

To: NMT Student Government Association

From: Jose Martinez-Claros, GSA Representative to the SGA Senate

Date: Nov 3, 2019

Subject: Irregularities in procedure related to denial of late club packets by some SGA officers

Concerning business items brought up during the last SGA Senate meeting last Tuesday October 22nd, 2019, particularly around the subject of at least five different student clubs being denied official club status, and all actions emanating from this, it is my duty as an active GSA Representative to the SGA Senate in addition to a member of this community, to carefully review the documents provided during said meeting. As a concerned student and a public officer within the student body of this institution, my first priority is to listen to what the students have to say, and then evaluate what is within my power to do in order to assist them. Further, it is also within my duty to be wary about due process whenever challenging decisions must be made in this campus by either student government or New Mexico Tech's administration.

The way in which several business items were conducted during last week's SGA meeting raises many questions, and generates even more doubts of whether due process was followed, whether everything done was within the limits of legality, among other concerns. For the sake of brevity, I have created a review for the discussion of three main documents shared with the Senate during the last meeting, whose titles read:

- 1) Rebuttal
- 2) Executive Ruling
- 3) Supreme Court Interpretation: Executive Ruling in Regards to Vice Presidential Power over Club Chartering Date: 22 October 2019

Useful definitions

The 5th Amendment states that no one may be deprived of life, liberty or property without due process of law. There are two types of due process: procedural and substantive. Procedural due process is based on the concept of fundamental fairness. (Source: US Constitution)

The principles contained in the 5th Amendment are vital to a person accused of a crime. Although the amendment contains several provisions, four elements protect a person accused of a crime: the right against compelled self-incrimination, the right to a grand jury, the right of protection against double jeopardy and the right to due process. (Source: US Constitution)

No person accused of a crime may be compelled to be a witness against himself or herself. At the trial level, the right against compelled self-incrimination means that defendants may not be forced to testify. (Source: US Department of Justice)

The 5th Amendment states that no one may be deprived of life, liberty or property without due process of law. There are two types of due process: procedural and substantive. Procedural due process is based on the concept of fundamental fairness. It means that a person must be notified of the charges and proceedings against him or her and have an adequate opportunity to respond. This is done through an indictment (or an “information” in a misdemeanor), which is a formal document detailing the charges. Additionally, throughout the trial, the judge must protect the defendant’s due-process rights by ensuring the defendant understands every phase of the proceedings. (Source: US Department of Justice)

FERPA: The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. (Source: US Department of Education)

To Publish: The act of distributing a document to the SGA via paper copy or electronic means, including but not limited to email and uploading said document to the SGA website. (Source SGA 2019-20202 Senator Handbook)

Mens re-a: Oxford defines *mens re-a* as the intention or knowledge of wrongdoing that constitutes part of a crime, as opposed to the action or conduct of the accused. The Model Penal Code classifies *mens re-a* into four different categories:

“acting purposely - the defendant had an underlying conscious object to act

acting knowingly - the defendant is practically certain that the conduct will cause a particular result

acting recklessly - The defendant consciously disregarded a substantial and unjustified risk

acting negligently - The defendant was not aware of the risk, but should have been aware of the risk”

(Source: Legal Information Institute, Cornell Law School)

Ad hominem fallacy: When people think of “arguments,” often their first thought is of shouting matches riddled with personal attacks. Ironically, personal attacks run contrary to rational arguments. In logic and rhetoric, a personal attack is called an *ad hominem*. *Ad hominem* is Latin for “against the man.” Instead of advancing good sound reasoning, an *ad hominem* replaces logical argumentation with attack-language unrelated to the truth of the matter.

More specifically, the *ad hominem* is a fallacy of relevance where someone rejects or criticizes another person’s view on the basis of personal characteristics, background, physical appearance, or other features irrelevant to the argument at issue.

Fallacy of appeal to authority (*argumentum ad verecundiam*): This fallacy happens when we misuse an authority. This misuse of authority can occur in a number of ways. We can cite only authorities—steering conveniently away from other testable and concrete evidence as if expert opinion is always correct. Or we can cite irrelevant authorities, poor authorities, or false authorities.

Ex post facto law. A law that makes illegal an act that was legal when committed, increases the penalties for an infraction after it has been committed, or changes the rules of evidence to make conviction easier. The Constitution prohibits the making of ex post facto law.

1) In the document titled “Rebuttal”, the SGA Vice-President does not indicate in his rebuttal when is the deadline to have club packets turned in, specifically anywhere in this document.

2) In the same document he writes: “While I did not receive a response from Michelle I managed to meet in my office briefly with her and Chief Justice Sheerin to discuss any loophole or possibility for allowing clubs with late paperwork to receive status on Tuesday, September 24th.”

