SPRING TERM, 2017

Opinion of the Court

BAYLOR UNIVERSITY STUDENT COURT

DICKERSON *v.* ELECTORAL COMMISSION

Argued and Decided April 4, 2017

Justices joining the majority (4) – Justices joining the dissent (2)

DEPUTY CHIEF JUSTICE RUTHERFORD delivered the opinion in which CHIEF JUSTICE WESTON, JUSTICE VECSERI and JUSTICE WIXSON joined.

BACKGROUND

On April 4, 2017, the Baylor University Student Court (henceforth "the Court") received a Petition from Student Body President candidate, Amye Dickerson (henceforth "the Petitioner"), for Writ of Certiorari appealing the Electoral Commission's (henceforth "the Commission") decision to remove her from the ballot for failing to turn in a completed expense report.

During Ms. Dickerson's campaign, material was reused from previous elections. On April 2, 2017, Ms. Dickerson's counsel, Elliott Riches, contacted the Electoral Commissioner, Justin Plescha, regarding how to comply with §2.3.6 and §2.3.7 of the Electoral Code (henceforth "the Code"). Ms. Dickerson submitted her campaign's expense report at 10:30 a.m. on April 3, 2017, with the deadline being 5:00 p.m. later that day. §2.3.6 of the Code states "Each candidate is required to turn in a certified itemized final expense report, which will be provided to all candidates by the Electoral Commission

along with all necessary filing forms, by 5 p.m. two (2) school days before the election. All expenditures must be shown in the expense account. The itemized expense account shall include attached receipts from those items purchased and a list of those items donated and previously used. All candidates must turn in the certified expense form even if no money was spent. Failure to turn in the itemized expense report shall result in removal from the ballot."

JURISDICTION

The Court's jurisdiction on this matter is twofold. First, the Commission is the sole governing authority for campaigns. For the Spring 2017 elections, the Commission was charged with hearing disputes between candidates over the Code (§6.2). As a result of a hearing, the Commission sanctioned the Petitioner. By sanctioning the Petitioner, the Commission made a decision that constitutes the basis for an appeal. This represents a decision as it is an action regarding an election and thus, falls under the case of Oury, et al. v. Electoral Commission (2014), where the Court held that an action by the Commission in regards to an election qualifies as a decision within the meaning of Art. IV, Sect. 5, Par. 3 (A)(iii)(e) of the Baylor University Student Body Constitution (henceforth "the Constitution"). The second part of the Court's jurisdiction comes from the explicit language of the code. §6.4.1 of the Code states, "The Student Court shall have appellate jurisdiction in all decisions made by the Electoral Commission." This clause gives jurisdiction to the Court to review this matter.

ISSUES PRESENTED

The questions considered by the Court are twofold:

A. *Did the Electoral Commission err in their decision to remove Ms. Dickerson from the ballot contrary to §2.3.6?*

B. Did the Electoral Commission err in their decision to remove Ms. Dickerson from the ballot contrary to the provisions in §2.3.7?

DISCUSSION

A

The Court finds that the Electoral Commission did not err in their decision to remove the Petitioner from the ballot. Electoral Code §2.3.6 states:

> "Each candidate is required to turn in a certified itemized final expense report, which will be provided to all candidates by the Electoral Commission along with all necessary filing forms, by 5 p.m. two (2) school days before the election. All expenditures must be shown in the expense account. The itemized expense account shall include attached receipts from those items purchased and a list of those items donated and previously used. All candidates must turn in the certified expense form even if no money was spent. Failure to turn in the itemized expense report shall result in removal from the ballot."

