, demanding that all students (and as we now hold, and the *Instrument* itself requires, student organizations and associations) respect the rights of their peers. See Student Const. ch. 1, art. IV, §§1, 2.

The *Instrument*'s broad applicability also solves a puzzle of Article IV of the Student Constitution. Though the Student Constitution delegates all 'judicial' authority to the *Instrument*, see *id.*, at §2, it also grants jurisdiction over certain cases and controversies to this Court, see *id.*, at §5. But the *Instrument* makes no mention of this Court. However, we observe that many passages of the *Instrument* institute broad obligations for students and student groups. See generally I I. S. J. G., Prmbl. Since the *Instrument* provides substantive and procedural rights for students in all cases, as required by the Student Constitution's supreme authority, those rights expand beyond the Honor System. Cf. I I. S. J. G. §A(3) (rev. 2021) ("[m]any forms of nonacademic [sic] conduct . . . are therefore areas of proper concern

[21] The common understanding, however, varies between the common understanding of persons who have read the document and the common understanding (much more common) of those who have not.

and regulation by the University community."), and *id.*, at §A(6) ("[t]he standards . . . serve to supplement, rather than substitute for the enforcement of the criminal and civil law applicable at large."). Consequently, all students, student organizations, and student associations must uphold and protect due process rights (as we held in *Welfare* v. *U. N. C. Student Body*, 1 S. S. C. 30 (1972)).[22] But the *Instrument*'s enumeration of due process protections is not, by its own admission, exclusive. See I I. S. J. G. §A(6). At minimum, the *Instrument* guarantees the rights to information and informed choices, the presumption of innocence, counsel, a fair hearing, not to incriminate oneself, the right to review evidence, to be proven responsible by clear and convincing evidence, and the right to appeal decisions or petition for a rehearing. See IV I. S. J. G. §§A(1–8). And though not directly pertinent to this case, the *Instrument* also makes broader rights protections: declaring specific commitments to the right to privacy and free expression, *id.*, at §C, and App. D.

In any context where the accused is likely to suffer an injury to their personal liberty at the hands of student organizations, organs of student government, or its agencies, these minimal procedural due process protections shall apply.[23] The extent of the rights safeguarded under these protections, beyond those we have reached here, are a subject for future litigation. We pass no comment on whether—by invoking the *Instrument*—this Court retains concurrent or

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[22] See *Welfare*, 1 S. S. C., at n. 12 and n. 14 ("This Court is a Court at common law, *i.e.*, it is bound by its own decisions").

[23] This Court has previously understood that the due process standards under Student Law might actually be more expansive than the protections as defined under, for example, the Fourteenth Amendment to the United States Constitution. See *Welfare*, 1 S. S. C., at n. 7 ("The student body has secured to itself more extensive rights than [the *Givens* list]"), and n. 10 ("It is the duty of the President to secure to the accused student any due process rights guaranteed by the Fourteenth Amendment.").

appellate jurisdiction in claims arising from the Honor System itself.

We apply the basic due process standards to the claims raised under Pearce's complaint, since the RHA must be subject, as an Independent Agency of Student Government, to the rights protected by the Student Constitution, and therefore, the right to procedural due process.[24] Any such situation is a context in which "the deprivation of the individual's . . . liberty, consequent on a determination of [guilt]" is "capable of occurring only as a result of adjudication by a court . . . The adjudication quells that controversy by the application of relevant law and, where appropriate, of judicial discretion to facts ascertained in accordance with the degree of fairness and transparency that is required by adherence to judicial process." *Magaming* v. *The Queen* [2013] H. C. A. 40 (Austl.) (slip op., at 18) (Gageler, J., dissenting). This same common-sense standard applies to all student 'judicial' contexts delegating out the uniquely judicial authority to punish or otherwise restrict a student's liberty.

2

The administration thinks that because the RHA's Constitution was 'approved', it has met the University's due process requirements. After all, the constitutions of Student Organizations must allow an avenue for due process.

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[24] The RHA's Ethics Hearing is obviously an exercise of judicial power, and though not explicitly described by the Constitution, is no less judicial in nature. For example, the legislative body "can choose to confer many functions on courts which are not exclusively judicial . . . The determination and punishment of criminal guilt is not one of those interchangeable functions." *Magaming* v. *The Queen* [2013] H. C. A. 40 (Austl.) (slip op., at 16) (Gageler, J., dissenting). *See also Waterside Workers' Federation of Australia* v. *J. W. Alexander Ltd.* (1918) C. L. R. 434, at 444 (Austl.); [1918] H. C. A. 56; *Chu Kheng Lim* v. *Minister for Immigration* (1992) 176 C. L. R. 1, at 27; [1992] H.C.A. 64 (Austl.); and *United States* v. *Price*, 383 U. S. 787 (1966).

See "Constitution Guidelines" *Student Life and Leadership* (accessed November 30, 2022), https://tinyurl.com/ycym3hfs ("[a]ll removal procedures should follow due process, including but not limited to the right to speak on one's behalf, the right to call witnesses, and the right to an appeal."). Though even cursory review of the RHA's Ethics Hearings procedures reveals that the University's scrutiny cannot have been that rigorous (since the RHA objectively fails its criteria), we do not address the due process question on the basis of the University administration's standard. The student governing documents enshrine a due process right wholly apart from University policy and its corresponding legal requirements. See, *e.g.*, *Welfare* v. *U. N. C. Student Body*, 1 S. S. C. 30 (1972). Though the University must adhere to certain due process considerations mainly under the Fourteenth Amendment of the United States Constitution, those requirements are not the ones with which we preoccupy ourselves.[25]

In that Federal context, the 'fundamental' due process right has become malleable. Courts can, for example, engage in various balancing tests to determine 'how much' process to afford an accused student. See *Matthews* v. *Eldridge*, 424 U. S. 319 (1976) (establishing a three-part test to determine the constitutional sufficiency of an administrative procedure). And even in cases when due process is the most important, with the most important interests at stake, the due process constraints are even more relaxed. See, *e.g.*, *Hamdi* v. *Rumsfeld*, 542 U. S. 507 (2004) (holding that U.S. citizens could be designated enemy combatants and held indefinitely by the military after an evidentiary hearing before a military tribunal). Courts have even deferred, in some cases, to the judgement of the University in

[25] The North Carolina Constitution, for its part, contains no explicit due process protections. The University's "Constitution Guidelines" provided by Student Life and Leadership (SLL) encourage students to "contact Carolina Student Legal Services" to help them format their due process considerations.

cases involving academic matters. See *Univ. of Mich.* v. *Ewing*, 474 U. S. 214 (1985). So, while we acknowledge that the University's guidelines for due process certainly go beyond the Federal requirements (which in many cases boil down to whether or not there simply *is* a process), we do not address the due process question through that lens. Cf. *Welfare*, 1 S. S. C. 30, at 40 (1972) (noting that the due process considerations of the Student Law is separable from the University-administrative issue).

