

SPRING TERM, 2015

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**

PORTER *v.* PARK, ELECTORAL COMMISSIONER ET AL.

Argued April 20<sup>th</sup>, 2015

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Justices joining in the majority (6) – Justices recused (1)

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ON PETITION FOR WRIT OF CERTIORARI FROM THE  
ELECTORAL COMMISSION

JUSTICE DAVIS delivered the Opinion of the Court which  
JUSTICE CHANS, JUSTICE CONASTER, JUSTICE  
COURTWRIGHT, JUSTICE SPECIALE, and JUSTICE  
STOVER join. JUSTICE PELLEGRIN took no part in the  
consideration or decision of the case.

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**Background**

On April 9<sup>th</sup>, 2015, Senate Enactment 62-12, titled, “Constitutional Amendment for Addition of Appellate Procedure,” (hereinafter, SE 62-12) was passed by a two-thirds majority vote in the Baylor University Student Senate (hereinafter, the Senate). Pursuant to Article VII, SEC. 1 of the Baylor University Student Body Constitution (hereinafter, the Constitution), the constitutional amendments from SE 62-12 were placed on the ballot in the runoff election on Thursday, April 16, 2015. During that day, the Electoral Commissioner, Ms. Sarah Park (hereinafter, Commissioner Park) received a text message from a student informing her that the amendments on the ballot were incomplete. That evening, after the voting period closed and the Electoral Commission (hereinafter, the EC) counted the ballots, the

EC released the results of the runoff election. However, because of the text message received earlier that day, the EC did not release the election results pertaining to the constitutional amendments specified in SE 62-12.

On the evening of Thursday, April 16, 2015, Senator James Porter noticed that the results pertaining to the amendments had not been posted. On Senator Porter's behalf, Danny Huizinga sent an email to Commissioner Park in which he inquired about the release of the election results. Commissioner Park instructed Mr. Huizinga to review Section 4.3.4 in the Electoral Code, which states:

"The Electoral Commission must hear and decide on all violations and complete all unfinished business determined to be of importance to the execution of a fair and expeditious election before the election results are announced. The Electoral Commission may announce partial election returns, so long as the announcement does not compromise a potential run-off, recount, or a new election. This limitation does not apply to races that warrant a run-off election."

Commissioner Park informed Mr. Huizinga that the EC "determined that there [was] unfinished business regarding the amendments," and asked him to wait for "an update regarding this matter."

On Friday evening, April 17th, 2015, Senator James Porter emailed a petition for review to the Baylor University Student Court (hereinafter, the Court), which was granted by the Court for further proceedings by a majority vote. On Monday, April 20th, 2015, at about 6:30 p.m., an hour and a half before the start of these proceedings, the EC released the election results pertaining to the amendments. However, the Court was not made aware that the results had been posted until after the hearing began and proceeded to hear arguments as to the reasoning behind the late release of the results.

## **Jurisdiction**

The Court finds jurisdiction in this matter under Article IV, Section 2, Paragraph 2, Clause B of the Baylor University Student Body Constitution.

## Discussion

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When deciding this Case the Court considered four questions.

- I. *Under certain circumstances, does the EC have the ability to release partial election results?*
  - II. *Did the EC have unfinished business?*
  - III. *Was the unfinished business “of importance”?*
  - IV. *Was this election executed fairly and expeditiously?*
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### I

In this situation, the EC was pleased with the results of the presidential runoff election, but was made aware of a problem within the amendment election. For that reason, the EC announced the results of the presidential runoff, but withheld the results of the amendments. Section 4.3.4 of the Electoral Code allows the EC to release “partial election returns.” The Court recognizes that the EC is granted the discretion to release partial election results in situations where such action is necessary and appropriate.

### II

Commissioner Park cited “unfinished business” as the reason why the EC did not release the amendment results immediately. The question of unfinished business resulted from a text message from a student informing the EC that the amendments on the ballot were incomplete. When asked for more details about the text message, Assistant Electoral Commissioner, Erin Foster (hereinafter, Assistant Commissioner Foster) informed the Court that the text came from a “random” student, who has no affiliation with student government and who provided no additional background information. According to Assistant Commissioner Foster, the student informed the EC that the amendments were incomplete without explaining how he or she came to this knowledge or in

what way the amendments were incomplete. The EC determined that this information was sufficient to delay releasing the results.

