

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

## GALVAN *v.* ELECTORAL COMMISSION

Argued and Decided April 17, 2010

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Justices Joining the Majority (6) – Justices Dissenting (3)

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Pursuant to § 1.1.5 (3) of the Baylor University Electoral Code (hereinafter referred to as “EC”), the Electoral Commission (hereinafter referred to as “Commission”) has original jurisdiction in penalizing those who violate the EC. In this case, Candidate Galvan was charged with eighteen (18) independent violations of the EC. As the result of procedural infractions, sixteen (16) of those violations were dismissed, leaving those brought by Electoral Commissioner William Dunker and Mr. Zach Wynn to be decided. These violations consisted of failure to comply with the Building Code for Hankamer/Cashion Academic Building(s) and failure to comply with Baylor University Student Activities policy with respect to bulletin board posting. Prior to the hearing, Candidate Galvan agreed that both charges could be heard simultaneously, rather than in individually.

In each case, the Commission upheld the charges, and imposed sanctions under § 5.3.1 of the EC requiring the removal of all indoor campaign materials, including, but not limited to, flyers. Additionally, because of the compound nature of these infractions, which demonstrated significant, albeit not malicious, EC violations, the Commission imposed further punitive sanctions which disallowed Candidate Galvan from using campaign t-shirts or buttons for the remainder of the campaign period. The analysis of the Commission was that these materials could be used both indoors and out, and could therefore be reasonably excluded entirely from use along with exclusively indoor campaign materials. Immediately after the Commission issued its decision, Candidate Galvan contacted the Court seeking injunctive relief from sanctions until such time as a full appeal could be heard. Taking into account possible procedural misconduct by the Commission, and the severe repercussions that these sanctions could spell for her campaign, the Court granted temporary injunctive relief to Candidate Galvan. Furthermore, taking into account the time sensitive nature of the case, the Court moved to hear Candidate Galvan’s appeal quickly.

In her appeal, Candidate Galvan stated that she was not questioning the procedure employed by the Commission nor that she was, in fact, in violation of the EC. Rather that she challenged the appropriateness of the sanctions imposed as being either too severe or improper given the circumstances. The question before the Court, then, was whether or not the Commission exercised due diligence and acted within the parameters of the EC. To answer this question, the Court was forced to acknowledge a significant degree of ambiguity in the EC with respect to issuance of penalties. Furthermore, the Court understood that it would have to interpret the logic applied by the Commission for the purpose of deciding proper sanctions. The Court had to establish a system by which the Commission should have decided proper recourse, and then determine whether such a system was fairly applied to Candidate Galvan. To do this, three questions must be entertained, presuming guilt on behalf of the accused:

1. Does the nature of the violation(s) represent such an egregious disregard for the EC and its subordinate provisions (i.e. building codes, etc.), whether intentional or not, as to call into question the fairness and legitimacy of the entire election, the honor and reputation of Student Government, or the honor and reputation of Baylor University?
2. In committing upheld violations, did the guilty party do so in negligence or with prior knowledge, and was the intent of the guilty party innocuous or malicious?
3. Did the Electoral Commission take the preceding questions into account, along with consideration for prior Electoral Code violations, and did the Electoral Commission determine a penalty which both falls within its jurisdiction to impose and is fitting to the situation with respect to fairness and to the potential consequences it may represent, both to the guilty party and the election at large?

In regard to the first question, the Court found that the actions of Candidate Galvan did represent significant disregard for the EC, which stood to call into question the legitimacy of the election. Furthermore, the Court recognizes that Candidate Galvan did not act with prior knowledge or malicious intent. However, a candidate is responsible for reviewing and understanding the EC in its entirety, and Candidate Galvan did not take proper action to do so. Additionally, the Court believes that the Commission imposed a penalty which does not do terminal or unfair damage to Candidate Galvan's campaign, but does both penalize and discourage future EC violations. Without prescribed penalties for particular offenses, the Commission did its best to eliminate subjectivity with close attention to the EC and the consequences of its ruling; and under § 5.3.2 of the EC, the Commission has the right to impose sanctions above and beyond the magnitude of an individual violation when multiple violations are upheld.

It is therefore the opinion of the Court that the Electoral Commission acted in good faith to execute its duties, that it applied sufficient reason in determining proper sanctions, and that the sanctions it imposed were not too severe in the context of Candidate Galvan's multiple violations. Furthermore, it is the opinion of the Court that the conclusion, including all punitive sanctions, of the Electoral Commission be upheld and that, effective immediately, injunctive relief be revoked.

## Dissenting Opinion

**BAYLOR UNIVERSITY STUDENT COURT****GALVAN *v.* ELECTORAL COMMISSION**

Argued and Decided April 17, 2010

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 Justices Joining the Majority (6) – Justices Dissenting (3)
 

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In determining the appropriate sanctions to impose on Candidate Galvan for her incompliance with § 2.1.1 of the Electoral Code, the Electoral Commission determined that prohibiting the Candidate's indoor campaigning, including the use of buttons and t-shirts, was a suitable and just decision. However, after giving great deference to the EC's discretion as outlined in § 5.3.2 and hearing the EC's logic for applying such sanctions, it is clear and apparent that the sanctions are extraordinarily punitive and surpass the logical basis for which the EC claims to use to hand down its sanctions.

In written and oral testimony presented during her original trial before the EC, and in her appeal to this Court, Candidate Galvan acknowledged her negligence in following both Student Activities policy and specific building codes. With culpability determined, the EC was left only to determine a suitable remedy to apply to the candidate. Citing a prior violation of §3.2.5.1, failure to report campaign workers in a timely manner, the EC imposed a stringent sanction on Candidate Galvan to punish her for these new charges. The sanction effectively limited her campaign "to electronic and generally 'outdoor' means, excluding buttons and T-shirts." The EC argued that they wanted to strip the candidate of the ability to campaign indoors because of her wanton disregard for the Electoral Code as demonstrated by her repeated violations.

In addition to removing the offending flyers, the candidate was required to remove all flyers from all buildings and additionally prohibited from using buttons and T-shirts. The EC determined that because buttons and T-shirts had the ability to move from outdoors to indoors, both served as a means for indoor campaigning and therefore should be off-limits to Candidate Galvan's campaign.

At no point does the Electoral Code define indoor or outdoor campaigning. It is then necessary to interpret what constitutes indoor or outdoor campaigning. Indoor campaigning is all campaigning which occurs primarily within a building-academic, administrative, residential, or otherwise. Outdoor campaigning should then be defined as all campaigning that occurs outside of a building. Applying these colloquial definitions, it is then clear that a flyer affixed to a bulletin board in the Bill Daniel Student Union Building falls under the definition of indoor campaigning whereas a picketed sign staked in the ground in Fountain Mall is representative of outdoor campaigning.

The ambiguity lies in dual-natured, mobile items such as t-shirts and buttons. When worn, these items have the potential of being both indoor and

outdoor campaigning. For example, were a dining services worker to wear a button in support of a candidate during the course of his work, the action could be seen as indoor campaigning. Alternatively, were a student to wear a button endorsing a candidate during the festivities on Diadeloso, the act could be seen as outdoor campaigning.

The mobile nature of these campaign materials makes categorizing them as purely indoor or purely outdoor campaigning impossible and, their complete restriction unreasonable. Were Candidate Galvan able to use t-shirts and buttons outdoors, the decision of the EC would have been an appropriate and just sanction. However, because their intentions were to only restrict the candidate from indoor campaigning, disallowing t-shirts and buttons altogether is excessive and unjust.