

FALL TERM, 2016

Opinion of the Court

NOTICE: The following document represents the official Opinion of the Baylor University Student 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 Court precedent.

BAYLOR UNIVERSITY STUDENT COURT

HILLEBRAND v. ELECTORAL COMMISSION

Argued and Decided September 29, 2016

Justices joining the majority (3) – Justices joining the dissent (2)

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

BACKGROUND

On September 29, 2016, the Court received a petition from freshman candidate Shelby Hillebrand for writ of certiorari appealing the Electoral Commission's (henceforth "the Commission") decision to extend the deadline for Campaign Expense Report submissions. Electoral Code §2.3.6 sets the deadline for Campaign Expense Report submissions to "5:00 p.m., two school days before the election" (in this case 5:00 p.m. on Friday, September 16th) and "failure to turn in the itemized Expense Report shall result in removal from the ballot". The Commission is required, according to Electoral Code §1.5.8, to "publish a calendar with all campaign related dates and deadlines by the first Friday of each semester" and failed to do so. After 58 percent of freshman candidates failed to meet this deadline, the Electoral Commission realized its failure to publish the Campaign Expense Report submission deadline on the calendar and thereafter extended that deadline to 5:00 p.m. on the day before freshman elections, Monday, September 19th. This

enabled nine candidates who failed to meet the initial deadline to be placed back on the ballot. The Petitioner submitted her Expense Report by the first deadline, 5:00 p.m. on Friday, September 16th and was placed on the ballot. She subsequently placed 15th in an election with only 13 available seats.

On Thursday, September 22nd, Hillebrand emailed a preliminary petition for review to the Baylor University Student Court (henceforth “the Court”), which was unanimously accepted by the Court for proceedings.

ISSUES PRESENTED

The questions considered by the Court are twofold:

- A. *Was the Electoral Commission wrong in allowing candidates who failed to turn in their Expense Reports by the deadline outlined in the Electoral Code to appear on the ballot with the candidates who complied with the deadline?*

- B. *Did the Electoral Commission disregard Article 1.4.2 of the Electoral Code in order to bypass the Student Senate and change Article 2.3.6 of the Electoral Code?*

DISCUSSION

A

The Student Court found that the Commission was wrong in allowing candidates who failed to turn in their Expense Reports by the deadline outlined in the Electoral Code (henceforth “the Code”) to appear on the ballot with the candidates who complied with the deadline. This finding was based on the Preamble to the Code. The Preamble states that:

It is the responsibility of individual candidates to know and follow the Code. Ignorance of the Code will not be considered as an excuse in the event of a hearing.

The freshman candidates erred by failing to meet their primary responsibility of reading the Code, a duty to which they are bound by the above provision. Candidates who failed to meet the deadline defined in the Code are subject to removal from the ballot according to §1.5.3, which states that, “[the duties of the Electoral Commission include] penalizing those who violate this Electoral Code.” After the deadline had passed, the Commission realized its failure to release a calendar including the Expense Report submission date (§1.5.8). Rather than remove candidates who failed to meet the Code’s mandated deadline, the Commission held itself responsible for the ignorance of the aforementioned candidates. Thereafter, the Commission extended the deadline from the Code’s mandated deadline (§2.3.6) to 5:00 p.m. on Monday, September 19, with the intent to preserve fairness and provide the best outcome for the most candidates.

This Court finds that the Code clearly establishes a binding responsibility upon each candidate to read the Code, and therefore, candidates who failed to meet the deadlines mandated by the Code are responsible for their own shortcomings. Though the Commission has a responsibility to publish a calendar with all dates and deadlines (§1.5.8), that obligation does not nullify a candidate’s responsibility to read and fulfill the Code. §1.5.3 of the Code provides a direct consequence for candidates who fail to read and fulfill deadlines outlined in the Code: penalization by the Commission, which Court precedent has understood to mean removal from the ballot (see *Gober v Electoral Commission, 2016*).