Student Law encompasses a due process right beyond the minimal protections afforded under higher legal authorities. See *Welfare*, 1 S. S. C. 30, 40 (1972) ("[t]he due process right guaranteed by [the Student Constitution] and that guaranteed by the fourteenth amendment to the United States Constitution are very similar, though [the Student Constitution] is both broader and more specific"). And indeed, this due process right exists under a separate source of sovereignty than the one Universities must obey. See *id.*, at 40 ("it is the duty of this Court to construe the Student Constitution's due process and not the [Federal] Constitution's due process"). We have afforded more protections to students even where higher courts offer woefully inadequate protections for the average student. *Ibid.* Though the University may have approved the RHA's Constitution, that fact does not (and cannot) guide our analysis as a matter of student law. Cf. Student Const. ch. 1, art. V, §5. We analyze the question of due process concurrent where the University's jurisdiction ends, and we enforce it at a much higher bar.

B

1

The first question Pearce presents is whether the RHA Bylaws and RHA Constitution's procedures violate due process *per se*, and if not, whether Pearce's due process rights were violated 'as applied,' when he was suspended from power pending an ethics hearing. See, *e.g.*, Doc. No. 11, at

4–5, 8, and 11–12.[26] As the defendants note, the RHA both represents the interests of certain students, and confers certain privileges on its governing members. See Doc. No. 13, at 3–6. Pearce was elected to the position of Connor Community Governor and was therefore tasked with certain responsibilities such as appointing members of the Connor Community Executive Board, representing Connor Community residence before various governing bodies, and representing Connor Community's interests to the Executive Board of RHA. *Id.*, at 5. The Connor Community Governor also sits on the RHA Board of Governors (RHA BOG) whose activities are regulated by the RHA's Bylaws and by RHA's Constitution (in particular, Article V).

The RHA Constitution stipulates that a "Community Governor may be removed through an Ethics Hearing conducted by the Executive Board, pending approval by the Board of Governors." art. V, §3(B) (rev. March 10, 2022). While the RHA Constitution's guidance offers no further details, the RHA Bylaws establish further procedures for ethics hearings.

One of the most fundamental procedural due process rights is the right to face one's accuser. See *Givens*, 346 F. Supp. 202, 209 (W. D. N. C. 1972) ("(6) the right to confront and examine adverse witnesses"); IV I. S. J. G. §A(6) ("The right . . . to hear or face witnesses testifying against the accused student and question any material witnesses"); and U.S. Const. amend. VI ("the accused shall enjoy the right . . . to be confronted with witnesses against him"). To respect this right, the RHA's Ethics Board must permit the accused to be present at the hearing and to confront witnesses (and more generally the case) against them.

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[26] Count IV does not implicate a due process consideration, so Pearce is the only plaintiff to whom we extend a due process analysis, and while we do not yet address the question, we also do not consider the question of Count I as fundamentally a question of due process in the context of *Magaming*, *i.e.*, the principle of requiring due process when personal liberty is at stake before a judicial exercise of power.

They do not. Instead, they require that "once an ethics hearing is called, the accused shall not be present within any RHA spaces, events, or meetings, whether virtually or in-person, through the duration of the Ethics Hearing." VII RHA Bylaws §1(A) (cleaned up). This provision plainly runs afoul of the right to face one's accuser and confront witnesses against them. The violation is not minimal or forgivable, it pervades the text of the statute. First, the statute specifically forbids the accused form being present at their hearing—an "RHA space." *Ibid.* Any application or construction of the statute to prohibit the accused from being present to defend themselves is a violation of the accused's right to due process.

The RHA's governing documents are also, to put it mildly, vague. The RHA Bylaws nowhere define the term "RHA space" except for the examples enumerated in the statute itself (which are self-admittedly non-exclusive). See *id.* The lack of definition, the breadth of the term used, and the provision of applications that are non-exclusive render impossible the average student's understanding of its particularities and obedience to its dictates. Cf. *Connally* v. *General Constr. Co.* 269 U. S. 385, 391 (1926) ("a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential due process of law."). For example, University Housing itself might be considered an 'RHA space' given the RHA's mandate and jurisdiction. And so, one reasonable application of the statute might be not only to prohibit the accused from hearings or meetings, but also their home. Or would an "RHA space" be only those spaces bearing the RHA seal or logo? The lack of definition renders the statute so vague that—notwithstanding its citation to deny the accused the right to confront witnesses against them—its vagueness "as to its application violates the first essential due process of law." *Ibid.*, see also *Kolender* v. *Lawson*, 461 U. S. 352 (1983). This Court will not uphold statutes

that are so broad as to evade definition while threatening violators with disciplinary authority of any form. The opposite conclusion is impermissible: permitting student organizations and agencies to promulgate regulations ripe both for arbitrary application and for public confusion.[27] The RHA Bylaws' references to 'RHA Spaces', are unconstitutionally vague.

2

We next turn to the as-applied challenges, *i.e.*, whether Pearce's rights, privileges, or immunities were violated by the defendants in this case in particular. Having held that VII RHA Bylaws §1(A) is unconstitutional *per se*, we conclude that as a matter of due process, Pearce succeeds in part on their claim under Count II. See Doc. No. 11, at 8. No possible construction or application of those statutes can satisfy our due process standards.

There remains a question of law presented by the parties as to whether or not the suspension was proper even assuming that it did not violate the accused's right to due process. See Doc. No. 11, at 7 ("[i]t is a meaningful question of law if the RHA President has the ability to suspend the powers of a Community Governor by calling an Ethics Hearing."). The defendants pose a substantially identical issue, though packaged in a different framing. While the defendants concede that then-President Doe's first suspension of Pearce was unlawful, see Doc. No. 13, at 12, they contend that the unlawful suspension was "rescinded" and that "the proper process took place thereafter." *Ibid.* They contend that Article VII of the RHA Bylaws do grant the Executive Board

[27] See *Conally*, 269 U. S., at 391 (1926), the "vague" nature of the statute that allows persons "of common intelligence" to "guess at its meaning and differ as to its application" underscores this principle. We do not tolerate the existence of statutes which confound individuals who seek to apply them, nor dangle the Sword of Damocles over the heads of individuals seeking to obey them.

the authority to suspend a Community Governor pending the outcome of an Ethics Hearing. That is wrong.

