

SPRING TERM, 2010

Opinion of the Court

NOTICE: The following document represents the official Opinion of the Court, and constitutes a binding decision on all parties concerned within the jurisdiction of the Court. This decision, and all concurring or dissenting opinions, will remain on the official record for seven (7) years in accordance with Article IV 3.5.A of the Student Body Constitution.

**BAYLOR UNIVERSITY STUDENT COURT**

**BAUMGARDNER v. ELECTORAL COMMISSION (2)**

Argued and Decided April 25, 2010

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Justices Joining the Majority (8) – Justices Recusing (1)

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ON PLEA FOR REINSTATEMENT

As dictated by §1.4.1 of the Electoral Code (hereinafter “EC”), the Electoral Commission (hereinafter “Commission”) “must enforce” the EC as it is written. This language clearly, without ambiguity or room for interpretation (i.e. “can” or “may” enforce), outlines the function and purpose of the Commission and provides an incontrovertible framework by which the Commission *must* operate. In this case—which comes as the conclusion to a long series of interactions between the Court and Candidate Paul Baumgardner—Candidate Baumgardner appealed to the Court for the suspension of sanctions imposed by the Commission which terminated his campaign and disqualified him from the election. The violations in question were of §5.3.3 of the EC, which states that “failure to comply with the ruling of the Electoral Commission will result in an additional violation hearing and with the possibility of additional sanctions.”

The ruling of the Commission, upheld unanimously by the Court in a previous hearing (*see Baumgardner v. Electoral Commission (1)*), was that Baumgardner was guilty of two particularly serious violations. First, it was charged and upheld that Baumgardner had violated §3.2.4 of the EC, which states that “no candidate shall make a statement in public which might injure the character or reputation of another candidate”. In this case, Baumgardner made a public statement during the candidate’s debate which amounted to a clear suggestion that his opponents were operating intentionally misleading campaigns. Second, the Commission charged and found Baumgardner in violation of §3.2.7 of the EC which prohibits candidates or campaign workers from “simultaneously (actively or passively) campaign[ing] for another candidate.” In this instance, senior senate candidate Katie Jo Baumgardner was acting as Paul Baumgardner’s campaign manager and Facebook® group administrator. §3.2.7.1 and §3.2.7.2 outline in clear language that active campaigning consists of “verbally (spoken or text) communicating support for a

particular candidate or their platform” and that passive campaigning consists of “non-verbally expressing support for a particular candidate or their platform.” Under both provisions, it is abundantly clear that Katie Jo Baumgardner, who was simultaneously campaigning for senior senate, could not conceivably act as campaign manager or Facebook® administrator without either actively or passively, or both, campaigning on behalf of Candidate Paul Baumgardner. As a result, the Baumgardner campaign was issued sanctions which excluded all but Baumgardner’s outdoor signs and word of mouth from use in his campaign. This meant, as was clearly stated in the decision of the Commission and upheld by the Court, that no electronic campaigning whatsoever, with the exception of a video limited specifically to YouTube®, could be utilized.

Following the issuance of these sanctions, the Baumgardner campaign filed for injunctive relief from the Court as granted by §5.4.3 of the EC. The court denied any temporary injunction but granted appeal on both of the two charges. As previously stated, on appeal the Court upheld the decision of the Commission in these two instances unanimously. The result of this ruling meant that from the initial decision of the Commission, the Baumgardner campaign had twenty-four (24) hours (*see* §5.4.3) to come into compliance with the sanctions issued by the Commission.

The violations in question, then, came as the result of several campaign related elements remaining on Facebook® well after the twenty-four (24) hour compliance period. One element, a statement which read “Running for IVP. Vote for me—the future looks bright”, was posted on Candidate Baumgardner’s personal Facebook® page immediately below his profile picture (upper left-hand corner) in a highly visible area. The second element was the video expressly forbidden from Facebook® use by the Commission’s decision which was posted on Candidate Baumgardner’s personal Facebook® “wall”. At no point did the Baumgardner campaign attempt to deny the existence of these apparent violations of the sanctions under which they were to be operating, thus establishing their disregard of §5.4.3 and violation of §5.3.3 of the EC. As a result, Baumgardner was held in violation and was disqualified from the election.