B

Rather than fulfill its binding duty according to §1.5.3, the Commission compensated for its mistake by changing the deadline for Expense Report submissions, thereby changing the substance of the Code. Independent changes to the substance of the Code are prohibited by §1.4.2 which states that, “The Commission may not add to, take away from, or change in any way, the mandates of this Code without the official approval of Student Senate.”

The Commission’s decision to change the Expense Report submission deadline without Senate permission not only violated the Code, but also provided an unfair advantage to candidates who failed to meet their responsibility of reading the Code. By extending the deadline, the Commission implicitly undermined each candidate’s responsibility to read and follow the Code, a responsibility candidates are clearly bound to and cannot be excused from according to the Preamble. While this Court recognizes the Commission’s well-intentioned attempt to correct its mistake and promote fairness, it does not believe that good intentions grant it permission to either violate the Code or nullify each candidate’s responsibility as defined in the Preamble.

* * * *

CONCLUSION

Therefore, candidates who failed to meet the deadline according to §2.3.6 should have been removed from the original ballot. The Commission erred firstly by failing to publish the calendar with all deadlines, including the deadline for the submission of Expense Reports, and secondly by failing to obtain Senate approval before changing the Code. Candidates who failed to meet the first deadline, as defined in §2.3.6, failed to meet their burden to read and follow the Code. This Court finds the

candidate's primary obligation to read and follow the Code as independent from the Commission's responsibility to publish deadlines. Therefore, the Commission's failure to publish deadlines does not excuse a candidate's late submission of election materials. Candidates must be held independently responsible for their failure to read and follow the Code.

This Court finds appropriate redress in preserving the positions of candidates who properly followed the Code's procedure, while removing candidates who failed to meet the original deadline. All remaining vacancies shall be filled by a secondary election for freshman senators which shall be open to all members of the freshman class. Therefore, candidates shall be held responsible for fulfilling their duty to read and follow the Code according to the Preamble and §1.4.2, and the Commission shall be held responsible for fulfilling their duty to administer §1.5.3, §1.5.8, and §1.4.2 of the Code.

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

FALL TERM, 2016

Dissent of the Court

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BAYLOR UNIVERSITY STUDENT COURT

HILLEBRAND *v.* ELECTORAL COMMISSION

Argued and Decided September 29, 2016

Justices joining the majority (3) – Justices joining the dissent (2)

JUSTICE SHEETS filed a dissenting opinion in which
JUSTICE RUTHERFORD joined.

It is important first to note that we do not disagree with the majority opinion in its holding with the Petitioner. We agree with the assertion that the Preamble to the Electoral Code places an explicit and powerful burden upon candidates to know the Code in its entirety. It is our position that the burden of the Electoral Commission to appropriately monitor and regulate Student Elections neither erases nor lessens the burden held by the candidates.

We further agree that it is the duty of the Electoral Commission to interpret and enforce the mandates of the Electoral Code; however, a failure to perform that duty does not outweigh the burden of the candidates to know and follow the Code for themselves.

Where we disagree with the majority is in the relief granted to remedy the injury to the Petitioner. The purpose of “relief” is to return the Petitioner and the circumstances of their case to the position that they would be in had the error never occurred, or as close a position thereto as possible. In this case, the error made by the

Electoral Commission was to allow a number of candidates to appear on the ballot after failing to comply with a specific deadline mandated by the Electoral Code.

Therefore, it would seem that the appropriate relief would be the removal of the offending candidates from the electoral ballot. This is easily done by removing those offending candidates who were elected from the positions they now hold. Taking the purpose of “relief” as that stated above, the logical aim of the Court should be to return circumstances to as close a position as possible to the position they would be in had the error (the inclusion of the offending candidates on the ballot) never occurred. The way in which this can be done is to hold all other circumstances of the election constant and to remove the offending candidates from consideration. The end result would be the filling of the Senate seats now occupied by the offending candidates with candidates who met all guidelines and mandates of the Electoral Code and appeared on the election ballot.

Finally, the remaining seats should be filled in the same manner as though the number of original candidates was less than the number of available seats (appointment by the Freshman class officers pursuant to Article II, Section 11, Paragraph 1, Clause A).

Therefore, we respectfully dissent.