The authority claimed by the defendants' filings is the right to sanction an RHA Official. See VII RHA Bylaws §4 (rev. April 26, 2021); see also Doc. No. 14, at 17. In our fact-finding analysis, we determined that neither the RHA Executive Board nor Doe invoked their authority to suspend Pearce as a sanction, properly understood. Though the defendants contend that "[t]his is a granted authority per [§4] which allows for the probation of a set duration and suspension from offices of a Community Governor during an Ethics Hearing", *id.*, at 13, the reading is simply mistaken. Consider the text:

> Section 4. Sanctions
> If found in violation of an ethical standard, the Executive Board reserves the right to make any or all of the recommended sanctions below.
> 1) Probation for a set duration to be determined by the Executive Board. [. . .]
> 2) Suspension from offices or committee positions held for a set duration to be determined by the Executive Board. [. . .]

The defendants' interpretation conveniently omits the prefatory clause of Section 4 which states that the sanctions may be made "*if*" the accused is actually "found in violation of an ethical standard." *Ibid.* (emphasis added). But when Doe and later the RHA Executive Board suspended Pearce from office, his hearing had still not occurred. Doe's email revoking his initial suspension and reinstating a new suspension was sent on September 13, 2022, a week before the Ethics Hearing was slated to be held. See Pl.'s Ex. 4 (scheduling the hearing for Tuesday, September 20, 2022, at 6:00 p.m.).

We find additionally curious defendants' assertion of authority under §4 given that Doe's email formally

suspending Pearce on behalf of the RHA Executive Board invoked the authorities of §§1 and 3 of the same Article, not even mentioning §4. And §4 does not confer any such authority. Our holding follows accordingly: §4 did not confer upon any RHA agent or officer the authority to suspend Pearce pending the outcome of the Ethics Hearing. And we have already found that the statutes applied to confer this authority (sections 1 and 3) were unconstitutional violations of Pearce's right to due process. See *supra*, at ____–____.

*

Pearce succeeds on their claims under Count II. The defendants' filings cite to statutes which do not stand for the proposition for which they are cited. The authorities which do confer upon RHA and its agents the authority to suspend Pearce throughout his hearing and forbid his presence are unconstitutional. They are facial violations of the procedural due process right in multiple ways, but foremost among them: the presumption of guilt, the punishment before adjudication, and the deprivation of the accused's rights to confront witnesses against them. They are also unconstitutionally vague. Finally, the administrative assertion that due process requirements were satisfied misses the guiding principle of our analysis entirely: focusing on the bare-bones University due process considerations and not those of Student Law.

C

The case also presents a granular question of the Vice President's authority over newly appointed Community Governors. Defendants claim a sweeping authority to intervene in the governing process when the governors are new to their positions. Plaintiffs' filings invoke a similarly broad authority running in the opposite direction (indeed, an "unlimited authority", see Doc. No. 11, at 4). Neither interpretation works, but the interpretation actually put

into practice (Miller's working interpretation) was overly broad and resulted in an illegal infringement on Pearce's true powers as a Community Governor.

The defendants make special note of the Vice President's authority to "oversee" Community Government logistics. See Doc. No. 13, at 9 (citing RHA Const. art. IV, §3). Miller contends that her September 8th email to Pearce stating that "we cannot send external applications extending the deadline," Pl.'s Ex. 1, was an extension of that process. The reading is natural, and if there were no other statutory authorities at play, persuasive. But there are other statutes involved. So, it is not persuasive.

The RHA Bylaws delegate out the appointment authority to the Community Governors in a similarly expansive fashion. Consider the text of V RHA Bylaws §3(C):

> Section 3. Governing Structure
> [. . .]
> C. The Governor shall appoint members of the Community Government in accordance with the procedures set forth in the Community Constitution. The following positions shall be required on all Community Governments and shall comprise the Community Government Executive Board: [. . .]

At first §3(C) seems to be an irreconcilable contradiction with the Vice President's oversight powers. But that oversight can only extend as far as ensuring that the Community Governor carries out their appointment process in the fashion enumerated under the Community Constitution or pursuant to §3(C). Miller was not acting under this principle. Instead, at trial and in their filings, Miller and the RHA make plain that the Community Government Application process is centralized through the overarching RHA infrastructure. There is a single Google Form the Community Governors are permitted to use, and even the Community Government HeelLife pages, separate from the

RHA's,[28] are still administered by the SLL and the RHA's Executive Officers.[29] The defendants' claim still fails even allowing for the possibility that Miller presumed the narrower oversight capacity we have just described.

The RHA Constitution delegates the authority to set the manner in which the Community Governors shall consider applicants to the Community Constitution themselves. See VII RHA Const., §2. In this case, the Connor Community Government Constitution is delegated the authority to set the manner in which the Connor Community Governor will consider applicants for the Connor Community Executive Board. The Connor Community Constitution has the final say as to the manner in which the applications may be considered subject to the limits of §3(C) of the RHA Bylaws.[30] The Connor Community Governor's primary duty is to "appoint each member of the Executive Board" and to "represent residents of Connor Community in dealings with the Residence Hall Association, Student Government, the faculty, the administration of the University of North Carolina at Chapel Hill, and any organizations deemed necessary by the Executive Board." Connor Comm. Const. art. III, §§B(1) and (3). The Constitution makes no mention of hard deadlines to appoint the Executive Board and because the Governor is delegated the authority to conduct the appointments process, see *ibid.*, they are the only source of

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[28] Compare *Residence Hall Association*, Heel Life (accessed Nov. 25, 2022), https://heellife.unc.edu/organization/residence-hall-association (listing defendant Doe as primary contact) with *Connor Community*, Heel Life (accessed Nov. 25, 2022), https://heellife.unc.edu/organization/connor_community (listing defendant Miller as primary contact and not listing Pearce as an "officer").

[29] The Google Form at issue is why Miller references "external applications" in her September 8 email to Pearce. The problem was that the External Application would not run through the RHA's centralized Community Government application infrastructure. See Pl.'s Ex. 1.