The Court finds that the Petitioner's expense report was incomplete, as it did not contain all of the necessary parts to be considered a complete expense report. According to §2.3.6, an itemized expense report must include "attached receipts from those items purchased and a list of those items donated and previously used." Because the code does not qualify "those items" in either requirement with the word "current," the Court must assume that "those items purchased" refers to any and all items used in the campaign, both current and past. Since the Petitioner only submitted receipts for items purchased and used in that current year and not items purchased in the previous year, her expense report was incomplete. Therefore, she did not turn in an expense report, as was

necessary, to not be removed from the ballot, according to the wording of the Code §2.3.6. The argument was made that §2.3.6 does not require a complete expense report, but just that one is submitted; however, the majority finds that it does indeed require a complete report. At the beginning of §2.3.6, it states "each candidate is required to turn in a certified itemized final expense report." The majority interprets 'final expense report' to mean exactly that, a report that is in its final state, both correctly and completely filled out according to ALL of the guidelines laid out in the Code. When something is in its final state, the intention is for the report to be completed. Why would the Code require a final expense report if it did not have to be complete? With this being said, the majority also finds that it is the candidate's responsibility to have the documentation necessary to prove prior usage of campaign material. It is unreasonable to require the Commission to hold onto every document submitted for at least a year. The Commission holds onto documents for a month after the election cycle; it is up to the candidate to retrieve any documents they so desire.

B

The Court finds that the Electoral Commission did not err in their decision to remove the Petitioner from the ballot. Electoral Code §2.3.7 states:

> "Campaign items that are either 1) donated or 2) used from the candidate's previous campaign(s) may be depreciated at a discount rate of 20% from the original price. Therefore, 80% of the original price must be accounted for on the submitted expense report. To depreciate the value of a previous campaign item or material, the candidate must be able to prove the item's previous usage and original cost (through the previous year's itemized expense report, original receipts, photographic documentation, etc.). Family members are not permitted to act as donors and discounted donated

items may only account for 30% of total expenses. In addition, candidates must provide the signature(s) of those donating materials to their campaigns in the space designated on the expense report. The Electoral Commission may exercise its discretion in discounting campaign items."

The Court finds that the Petitioner failed to provide every piece of documentation required in §2.3.7. The Petitioner failed to submit photographic documentation showing prior usage of campaign material.

* * * *

CONCLUSION

Therefore, the Court finds that the Commission did not err in interpreting §2.3.6 and §2.3.7 of the Code and took proper action in removing the Petitioner from the ballot. Subsequently, the Court finds no reason to overrule the Commission on the grounds that Dickerson's campaign did not meet its duty required by the Code.

The decision of the Electoral Commission is hereby affirmed.
It is so ordered.

SPRING TERM, 2017

Dissent of the Court

BAYLOR UNIVERSITY STUDENT COURT

DICKERSON *v.* ELECTORAL COMMISSION

Argued and Decided April 4, 2017

Justices joining the majority (4) – Justices joining the dissent (2)

JUSTICE CALVERT filed a dissenting opinion in which JUSTICE ABEL joined.

§2.3.6 of the Code states:

"Each candidate is required to turn in a certified itemized final expense report, which will be provided to all candidates by the Electoral Commission along with all necessary filing forms, by 5 p.m. two (2) school days before the election. All expenditures must be shown in the expense account. The itemized expense account shall include attached receipts from those items purchased and a list of those items donated and previously used. All candidates must turn in the certified expense form even if no money was spent. Failure to turn in the itemized expense report shall result in removal from the ballot."

§2.3.7 of the Code states:

"Campaign items that are either 1) donated or 2) used from the candidate's previous campaign(s) may be depreciated at a discount rate of 20% from the original price. Therefore, 80% of the original price must be accounted for on the submitted expense report. To depreciate the value of a previous campaign item or material, the candidate must be able to prove the item's previous usage and original cost (through the previous year's itemized expense report, original receipts, photographic documentation, etc.). Family members are not permitted to act as donors and discounted donated items may only account for 30% of total expenses. In addition, candidates must provide the signature(s) of those donating materials to their campaigns in the space designated on the expense report. The Electoral Commission may exercise its discretion in discounting campaign items."

A

§2.3.6 of the Code requires that candidates must submit a "certified itemized final expense report… by 5 p.m. two (2) school days before the election." In order to properly understand the expectation placed on candidates, the meanings of the words describing the expense report that must be submitted must be clear. By "certified" the Code means that the candidate must formally attest to the truth of the information contained within the document. By "itemized" the Code means that the report must identify the individual items that the campaign made use of. By "final" the Code establishes an end point in time, all activity preceding which must be accounted for in the report.