Based on this statement, I wish to raise some few points of discussion:

- During the October 22 SGA meeting, there was evidence to indicate that both Justice Sheerin and Vice-President Sobers met to discuss official business. There is no indication of whether President Sherman participated in all of this discussion.

- During the October 22 SGA meeting, President Sherman mentioned she overheard a meeting of several justices with Vice President Sobers while the Supreme Court was preparing its official interpretation. Such a document was not sent in advance to the Senate for revision. Justice Sheerin’s appeal to her health condition that day is an *ad misericordiam* fallacy, which even though it is true, it does not answer the question.

3) Message exchange with former SGA Vice-President Matt Dougherty. Although the opinion of an expert is appreciated, presenting a message thread involving an individual no longer affiliated to the school in any quality, but as an alumni, is a *fallacy of appeal of authority*. Whatever Matt Dougherty believes should be done does not necessarily mean that it should be done. Further, a former public citizen in the reference frame of the SGA is considered now a private citizen within the same reference frame. A public citizen should not guide his moral, ethical or procedural compass based on the opinions of a former public citizen, regardless of their past experience.

4) Email exchange: neither the SGA Vice-President nor any of the witnesses he called to speak during the meeting produced any written permission that indicates that emails should be exchanged in a public meeting, such as the SGA Senate. More than the official contents of such emails, the fact that official email handles were not redacted from the presented documents raises **FERPA** violation questions. Such a question should have been raised immediately by a Senator, including myself, during the Senate meeting. However, due to the lack of due process, including the absence of some relevant documents in addition to the absence of enough evidence can constitute sufficient reason to not raise an immediate question. In other words, while the Vice-President didn’t act incorrectly by sharing evidence within the Senate exclusively via email, it acted incorrectly by not indicating the exact nature of the procedure he would follow during the SGA Senate meeting, the bringing of witnesses, and the display of content-sensitive evidence without any guarantee of the protection of privacy of all private citizens.

5) When I asked Vice-President Sobers if “to publish” can be equated to “determine or establish” he said yes. The SGA Constitution defines “to publish” as is indicated above. If my counter-argument was not brought on my behalf during the SGA meeting, it was also a consequence of my original doubt of whether the whole procedure related to the same topic was within due process or not. I am very surprised that neither Vice-President Sobers nor any of the justices referred to this section of the SGA Constitution, at least to clarify. If proven that a section of the Constitution is omitted while the incumbent agenda item is actually about constitutionality, this constitutes *mens re-a*, as defined above.

6) Based on the Fifth Amendment of the United States constitution, everyone should be entitled to due process. Further, no one can be forced to be a witness against themselves. Inviting one representative of each of the affected clubs to give a public statement severely lacks due process, as this should have been first reviewed by a Club Advisory Committee, which of course had not a proper time window to even consider these cases before they were brought up in public at the SGA Senate meeting. Further,

the Vice-President produced no document detailing the intent to proceed as a trial, with the right to his own witnesses, but also did not produce any document detailing that all these club members understood the terms in which they were being called to give an oral statement. This also includes members of other clubs that were called as character witnesses of the Vice-President. Finally, if such an agenda item was meant to be handled as a trial, the SGA President also would have the right to defend herself and prepare her arguments in addition to any possible witnesses of her own. It is at least questionable that such a thread of actions between Appeal-Rebuttal-Supreme Court Interpretation should be ever handled as a court of law, and there is no indication in the SGA Constitution that it should.

7) After Justice Sheerin read the Supreme Court interpretation, both Justice Aliser and Justice Strobel proceeded to interrogate President Sherman, also without the right to due process. Justice Aliser asked her why she produced her Executive Ruling document at 2 am, and started conjecturing on what were her true intentions on doing so, which constitutes an example of one of several *ad hominem* attacks observed during that meeting.

8) Since there are several questions raised on the matter of the Rebuttal document produced by Vice-President Sobers, and since this document precedes both the Executive Ruling produced by President Sherman and the Supreme Court Interpretation, it is impossible to make an accurate assessment of the latter before this cases is thoroughly reviewed by a competent authority.

This document I present to you is meant to be a thorough and exhaustive discussion of procedural irregularities recorded during the last Senate meeting. If the Senate is to vote on such procedures, it should be well-informed and have access to all the information with enough time to review it. Further, based on the amount of irregularities listed, I would recommend that a special neutral party committee be named either by the Dean of Students or the SGA Senate itself to investigate these matters. Finally, I wish to remind everyone that even though the laws and bylaws of the US Constitution are not exhaustively explicit in their entirety within the SGA Constitution, it is implicit that the latter is bound to the former, as the latter is also bound to FERPA regulations and the New Mexico Tech Student Handbook.

Sincerely,

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GSA Vice-Executive Officer
Graduate Representative to the SGA Senate

Cc: Dr Peter Phaiah, Dean of Students