[30] It is here where the RHA may exercise its supremacy to oversee the appointments and ensure they do not run afoul of this clause. Cf. RHA Const. art. I, §1.

authority for setting such deadlines in their community's appointment scheme. Absent a showing that the failure to appoint by a specific deadline would constitute an abdication of the Community Governor's duty—which is not alleged by the defendants—there is no authority to intervene.[31] Consequently, Miller or the RHA's affirmative, proactive decision to set and enforce the uniform deadline was not an exercise in oversight but rather a policymaking decision for the appointments process. It was therefore an illegal interference in community governance under the RHA Bylaws.

The crux of the complaint centers around the communications structure of the RHA. See, *e.g.*, Doc. No. 11, at 5. Miller and the defendants contend that her September 8th email to Pearce did not actually prevent Pearce from communicating or sending the letter to his constituents because she continues to frame her actions as a requested "edit," stating that she is actually "able to send out [the] letter." Pl.'s Ex. 1. Defendants believe the facts indicate that the September 8th email was a suggestion, not a command. See Doc. No. 13, at 9. Their argument would only be a defense—and even then, a very weak one—against the contention that Miller's actions were preventing the communication *per se*. As Pearce noted at trial, however, the question is simply whether or not Miller's email's natural, foreseeable, or reasonable effect would be to prevent the dissemination of the email through official means. See Doc. No. 11, at 4 (noting illegality and harm of the refused promulgation). Moreover, defendants' interpretation simply does not comport with the context of the email. After stating that she is "able to send out" Pearce's Meet the Governor

[31] Again, abdication of the Community Governor's authority is precisely the sort of concern that falls into the 'oversight' category. See RHA Const. art. IV, §3(4) ("To ensure accountability of governors and community governments to their constitutional duties."). Their 'constitutional duties' are those prescribed by the RHA Constitution. Cf. *id.*, at art. VII, §2.

Email, Miller states in the very next sentence, the substance of her "edit": "*we cannot send* out external applications or extend the deadline [. . .]" Pl.'s Ex. 1 (emphasis added). The framing provided in the defendants' filings (that Miller's email was merely a suggestion, see, *e.g.*, Doc. No. 13, at 9) does not live up to the substance of her communication: an obvious refusal on at least two grounds, to promulgate Pearce's communication to their constituents. While we have already noted that Miller's notion of the deadline extension is not grounded in her authority as Vice President, see *supra*, at ____, but the problem here obviously extends further.

Miller's actions extended beyond the reach of her constitutional authority to 'oversee', RHA Const., see art. IV, §3(3) and (4), 'advise', see *id.*, at §3(8) and receive updates about Community Government, see *id.*, at §3(5).[32] The record instead demonstrates that Miller's actions were proactive and set strict regulations on the appointment process (that she was only supposed to 'oversee'), and acted on those regulations. The RHA's governing documents neither give her nor the RHA the authority to require the use of the single application, to centralize the community government appointment process (as we have already demonstrated), or to blockade communications between Community Governors and their constituency. Community Governors, unlike the Vice President, are elected officials. See III RHA Bylaws §1. They have a special interest in their ability to communicate with their constituents that goes beyond their normal right of students to freely communicate. Cf. I. S. J. G. App. D, §III(D) (declaring protections on freedoms of speech and expression). The principle of responsible governance requires the free flow of communication between elected officials and their constituents, and regulations are further objectionable where they are instituted by

[32] We note that, in its current form, the RHA Constitution is misnumbered here, jumping directly from §3(1) to §3(3). See Doc. No. 14, at 4.

unelected officials.[33] The capacity to communicate with one's constituents is implicit in the Community Governor's duty to "represent residents of Connor Community," and necessitated in this case by the requirement that they "appoint each member of the Executive Board." Connor Comm. Const., art. III §§B(5) and (1). Miller's actions were not only illegal and beyond the scope of her powers but unduly interfered with the rights and responsibilities of plaintiff to faithfully represent their constituency. The defendants' contention that permitting the email to be transmitted would be "unfair" to other communities is belied by their concession at oral argument that Community Government is not a competitive endeavour. Pl.'s Ex. 1.

The parties also agree that both SLL and the RHA's Executive Board control the Heel Life page through which all Community Governors must direct their communications to their constituents. No textual authority grants them this power, just as no authority grants the Vice President the power to interfere with Pearce's communication and no authority grants them the power to centralize the Community Government appointment process. This application process must be returned to the authority of the community governors, and the Vice President must stick to their Constitutional duty to advise and oversee, see RHA Const., art. IV, §3. Neither of those responsibilities are implicated in this case.

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[33] Beyond the enumerated speech protections, see I. S. J. G. App. D, §III(D), the principle of any governing structure accountable to an electorate requires free communication, especially to uphold responsible governance practices. See, *e.g.*, *Australia Capital Television Pty. Ltd.* v. *Commonwealth* (1992) 177 C. L. R 106 [6] (Brennan, J.) (Austl.) ("The power cannot be exercised to impair unduly the freedom of informed political discussion which is *essential to the maintenance of a system of representative government*. Whether that freedom is regarded as an incident of the individual right to vote or as inherent in the system of representative and responsible government prescribed by ChI of the Constitution, it limits the legislative powers otherwise conferred on the Parliament." (cleaned up) (emphasis added)).

D

We are last asked to answer the question of whether or not the RHA is subject to North Carolina's Open Meetings Laws. See generally N. C. Gen. Stat. §33C–143. Defendants move to dismiss the claim on the grounds that having "consulted with Student Life & Leadership who has [sic] consulted with University Counsel and have been affirmed [sic] that RHA is not subject to Article 33C of Chapter 143 of the North Carolina General Statutes." Doc. No. 13, at 22. At trial, the defendants contended that they did not have a written rationale for that determination, but upon request, the SLL has informed this Court that University Counsel had sent the RHA an email stating that they need not comply. Importantly, however, there was no attached rationale to that proclamation.

We do not touch State Law, and we need not consider University Counsel's determination as a matter of State Law. That is an area where this Court is not fit to make judgement. But as we noted previously in our analysis of this Court's jurisdiction, the relevant North Carolina Statute has been repurposed for Student Law. See *supra*, at ____ (citing I J. C. S. G. §140(A)). Whether or not the RHA need not follow the open meetings laws as a matter of State law (the question addressed by the Administration and the defendants) is irrelevant, since the Joint Code explicitly applies the same text, see *ibid*., and therefore, this Court is bound to give it meaning.