Counsel to Candidate Baumgardner argued that the violations were innocuous and unintentional and did not constitute grounds for disqualification. The Commission, in rebuttal, pointed out that it was not the nature of the individual violations in question, but rather a demonstrated trend of disregard for the EC, evidenced by three (3) previously upheld violations, which made disqualification a valid recourse. In addition, it must be noted that the final violations were not of the EC directly, but rather constituted failure to comply with previously imposed sanctions. In this context, the magnitude of each particular violation is significantly greater because they demonstrated abject disregard for the authority of the Commission to regulate the election. As stated in §5.3.2, the Commission “shall give due consideration to...previously upheld violations committed by the candidate and/or their campaign team” when determining proper sanctions.

Counsel to Candidate Baumgardner spent a great deal of time defending its assertion that the results of the election, which Baumgardner won by a significant margin, constituted sufficient grounds to overturn the ruling of the Commission based on a fragment of §5.3.2 of the EC which reads that “the

Electoral Commission... shall select a remedy or sanction appropriate to the violation.” Counsel, in its argument, iterated that because the sanction prevented Baumgardner from taking the seat he had won, *de facto*, in the election, that it was too severe and thus inappropriate. In an effort to solidify this point, counsel went on to say that if Baumgardner had lost the election, and therefore stood to lose nothing further by disqualification, then the sanctions imposed by the Commission would have been appropriate. The Court found this line of reasoning highly suspect, at best, and deemed it invalid on two grounds:

- 1) The Commission had no foreknowledge of the election results at the point in time at which it deemed disqualification appropriate. It, therefore, issued a judgment which had nothing to do with the outcome of the election.
- 2) The argument that a disqualification is determined to be either just or unjust only after the results of an election have been published is counter to any legal standard. If a candidate has committed sufficient violations of the EC to warrant disqualification, he or she should be disqualified.

Furthermore, applying the latter portion of counsel’s own argument (which is to say constructing a hypothetical scenario in which Baumgardner either won by a lesser margin or placed second or third) left the Court with no choice but to judge it irrelevant. Allowing the logic to play out, his own counsel would be forced to recognize the legitimacy of disqualification if only Baumgardner had not won the election. Bearing in mind that repeated disregard for the EC undoubtedly gave Candidate Baumgardner an unfair advantage in the election, it is easy to see that the election results have no bearing on the legitimacy of the ruling.

Additionally, the Court took into consideration the Baumgardner campaign’s argument that it was under such time constraints that it did not notice the remaining violations. This argument was defeated based on evidence presented by the Commission which clearly showed the Baumgardner campaign to be actively campaigning via Facebook® with hardly more than an hour left to come into compliance. The Court found that if the campaign had utilized the entirety of its twenty-four (24) hour compliance period to come into compliance, rather than to continue disallowed campaigning, it would have had ample time to notice any lingering violations. Furthermore, the Court understands the twenty-four (24) hour compliance period to exist solely for the purpose of ceasing and desisting in disallowed activities in a timely manner. The fact that Candidate Baumgardner blatantly utilized this period to extend his online campaign without sanction, until the final hour of clemency, demonstrated clear disregard on his part and offers no substantive justification to overturn the Commission.

Due to the nature of the violations in question, which were neither independent nor incidental but, rather, represented manifest disregard for sanctions already in effect as the result of negative campaigning and coalition campaigning, it is the opinion of this Court that the Electoral Commission demonstrated sufficient culpability on behalf of the Baumgardner campaign for violations of §5.3.3, and that the violations warrant disqualification. Therefore, the Court upholds the decision of the Commission that Candidate Baumgardner is disqualified from the election and shall not be eligible to be confirmed as Internal Vice President.