It is our view that the Court has interpreted the words "certified itemized final expense report" in a way that is inconsistent with their literal and originally intended meanings. The Court correctly states in its answer to question A that we cannot read words into the Code that are not there. The text of §2.3.6 uses neither

the word "complete" nor "correct" in its text. This leads us to interpret the final sentence of §2.3.6 more narrowly than the court has. §2.3.6 of the Code states that those candidates who do not turn in a certified itemized final expense report by the appointed time *shall* be removed from the ballot. A simple cause and effect relationship is established between a candidate's automatic removal from the ballot and their failure to turn in a signed expense report that identifies the individual items used by the campaign during the time marked out as the campaign period. This mechanical relationship results in a unique penalty intended to be applied only in very specific circumstances. To demonstrate what we mean, the portion of the Code concerned with the Commission's authority, responsibilities and procedures in penalizing candidates must be inspected.

§6.3.2 outlines a duty owed by the Commission to candidates who are suspected to be in violation of the Code. In particular, the Code states that, "The Electoral Commission shall give due consideration to the severity of the violation, the intent of the violator, and any previously upheld violations committed by the candidate and/or their campaign team." This duty is important for the facilitation of compassionate and just outcomes that are in accordance with Baylor University's broader goal and mission. However, it is admittedly burdensome. As a way to alleviate some of the pressure resulting from this burden, the Code outlines specific exceptions to this duty. One such exception is found in §2.3.6, when the Code establishes a mechanism that results in automatic removal from the ballot once a candidate has acted in such a grossly negligent fashion that they altogether fail to turn in a certified itemized final expense report, as defined above. Given the narrow definitions of the terms utilized above, we find that the Petitioner does not satisfy the criteria to be subject to automatic removal from the ballot. This is not to say that removal from the ballot is off the table for the Commission. In fact, §6.3.5 of the Code

specifically establishes that "Removal from the ballot (short of disqualification) shall only be considered appropriate for infractions that represent a failure to correctly file all necessary paperwork for the elections as outlined in this Code." What we find this to mean is that the Commission *may* decide to remove a candidate from the ballot when they have incorrectly, or, as the Court has chosen to say, incompletely filed necessary paperwork, but only once the Commission has fulfilled their duty to the candidates as established in §6.3.2. Because the Commission incorrectly expanded the narrow meaning of §2.3.6 to include a candidate that was actually entitled to a higher duty, we find that the Commission did err in their decision to remove Petitioner from the ballot subject to the authority granted them under §2.3.6.

B

In the Court's answer to question A, it stated that "It is unreasonable to require the Commission to hold onto every document submitted for at least a year. The Commission holds onto documents for a month after the election cycle; it is up to the candidate to retrieve any documents they so desire." We find this reasoning problematic both in itself and in the implications that it holds for question B. The designation of the practice of maintaining records as "unreasonable" is an arbitrary judgement. One potential counterargument to this reasoning is that the Commission is responsible for administering elections, and as a result has full knowledge that many candidates, if elected in one year, will continue their involvement in Student Government and pursue election in the future. Under this line of argument, it is no more unreasonable to expect the Commission to maintain records, or at least notify candidates that their documents will be disposed of, than it is to demand that a student have certain knowledge of what they will choose to do a full year in the future. We are not advocating that a duty external to the Code ought

to be imposed on the Commission, merely that such an arbitrary judgement is unfounded and unnecessary.