Our analysis now applies N. C. Gen. Stat. §§33C–143, *et seq*., as a matter of Student Law under both our separate sovereignty from the State Law question and considering the statute as the extension of the Joint Code. See *ibid*. And while we are pressed to answer the more general question of whether or not all student organizations, *e.g.*, RSOs, are subject to the North Carolina Open Meetings Laws, we need not and do not reach that question. The RHA is bound by I J. C. S. G. §140(A) because it has a special status as a

governing body of "Student Government", *id.*, through its designation as an 'Independent Agency.' See Student Const. ch. 1, art. V, §1; and I J. C. S. G. §§121 and 140(A). They exist to "serve specific interests of the entire Student Body", Student Const. ch. 1, art. V, §1, and "handle all matters concerning student life in University-owned and approved housing and residence halls." *Id.*, at §10. The RHA serves in such a governing capacity, serving the public (students) of UNC, and is also a University Sponsored Organization (USO)—serving as an arm of the University in certain relevant aspects. See generally University of North Carolina at Chapel Hill, *Statement Regarding University Sponsored Groups* (December 11, 2020), https://tinyurl.com/2uhe3r84 (hereinafter "the USO Policy"). All of these designations come with increased and particular responsibilities.

The University policy acknowledges that "[o]ur Courts have held that the Chancellor . . . is established by North Carolina law as the administrative and executive head of the University and is responsible to the Board of Governors of the University of North Carolina System". *Id.*, at 1. In this sense the Chancellor acts as an arm of the State. The USO Policy also states that "[i]n accordance with longstanding practice . . . the Chancellor has delegated substantial authority over student affairs and discipline to agencies of Student Government, among others." *Ibid.* In the performance of such duties, these USOs act, "in the performance of one of its essential core functions, as an agent of the University", and therefore, of the State. *Ibid.* The policy then lists all groups designated as a USO or "University Sponsored Group." *Ibid.* The University recognizes "Residence Hall Association and Community Governments" as USOs, "responsible for arranging services and providing social and recreational programs for students living in University housing." *Id.*, at 2.

Put simply, the RHA is delegated its authority to carry out its core functions by the University and, in part, acts as

an agent of the State. But while this conclusion alone makes a persuasive case for why the Open Meetings Laws should apply as a State issue, we note it only to solidify the application of the law under the Joint Code. See I J. C. S. G. §140(A). Specifically, the University makes clear that the RHA serves a public interest for its students.

The RHA's duties constitute it as a body responsible for administering "legislative, policy-making, quasi-judicial, administrative, and advisory functions of North Carolina and its political subdivisions", but in particular, it exists to conduct the "*people*'s business," namely the business of students in University housing. N. C. Gen. Stat. §33C–143–318.9 (1979) (emphasis added). Because the North Carolina statute is only read as an incorporated portion of the Joint Code, the language of the "people" means the fee-paying students over which the Student Constitution has authority. *Ibid.*, see also Student Const. ch. 1, art. IV, §1.[34] Insofar as the University continues to delegate authority to the RHA as a USO, *and* as far as the Student Laws and Constitution consider the RHA an Independent Agency, it is bound by open meetings requirements as a matter of *student law*.

We reject the defendants' claim of exemptions and immunities from the law.[35] Furthermore, our treatment of University Policy in *USG Senate* v. *Grodsky*, 2 S. S. C. ____ (2022), made plain that where University Policy invoked larger legal obligations on a branch of Student Government

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[34] In other words, those 'people' bound by the authority of the Student Constitution. See Student Const. ch. 1, art. IV, §1.

[35] We note also that various other organizations are explicitly bound by these laws. For example, "Undergraduate Student Government organizations shall be subject to the laws pertaining to the Meetings of Public Bodies (Article 33C of Chapter 143 of the North Carolina General Statutes)." V U. C. S. G. §102(A) (2022). And "Student Government organizations shall be subject to the laws pertaining to the Meetings of Public Bodies". I J. C. S. G. §140(A) (2022). And the latter statute would seem to more explicitly invoke authority over the RHA since it applies to an "Agency holding the meeting." *Id.*, at §140(B).

bound by Student Law to respect those particular obligations, it is in this Court's purview to ensure that Student Government, its agencies, and its agents comply. But this is merely a supplementary point since the Joint Code's statutory authority is—to any reasonable reader—the beginning and end of the delegation question.

Having found no exemption from the Open Meetings Laws, we further find that the RHA's failure to publish notice of its meetings in its offices (because of the lack of contest in the fact-finding inquiry) and the failure to post notice of Executive Board Meetings violates the Open Meetings Laws. See N. C. Gen. Stat. §33C–143–318.12(b)(2) ("the public body shall cause written notice of the meeting stating its purpose. (i) to be posted on the principal bulletin board of the public body or . . . at the door of its usual meeting room") and *id*., at §143–318.12(e) (outlining guidelines for notice on the public body's website). Those actions are therefore violations of the RHA's duty to obey I J. C. S. G. §140(A). See also RHA Const. art. VIII, §2(A) (supersession clause).

IV

Having found myriad violations, the last pertinent question concerns what remedy might be provided. The plaintiff requests a mix of injunctive and declaratory relief. The defendant flatly denies our authority to grant *any* relief. See *e.g.*, Doc. No. 13, at 10. But those arguments were already disposed of since they require a completely incorrect understanding of the Court's jurisdiction. The legal analysis in Part III functions as declaratory judgement where appropriate. *Supra*, at ____–____.

A

As to Count I, Pearce requests that this Court enter an injunction against Miller to prevent any "further interference with the Community Government appointment process" and an order directing that the RHA provide "fully

equivalent events to the RHA Community Government officer trainings." Doc. No. 11, at 5. The defendants' response is puzzling, stating that the Court may not engage in its own inquiry into whether it has the authority to enter the proposed injunction. See Doc. No. 13, at 10 (citing Doc. No. 8). The Court has always held the power to enter injunctions to prevent or stop illegal acts. See *Gaskill* v. *Wrenn*, 1 S. S. C. 90 (1974) (entering an injunction against the Residence Hall Association tribunal); *Gaskill* v. *Wrenn*, 1 S. S. C. 100, 101–109 (opinion of Crump, C.J.) (outlining the history of injunctive relief in the Student Supreme Court); *Klein* v. *Moran*, 1 S. S. C. 212 (2009) (enjoining the Board of Elections from enforcing an elections-related judgement); *Nail* v. *Kushner*, 1 S. S. C. 263 (2016) (order granting injunction); and *USG Senate* v. *Grodsky*, 2 S. S. C. ____ (2022) (enjoining Student Government from enforcing V U. C. S. G. §101(8)). The defendants' contrary assertion is absurd even as a general statement, but becomes even more nonsensical when we consider that there is indeed precedent of this Court entering injunctions against officials of the RHA specifically. See, *e.g.*, *Gaskill I*, 1 S. S. C. 90 (1974).[36]