### III

Section 4.3.4 states that the EC must “complete all unfinished business determined to be of importance...” The phrase “of importance” implies that not all information obtained by the EC should warrant the same consideration. In other words, not all unfinished business should disrupt the regular election process. In this situation, Commissioner Park determined that the information obtained from the “random” text message was to be considered of importance. However, according to Assistant Commissioner Foster, the information in this text was incomplete and came from a student who, she claims, is not involved in student government. Furthermore, the information obtained from this text was inaccurate as the amendments placed on the ballot were, in fact, complete.

The sender of this text seems to have been referring to the fact that amendments from Senate Enactment 62-10 (hereinafter, SE 62-10) had not been placed on the ballot to be voted by the Student Body. As the Senate passed SE 62-10, these constitutional amendments should have been put on the ballot to be voted on by the Student Body as per Article VII of the Constitution. However, that these amendments were not voted on at the same time as SE 62-12 does not nullify or compromise the results of SE 62-12. The Constitution does not require that all constitutional amendments be ratified at one time. In fact, the Constitution does not even require that amendments be voted on at the same time as the other spring elections, namely, Diadeloso and the day prior, though these are the default dates. Article VII allows for an amendment to be voted on in a period of 30 days or less of its passage if such a special election is proposed. The dates on which the amendments in SE 62-10 were or were not voted on have no bearing on the legitimacy of SE 62-12’s placement on the ballot.

The Court finds it evident that the information obtained from this text message, which was found to be incorrect, should not have been considered of importance and therefore should not have affected the release of the election results pertaining to the amendments.

#### IV

Furthermore, Section 4.3.4 of the Electoral Code, which was cited by Commissioner Park as to why the results were not released, states that the EC must “complete all unfinished business determined to be of importance to the execution of a *fair and expeditious election* before the election results are announced.” The Court finds that the EC did not execute the election expeditiously. The EC did not release the full results of the election until Monday evening. According to Assistant Commissioner Foster, the EC waited to hear back from Mr. Burchett before deciding on what to do with the results. Once the EC received a response from Mr. Burchett on Monday evening at 5:09 p.m., the EC was comfortable releasing the results. The Court finds that, in consulting only one legitimate source of information and waiting three days to hear from that source before taking action, the EC did not act expeditiously in executing this election.

For four days, the EC withheld the votes and disenfranchised the voices of over 2500 students who voted in the election because of incomplete and inaccurate information. The EC’s attention to a simple text message from a student, who provided insufficient information and who claimed to have no connection with student government and its processes, inappropriately derailed the process that is explicitly outlined in Article VII of the Constitution. Therefore, the Court determines that the EC erred in its decision to not release the results in a timelier manner due to a single uncorroborated text message from an unnamed student.

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## Conclusion

The Court finds that the EC made its decision based on a text message rather than relying on the Constitution and the Electoral Code in order to make a more appropriate decision. The EC maintains that their duty is to interpret the Electoral Code, not to interpret, add to, or detract from the Constitution. The Court agrees that the EC has no authority to alter the Constitution in any way. However, as officials of student government, all members of the EC should be knowledgeable about the Constitution and act accordingly. The Court finds that, in this situation, the EC relied on an inappropriate source of information in the form of a text message rather than making its decision based on the aforementioned governing documents.

The Electoral Commission's decision to finally release the results is asseverated by the Court, but the Electoral Commission's decision to delay this release based upon the aforementioned reasons has been determined by the Court to be an irresponsible use of the Electoral Commission's time and contrary to the procedure found within the Constitution and Electoral Code.

The decision of the Electoral Commission is affirmed in part and reversed in part.

*It is so ordered.*

JUSTICE PELLEGRIN took no part in the consideration or decision of this case.