

ASUO Constitution Court

SAM DOTTERS-KATZ V. BEN ECKSTEIN &
KATIE TAYLOR (ASUO EXECUTIVE)

[Decided April 27, 2012]

OPINION By Chief Justice Schultz

Joined by Justice Glass, Justice Benevento and Justice Nicholson. Justice Washington did not take part in these proceedings.

I

On April 3, 2012, Sam Dotters-Katz [hereinafter “Petitioner”] filed a petition for review with the Constitution Court. The Petitioner filed this petition, which he characterized as a delayed elections grievance, against Ben Eckstein and Katie Taylor, the incumbent ASUO Executive [hereinafter “Respondents”]. The Petitioner alleges that the Respondents violated Rule 6.4 of the 2011 ASUO Election Rules. Petitioner cites two Oregon Daily Emerald articles which corroborate his claims. According to these articles, Charles Denson wrote two checks addressed to Sophie Luthin, the campaign manager for the Respondent’s 2011 campaign. Ms. Luthin then wrote checks for the equivalent amounts addressed to the Respondents. The Petitioner argues that Mr. Denson did not write a check to the Respondents directly in an effort to conceal his identity (and the fact that he made a donation) from the campaign financial disclosure form. Ultimately, the Petitioner argues that these transactions constitute false information on official forms promulgated by the ASUO Elections Board, and more importantly, that these actions were undertaken with the intent of affecting the outcome of the election *and* to mislead or obstruct the duties of the Elections Board.

On April 10, 2012, the Respondents submitted a brief in response to the Petitioner’s allegations. The Respondents submitted a lengthy argument which is best

summarized in two parts. First, the Respondents argue that the evidence provided by the Petitioner only demonstrates that Mr. Denson and Ms. Luthin (both supporters of the Respondent's 2011 campaign) committed the egregious campaign violations. The Respondents suggest that they should not be held accountable for the conduct Mr. Denson and Ms. Luthin. Second, the Respondents argue that the Court does not have the authority to remove either member of the ASUO Executive because Article 14 of the ASUO Constitution provides two exclusive means for removal of the ASUO President: impeachment and recall.

On April 22, 2012, both parties were invited to participate in a public hearing before the Constitution Court. The Hearing took place in Room 241 of the University of Oregon School of Law. Chief Justice Schultz and Associate Justices Benevento, Glass and Nicholson were in attendance.¹

The crux of the Petitioner's argument rests on two distinct issues. First, the Court must consider whether there is sufficient evidence to prove that the Respondents committed an egregious violation under Rule 6.4 of the 2011 Election Rules. The Petitioner alleges that the Respondents engaged in two egregious violations: (1) fraud with the intent of affecting the outcome of the election, and (2) intentional actions to mislead or obstruct the duties of the Elections Board. Assuming that sufficient evidence exists to prove the Petitioner's claim of an egregious violation, the second issue is whether the Constitution Court has the power to remove either of the Respondents.

II

The Constitution Court has jurisdiction to entertain this petition for review. Pursuant to Article 11 §2 of the ASUO Constitution, the "Constitution Court shall have supreme and final authority on all questions of interpretation of this Constitution and any rules promulgated under it, *including elections rules and complaints*" (emphasis added). Since the Petitioner asks this Court to determine whether the Respondents violated a provision of the 2011 Election Rules, this

¹ A transcript of the public hearing is on the Constitution Court website, available at <http://asuo.uoregon.edu/concourt.php>.

matter is within the Court's authority to adjudicate this dispute. Moreover, Elections Rule 6.4(b), which was approved by this Court in the 2010-2011 Spring session, states that the "Constitution Court retains appellate jurisdiction over all matters arising under the ASUO Election Rules."

Without any language expressing a temporal limitation on our jurisdiction, it is within the Court's authority to receive this claim, even though the alleged violation occurred one year ago. Moreover, the Court points to the 2011 Election Rules. Rule 7.4 states that "[i]n order to avoid real or perceived conflicts of interest, election grievances against the ASUO Elections Board or the ASUO Executive shall not be heard by the Elections Board. Instead, they shall be filed directly with the ASUO Constitution Court using the grievance form provided for this purpose."