The defendants' argument against injunctive relief also presents what is truly a question of law: that the Vice President does have the authority to interfere in the appointments process. See Doc. No. 13, at 10 ("the RHA Constitution directly gives the Vice President the power to interfere in the transition stage of Community Governments" (cleaned up)). The proposition is not true, and there is nothing precluding this Court from entering judgement to remedy that mistaken understanding of the law. Similarly, the

[36] In *Gaskill I*, Certain officials of the RHA and Granville Residence College refused to comply with the mandate and were found in contempt—both an Honor Offense and an action which led the University to reconsider Granville's status as University Housing. See *Gaskill* v. *Granville Residence College*, 1 S. S. C. 126 (1975) (contempt judgement against the Granville Senate).

defendants' argument that they possess such power actually serves to justify Pearce's concern that the defendants will continue to interfere in the appointment process for Connor Community.

We will grant an injunction, enumerated later in our decree, see *post*, at 41–42, enjoining then-Vice President and current-President Miller from exercising any non-oversight authority over Connor Community Government (not inconsistent with this opinion), requiring that they turn over access to at least some means of communicating with the Connor Community to Pearce, not preventing or punishing Pearce's communication with his community, and permitting Pearce to extend the application deadlines and to use an external application. Moreover, we will further require that the RHA Executive Board make plans to conduct commensurate Community Government training within one week of Pearce's established application deadline.

B

Pearce also requests that this Court annul all proceedings of the Board of Governors during the time of their illegal suspension and seeks a declaratory judgement that their suspension was illegal. See Doc. No. 11, at 8. Our analysis has already demonstrated the illegality of their suspension, and as such, declaratory judgement is granted. See *supra*, at 35. The pertinent question here is whether we should grant Pearce's proposed injunctive relief and annul all business conducted at RHA Board of Governors meetings on or between September 13, 2022 to October 25, 2022, as far as such nullification would not change the personnel or staffing of the RHA. Extraordinary relief of that sort is contingent on the degree of the violation, as our elections cases make clear. Cf. *Crawley* v. *Gordon*, 1 S. S. C. 25 (1972) (noting that in the elections context magnitude of requested relief was insufficient relative to established harm), and *Mask* v. *Gordon*, 1 S. S. C. 72, 75 (1973) ("In such cases as *Banta* and *Levey*[,] relief was ordered because

the boxes on the ballots were so badly misaligned that it . . . had a material and substantial effect on the outcome of the election").

The defendants incorrectly claim that this Court lacks the authority to enter such an order. See, *e.g.*, *Bates* v. *Besse*, 1 S. S. C. 135 (1975) (*per curiam*) ("the by-laws established under RA–57–74 are hereby declared null and void"); *Buttner* v. *Campus Governing Council*, 1 S. S. C. 148 (1976) ("judgement is entered for the Plaintiffs. BRJ–57–155 is hereby declared unconstitutional, null, void, and of no consequence whatsoever." (cleaned up)); *Nelson* v. *Kilbourne*, 1 S. S. C. 165 (1996) ("the Resolution adopted by . . . Student Congress was unconstitutional on its face and is hereby null and void."); and *Reeves* v. *Coleman*, 1 S. S. C. 180 (1999) ("we find the certified results of the . . . election of the Residence Hall Association President void."). But our capacity to enter such relief does not alone entitle Pearce to it, and furthermore, we require the plaintiff meet a high burden when asking us to annul the business of a governing body, especially over such a large time-frame, well after the fact.

No doubt Pearce possesses certain entitlements to a remedy, but the plaintiffs' proposed relief is extreme. At the same time, we weigh the extremity of the relief against the extremity of the violation; the plaintiff's right to due process. We analyze a couple of factors. First, we examine the scope of the relief, *i.e.*, whether the requested relief is overly broad and would punish behavior not inherent to the violation. Second, we examine whether the plaintiff has established a sufficient causal nexus between their proposed relief and its remedial effects.

Were we to annul "[a]ll business" in the timeframe proposed, the governing actions of all community Governors, also duly elected, would be annulled. Doc. No. 11, at 8. The RHA Executive actions infringing on Pearce's rights did not rely on the action of other Community Governors (or, at least, not according to the filings submitted by the

parties). Consequently, a sufficient deprivation of liberty is at stake for other parties, and moreover, the relief would undermine the democratic will of the other Governors.

One reasonable argument might be that the RHA Board of Governors was illegally assembled as far as one of their constituents had been suspended without due process. To nullify the actions of a body illegally assembled is not an unprecedented remedy. See, *e.g.*, *NAACP* v. *Moore*, ____ N.C. ____ (2022) ("While [the people] have assigned the legislature a role in the amendment process, the potentially transformative consequences of amendments that could change basic tenets of our constitutional system of government warrant heightened scrutiny of amendments enacted through a process that required the participation of legislators whose claim to represent the people's will is disputed." (slip op., at 61)). This case does not warrant such relief: it is not nearly so impactful to the design of society on the one hand, and the evidentiary showing is insufficient to warrant sweeping relief on the other.

Pearce has not established a sufficient causal nexus to demonstrate the due process injury is attributable to the RHA Board of Governors, nor have they demonstrated that the relief would change or alter the status quo so as to repair the injury they suffered due to Miller and Doe's actions. For example, Pearce might have entered factual demonstrations that, due to their absence, certain items of business were enacted by a margin that might have been changed by their presence. But no such evidence exists on the record. Even if it did, that demonstration would justify far narrower relief than that proffered by Pearce.[37] Pearce's request that we nullify the business of the Board of Governors is dismissed. Pearce may still make a showing under the narrower standards we have described; they might still

[37] For example, Pearce might have asked us to nullify those votes by which they could have had a deciding ballot, or those votes which has a particularized effect on Connor Community's constituency.

be entitled to some form of equitable relief. We do not foreclose that possibility, and as our Open Meetings analysis will ensure, the factual background for such a claim will be easier to establish.