In addition to this critique, and more to the point of this statement's relevance to question B, we are concerned that this particular stance, other portions of the Court's opinion on this case, and certain past rulings of the Court are creating a trend that forces an unfairly large burden onto candidates and relieves the Commission of responsibility that it rightly ought to bear. In the particular case at hand, a student working on the Petitioner's campaign reached out via text message to the Commissioner of the Electoral Commission (hereafter the Commissioner) for a clarification of expectations regarding §2.3.7. In those text messages, the Commissioner communicated a statement that he, the Petitioner, and the Commission all identified as constituting an interpretation of the Code. This identification is clear given the actions of the parties, as we will describe later. Petitioner argues that the interpretation of §2.3.7 that was communicated over the text exchange did not require her to provide documentation of prior usage, since the piece of evidence she had intended to use, previous expense reports, could not be recovered. After receiving the expense report that had been completed according to the communicated interpretation of §2.3.7, the Commission voted that the Commissioner's statement had been in error and overturned the previous interpretation. Then, acting under what we have explained that we view as faulty reasoning, the Commission found that the submitted document was incorrect with respect to §2.3.7, could not be considered a certified itemized final expense report as a result, and therefore triggered the automatic ballot removal mechanism found in §2.3.6. This sequence of events indicates that the Petitioner was removed through application of an ex post facto interpretation of the Code. This is manifestly unfair, and as such we cannot support an opinion that upholds the ruling of the Commission.

Some might suggest that there is reason to believe that the Petitioner did not truly believe that the text exchange constituted a statement of interpretation by the Commission, and as such is disingenuously using this line of argument to deflect attention and escape danger. It is possible that is the case. It is also possible that what the Petitioner says *is* sincere. As no factual support for either inference exists, we must remove this consideration from our reasoning. Instead, we must look at the facts and determine if the procedure that was followed by the Commission is consistent with its duty.

Upon such examination, we find that the Commissioner issued a statement, a candidate submitted a document that raised a question regarding the Commissioner's statement, the Commission voted to overturn the stated interpretation of the Commissioner, and the document was deemed insufficient as a result. If the Commission acts in a way that obscures the proper interpretation of the Code, we cannot expect candidates to divine the proper interpretation for themselves, and so we cannot hold the candidates to as high a standard as we otherwise would have. It can be, and has been, argued that the content of the text exchange is too ambiguous to justify identifying the Commission's actions as applying an ex post facto interpretation of the Code. However, we contend that it is precisely *because* of this ambiguity that the Petitioner cannot be held solely responsible for the resulting mess. It is incumbent on the sole spokesman of the Commission to eliminate ambiguity regarding interpretation of the Code, not propagate it. The Court is correct to say that we must be quick to hold candidates accountable for knowing the Code, but the Petitioner in this case cannot be construed as guilty of negligence or apathy on the front of knowledge. In fact, it was the Petitioner's active pursuit of clarity with the intent to comply with the Code that brought about this case. As a result, we cannot assign sole blame to the Petitioner.

It is for these reasons that we find that the Commission did err in the actions that they took to apply §2.3.7 to the Petitioner, even if their eventual interpretation of the wording was more or less accurate.

CONCLUSION

In light of these things, it is my view that the Court ought to have remanded this case back to the Commission under direction to allow the Petitioner to submit an expense report in accordance with now clarified expectations. It was the improper expansion of §2.3.6 that allowed for the Petitioner to be automatically removed from the ballot without the Commission fulfilling the duty that they owed her under §6.3.2. By remanding the case, the Court would see to it that the Commission retained its position as enforcer of the Code, but that Petitioner was also given the due consideration that the Code guaranteed her.

After all, the Commission does not enforce expense reporting regulations for its own sake. Rather, the Commission enforces technical rules and regulations in pursuit of the broader objective of facilitating fair elections in which no one candidate has an unjust advantage over another. It seems fair to say that §6.3.2 was intended to preserve this perspective in the Commission's penal proceedings. If the Commission performs its duty, clarifying miscommunications of expectations and duly considering the facts surrounding suspected infractions, and finds, through its application of the Code, that Petitioner has not acted in a way detrimental to fair elections, then she will be rightly restored to the ballot. If the Commission finds against the petitioner, it will have done it the appropriate way, consistent with the Code, Constitution and the broader principles of Baylor University as a whole. In this, we respectfully dissent with the Court's judgement.

Therefore, we respectfully dissent.