In his petition, the Petitioner cites several provisions of the 2011 ASUO Election Rules. Rule 6.4 states that "Egregious campaign violations shall consist of, but are not limited to: submitting votes for other students; tampering with the electronic election system; harassment, intimidation, bribery or fraud with the intent of affecting the outcome of the election; libelous or slanderous statements or conduct; tampering with another campaign's materials with malicious intent; intentional actions to mislead or obstruct the duties of the Elections Board." In the event that a candidate violates this provision, Rule 6.4(b) stipulates that "Consequences for egregious violations may include suspension of campaigning, removal from ballot, and removal from office."

III

We begin by assessing the meaning of fraud, which is not clearly defined by the 2011 ASUO Election Rules. Both Petitioner and Respondents offer competing interpretations of the term "fraud." The Court concludes that despite the differences in representation, the essential meaning of fraud can commonly be referred to as a misrepresentation of a material fact made by one person to another with knowledge of its falsity. This Court will not proceed to define the term "fraud" because such definitions are best left to the Elections Board, who is entrusted to promulgate the Election Rules. But the essential

meaning of the term is clear: that an actor falsely portrays the veracity of some material fact.

The Respondents contest that this dispute does not involve a fraudulent act committed by the Respondents, but rather concerns the allegedly fraudulent behavior of two key campaign contributors. However, the ASUO Election Rules stipulate that “Candidates and campaign managers shall be responsible for ensuring campaign affiliates are knowledgeable and aware of the ASUO Election Rules.” Even by the Respondent’s own admissions, the Executive candidates for a campaign are accountable for the misconduct of campaign contributors and supporters to the extent that they take affirmative actions to benefit the campaign. Therefore, the Court need only determine whether a campaign violation occurred in order to hold the Respondents accountable for the violation.

IV

The Court will first consider whether the Respondents committed an egregious violation under the 2011 Election Rules. Both of the parties agree that the evidence submitted by the Petitioner (the two Oregon Daily Emerald articles) prove the following: (1) Mr. Denson wrote a check for \$100 to Sophie Luthin, the Respondent’s campaign director, on March 9, 2011; (2) Ms. Luthin wrote a check for \$100 to Ben Eckstein on March 10, 2011; (3) Mr. Denson wrote a check for \$573 to Sophie Luthin on March 13, 2011; and (4) Sophie Luthin wrote a check for \$573 to Ben Eckstein on March 13, 2011. The images of all four checks were published in one of the articles submitted by the Petitioner. The Court concludes that the Petitioner has proven by a preponderance of the evidence that the aforementioned transactions did in fact occur. The Court next turns to whether this conduct amounts to an egregious violation under the 2011 ASUO Election Rules.

The problem with the Petitioner’s argument boils down to a lack of conclusive and persuasive evidence. The two sets of transactions between Charles Denson, Sophie Luthin and Ben Eckstein clearly indicate that Charles Denson made two distinct financial contributions to the Ben and Katie campaign in 2011. Furthermore, the fact that Ms. Luthin rerouted these donations proves that the Respondents (or at least their

campaign manage for whom the Respondents are accountable) submitted false or incomplete financial information on the official forms required by the ASUO Elections Board under Rule 6.3. The evidence provided by the Petitioner proves by a preponderance of the evidence that the Respondents committed a serious violation under the 2011 ASUO Election Rules.

But the Petitioner fails to offer sufficient evidence to prove an egregious violation. Under Election Rule 6.4, an egregious violation requires either “fraud with the intent of affecting the outcome of the elections” or “intentional actions to mislead or obstruct the duties of the Elections Board.” The Petitioner offers persuasive evidence proving that the Respondents committed fraud, but does not offer evidence of either Ms. Luthin’s or Mr. Denson’s intent to affect the outcome of the election. It seems entirely plausible that their motive in concealing Mr. Denson’s name was to avoid having his name (and position in OSPIRG) brought into the election discussion and media coverage. Whether this omission was designed specifically to mislead the student voters is simply unknown. For similar reasons, the Respondent’s motive is simply unknown, and the Petitioner has failed to offer evidence of their intent in concealing Mr. Denson’s name.