C

The relief plaintiffs demand as to Count IV is substantially similar to the relief demanded by Pearce as to Count II. See *Gary* v. *RHA Exec. Bd.*, S. S. C. No. 22–005, Doc. No. 3, at ¶13. The claim for relief was already extreme in the first instance, but here it is even less justified since we have found that the RHA has made an adequate showing of good-faith. We only explicitly address the request for an independent monitor. See *id.*, at ¶14. Again, because we found that the RHA, until now, had been acting on the good-faith assumption that they were not subject to the Open Meetings Laws (or it would seem, the Joint Code and Student Constitution), we do not yet take the drastic step of installing a monitor to ensure their compliance. But we retain jurisdiction over this matter to do so if they fail to comply with Open Meetings Laws and to punish contempt, if necessary, by referral of this matter to the Honor System.

V

Pearce's circumstance presents novel and complex questions of student law. Important among our findings: the RHA is not a unique organization immune from the various laws binding it, nor may it wantonly flout the most basic due process protections available to Students under our law, and both its registration as a USO and the explicit dictates of the Joint Code mandate that it adhere to the text of I J. C. S. G. §140(A), *i.e.*, N. C. Gen. Stat. §§33C–143, *et seq*.

Though our opinion winds through these complexities at length, our holding is, to some extent, quite minimal in its concrete effect on the RHA itself: they must provide some fundamental due process protections before they enforce

their disciplinary policies, they must post physical notice of their meetings, and the RHA's authority to interfere in the Community Government appointment process is far more limited than their current understanding and practice reflects. The RHA's violations of Student Law have required that this Court grant declaratory and injunctive relief to remedy the wrongs. The RHA shall comply with the Decree set forth below, and conduct itself in a manner not inconsistent with this opinion. This Court shall retain jurisdiction over this case so as to ensure that RHA does not violate this Court's order and to initiate contempt proceedings if required by violation of our decree.

We finally note that we decline to yield to the administration's pressure to rule for the RHA. The administration's justification does not go beyond concerns about the way things 'have always been' (though as our opinion demonstrates at length, such notions are unfounded). And the reason is simple. All of the documents sanctioning student self-governance by the University demand the result we arrive at on any rational reading. If the Administration desires to sever their contract with the Students, enshrined in the Student Constitution, that is certainly a decision in their power. But we decline to disguise it as one made by the Students.

It is so ordered.

DECREE

The Court having exercised original jurisdiction over this controversy between a fee-paying student and an Independent Agency of Student Government; the issues raised having been tried before the Court; the Court having received briefing and heard oral argument; and the Court having issued its opinion on all issues announced, *ante*, at 1–47.

It is hereby Ordered, Adjudged, Declared, and Decreed as follows:

1. The current Vice President of the Residence Hall Association and now-President Miller are enjoined from exercising any authority over the community government appointment process other than in an advisory or oversight capacity—not inconsistent with the Court's opinion; and

2. The RHA Executive Board shall grant Pearce all necessary access to communicate freely with the Connor Community Government and shall turn over any and all available means of communication to Pearce so that they may freely communicate the business of Connor Community Government with their constituency; and

3. The RHA Executive Board and all of its officers shall grant Pearce the authority to extend the deadline of the Community Government Application, and shall permit Pearce to utilize the external application attached to their original draft of the "Meet the Governor" email. See Pl.'s Ex. 2; and

4. The RHA Executive Board and all pertinent officials shall make plans to provide commensurate community government training to Pearce's appointees within one week of Pearce's extended application deadline, pursuant to part (3) of this decree; and

5. The RHA Executive Board is enjoined from suspending from office any individual accused, under the present guidelines, of a violation of an Ethical Standard; and

6. All officials and members presently granted such authority are permanently enjoined from enforcing Article VII of the RHA Bylaws; and

7. The RHA shall amend their hearings process in a manner so as to respect students' due process rights in a manner not-inconsistent with this opinion within one month of the issuance of this judgement and decree; and

8. Plaintiffs' request to annul all business of the RHA Board of Governors during the time of their suspension is denied; and

9. The RHA shall adhere to the dictates of I J. C. S. G. §140 in a manner not inconsistent with this opinion; and

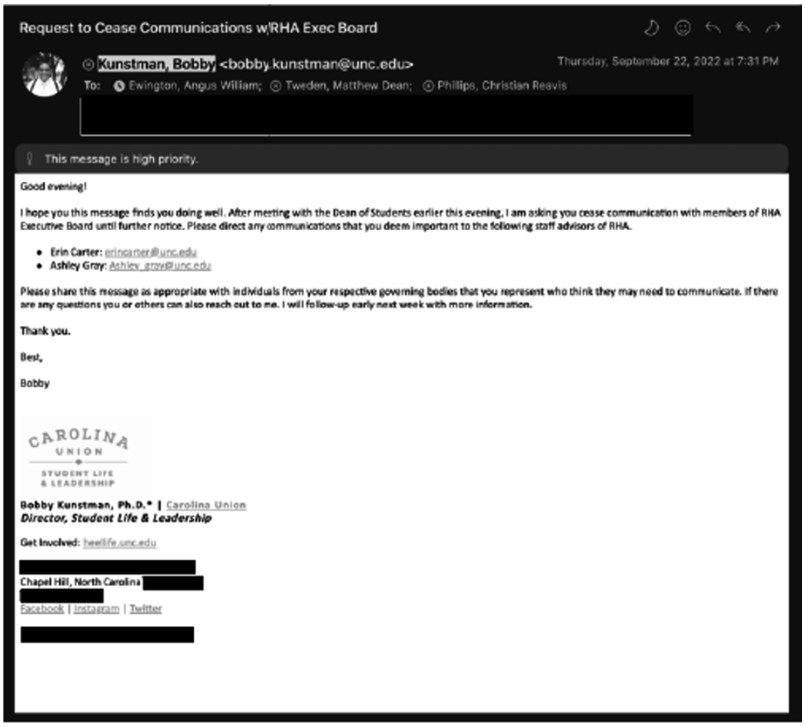
10. Plaintiffs' request to install an independent monitor is denied.

APPENDIX

A

This appendix contains the communications between Dr. Kunstman and this Court ordering the Court and two other branches of Student Government to cease communication at all with the defendants and were not to name John Doe, whose name will be redacted.

1. September 20, 2022 Email sent to JUSTICE EWINGTON, Joint Governance Council Chair Tweden, and Undergraduate Senate Speaker Phillips.



Request to Cease Communications w/RHA Exec Board

Kunstman, Bobby <bobby.kunstman@unc.edu> Thursday, September 22, 2022 at 7:31 PM

To: Ewington, Angus William; Tweden, Matthew Dean; Phillips, Christian Reavis

[redacted]

This message is high priority.

Good evening!

I hope you this message finds you doing well. After meeting with the Dean of Students earlier this evening, I am asking you cease communication with members of RHA Executive Board until further notice. Please direct any communications that you deem important to the following staff advisors of RHA.

- Erin Carter: erincarter@unc.edu
- Ashley Gray: Ashley_gray@unc.edu

Please share this message as appropriate with individuals from your respective governing bodies that you represent who think they may need to communicate. If there are any questions you or others can also reach out to me. I will follow-up early next week with more information.

Thank you.

Best,

Bobby

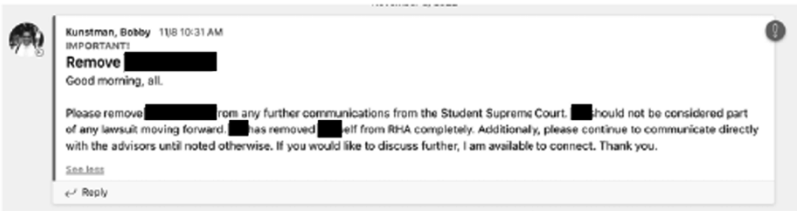
CAROLINA UNION
STUDENT LIFE & LEADERSHIP

Bobby Kunstman, Ph.D.* | Carolina Union
Director, Student Life & Leadership

Get Involved: heellife.unc.edu

[redacted]
Chapel Hill, North Carolina [redacted]
[redacted]
Facebook | Instagram | Twitter
[redacted]

2. Dr. Kunstman's Microsoft Teams Post leading to the removal of John Doe as a named defendant in this case.



3. Dr. Kunstman's Microsoft Teams Post reiterating that the Court should not communicate with Doe. (November 21, 2022 at 8:33 p.m.).

SUPREME COURT OF THE STUDENT BODY

No. 22–007

DEAN PEARCE, ET AL. *v.* RESIDENCE HALL ASSOCIATION EXECUTIVE BOARD

ORIGINAL

[December 19, 2022]

JUSTICE SHUE, concurring.

I join the Court's opinion. Nonetheless, I feel the need to further examine several issues. First, I reaffirm the inclusion of Federal Law and other legal precedents such as *Magaming* v. *The Queen* [2013] H. C. A. 40 (Austl.) (slip op.) (Gageler, J., dissenting), in the Court's analysis as entirely discretionary. As I wrote in *UGS Senate* v. *Grodsky*, 2 S. S. C. ____ (2022), these must be "purely contextual and nonessential to a complete and binding analysis by this Court. Our subject-matter jurisdiction . . . does not extend to Federal Law." *Id.* (slip op., at 2) (SHUE, J., concurring).

I moreover wholeheartedly agree with the Court's decision to enjoin the enforcement of Article VII of the Residence Hall Association's (RHA) Bylaws on due process grounds. However, a certain provision within this article warrants particular scrutiny. Under Section 1(A), "the President and RHA Advisor" are empowered to "call a special meeting of the Executive Board to hold an Ethics Hearing," meaning that the subject of the Hearing "shall not be present within any RHA spaces, events, or meetings" until such time as it is resolved, potentially as many as two weeks later (emphasis added). We have already addressed

the legality of pre-emptive suspension, but not that of the RHA Advisor's role in such proceedings. Although it is not a question explicitly before the Court in this case, it is sufficiently concerning to justify discussion, especially in light of our decree that the RHA "amend their hearings process in a manner so as to respect students' due process rights." *Ante*, at ____.

As a matter of necessity, disciplinary procedures that respect due process rights cannot grant near-absolute authority to any one actor; on the contrary, they must contain various checks in addition to opportunities for the accused to appeal to some higher authority in the event of unfair or inequitable outcomes. As it stands, the language of Article VII fails flatly on these counts. By empowering the RHA Advisor to call an Ethics Hearing—which, until our ruling, immediately suspended any RHA actor for up to two weeks—and by vesting authority to hear appeals solely in the RHA Advisor, the RHA's Bylaws grant incredible authority to a single individual. Indeed, by the admission of Defendants during oral arguments, the RHA Advisor is empowered to call hearings on the same purported offence at two-week intervals ad infinitum, or even hear appeals for hearings which return a not guilty verdict. They are even empowered to suspend the RHA President, a unique ability reserved for no other official.

One might contend that the RHA Advisor's status as an employee of Carolina Housing makes them less likely to abuse their power than would be the case with a student, thus rendering these provisions reasonable from a due process perspective. This, however, entirely misses the point. The likelihood of whether an official might choose to violate the rights of others is irrelevant: the law cannot permit them to do so in the first place. But perhaps more critically, the fact that the RHA Advisor, as a University employee, is wholly outside the supervision of the RHA fundamentally undermines all notions of student self-governance and due process. Should they begin to misuse their authority over

ethics proceedings, there is functionally no action the accused could take in response, and for that matter nothing any other RHA actor could do to stop them. Historically, this is exceptionally rare for judicial or judicial-adjacent proceedings at the University: due process and student self-regulation have long gone hand in hand. As the Court recognizes, the *Instrument* clearly guarantees the rights to "a fair hearing" and "the right to appeal decisions or petition for a rehearing." *Ante*, at ____. Is the former not undermined if the RHA, as not only a student organization but an organ of student government, outsources its disciplinary powers to an unaccountable actor installed through entirely undemocratic means? They are no peer of the accused, but the beneficiary of a structural power imbalance which insulates them against any repercussions. Is the latter not likewise usurped by the extraordinary authority presently vested in them by Article VII?

This, if anything, brings to the forefront a question implicit throughout this case. It is one inherent not only in the lack of due process in the RHA's disciplinary processes, but in Student Life and Leadership's repeated unjustified intervention into this court's proceedings. Cf. *ante*, at ____–____. What role can University administrators and employees take in the internal affairs of Independent Agencies, University Sponsored Organizations, and Student Government more generally? This is an exceedingly consequential matter of student law, and not one which the Court can or should seek to answer today in part or in full. But it may be inevitable that we should need to examine these relationships in full in some future case. If this Court finds itself in such a position, it must be uncompromising in exercising its judicial independence. Neither the politics of Student Government nor the whims of University Administration can influence this body's objective interpretation of student law and delegated authority.

It is with these understandings that I join the Court's opinion.