Similarly, the Petitioner offers no evidence that the omission was the product of Ms. Luthin or Mr. Denson’s intent to obstruct the duties of the ASUO Elections Board. Was their intent to avoid political stigma associated with campaign contributions from an OSPIRG leader? Was their intent to intentionally obstruct the Elections Board’s administration of the election? Both reasons are plausible, and not necessarily mutually exclusive. But the Petitioner has the burden of proving intent, and this the Petitioner has failed to do.

Ultimately, the Petitioner’s claim of an egregious violation fails for a lack of evidence. If the Petitioner had the testimony of Ms. Luthin or Mr. Denson to corroborate his claims, this Court may reach a different conclusion. The problem does not rest with the validity of the Petitioner’s claims. A common euphemism illustrates the Petitioner’s dilemma: the problem is not what the Petitioner knows, but what he can prove before this Court.

Without much more than circumstantial evidence, this Court simply lacks any persuasive basis with which to reach a factual conclusion of the Respondent's intent. While the Court could speculate as to the Respondent's intent, it is the Petitioner's burden to produce such evidence. Therefore, this Court cannot conclude that the Respondents committed an egregious violation because there is insufficient proof of the Respondent's intent in committing the fraudulent act.

V.

Having determined that the Respondents are accountable for a serious campaign infraction in violation of Rule 6.3 of the 2011 ASUO Election Rules, the Court must determine what remedy is appropriate. Unfortunately for the Petitioner, the Election Rules are specific: "Consequences may include removal from the election ballot *until compliance is achieved*" (emphasis added). In contrast, an egregious violation under the same rules provides for consequences which include "removal from office." If the Elections Board had intended for a serious violation to invalidate an election or require subsequent removal from office, then certainly the rule would have been written to achieve such purposes. Instead, the Election Rules provide for the campaign's immediate suspension from the ballot *until* compliance is achieved. Thus, this is an unusual situation where the violation is discovered long after its commission. While the Court condemns the Respondent's misconduct, it is not within the Court's authority to remove the Respondents for a serious violation of the 2011 ASUO Election Rules.

However, the Court would like to explore the procedural dilemmas that would arise if the Petitioner had met his burden of proving an egregious violation. The Court agrees with the Respondents that Article 14.4 of the ASUO Constitution states in unequivocal terms that "Impeachment and removal from office of the ASUO President may be under the process set for in Section 5.1 of this Constitution, in addition to the process of Section 14.3." Hence, the ASUO Constitution requires that where the removal of the ASUO President is concerned, the only two avenues for achieving this goal are impeachment and non-fulfillment of duties. Unless either of these alternatives is exercised, the Court cannot arbitrarily vacate the office of the ASUO

President. Since an egregious violation under Rule 6.4(a) requires removal from office, the application of this rule would be unconstitutional as applied to the ASUO President.

Any other office, such as a Senate Seat, could be vacated by the Court without contradicting the ASUO Constitution. This is because the framers of the Constitution intended to restrict the removal of the ASUO President to two clearly defined mechanisms. While the Court may question the soundness of such a policy, it is the clear intent of the framers. Any alteration to the existing structure of Article 14 is best left to the political branches and the voting public.

The Court also points out that Article 14.4 only limits removal of *the ASUO President* to impeachment and non-fulfillment of duties. The precise consequences of this phrase are uncertain, but it is evident that the framers did not intend to similarly insulate the ASUO Vice President from the Court's power to vacate the office. However, the Petitioner has only proven Vice President Taylor's liability for a serious violation, which for reasons discussed above does not empower the Court to remove her from the office of ASUO Vice President. The Court illustrates the complexities of this hypothetical in order to identify a potential dilemma confronting future courts.

VI.

In summation, the Court concludes that the Petitioner has proven by a preponderance of the evidence that the Respondents committed a serious violation of Rule 6.3 under the 2011 ASUO Election Rules. However, the Petitioner has failed to prove the commission of an egregious violation by the Respondents. Since the Petitioner has failed to meet his burden of proof to establish an egregious violation, the Constitution Court cannot grant the Petitioner the remedy that he requests: removal of the ASUO Executive from the current offices. While the Court condemns the Respondents for this serious violation, the ASUO Election Rules do not offer the Court the authority to grant the Petitioner his requested remedy. This matter is hereby dismissed with prejudice.

It is so ordered.