THE STUDENT GOVERNMENT JUDICIAL COURT
THE UNIVERSITY OF TEXAS AT AUSTIN

Madison GARDNER, Presidential Candidate
&
Antonio Guevara, Vice-Presidential Candidate, Petitioners
v.
The ELECTION SUPERVISORY BOARD, Respondent

Docket Number: 2012SE–005
Filed: 02/23/2012

Opinion and Order Denying Petition for Review
Issued February 24, 2012

Smullen, J., delivered the opinion of the Court.

We deny Gardener and Guevara's petition for review of the Election Supervisory Board's ("ESB's") decision in *In Res Madison Gardener / Antonio Guevara (2).*

As a procedural matter, we first clarify the standard of review appropriate for ESB decisions appealed to this Court. We give deference to reasonable findings of fact made by the ESB, in recognition of the ESB's role as a court of original jurisdiction. As to questions of law, we apply a *de novo* standard of review, meaning that we consider the questions anew, without deference to the findings below. Finally, as to judgments and punishments imposed by the ESB, we employ an "abuse of discretion" standard, whereby we only contravene the lower body in clear cases of error.

In the decision below, the ESB found petitioner to be in violation of Title III Subchapter A clause 3.02 of the Student Government Election Code.

Title III Article III Subchapter A reads as follows:

3.02 *Only the Presidential and Vice Presidential candidates that compose an executive alliance are allowed to participate in campaigning together, all other candidates in the election must campaign separately, without endorsements from any fellow candidate. No association between candidates of any kind will*

be tolerated, with the exception of the executive alliance. Candidates found in violation of this rule can be subject to immediate disqualification.

The Petitioner demurred in the proceeding below as to the following facts:[1]

- Carissa Kelley, a candidate running for a position in a campus-wide election appeared in Petitioner's promotional media
- Petitioner was aware of this fact during the campaign period
- Petitioner failed to immediately remove the offending media from circulation.

As such, we find the ESB's decision to disqualify petitioner to be a reasonable interpretation of the authority granted by §3.02. As such, we are persuaded by Respondent's brief, which cites the SG Constitution as follows:

> 5.45 Election disputes and grievances shall first be heard by the Election Supervisory Board. Decisions of the Election Supervisory Board may be appealed and heard by the Judicial Court on the basis that the decision of the Board contravenes this Constitution, the Election Code, or another rule, regulation, or bylaw pursuant to this Constitution.

According to the Constitution, the appeal of the case at hand literally has no standing. In fact, granting an appeal without a specific claim that the Board violated the constitution, the Election Code, or another rule, regulation or bylaw is unconstitutional in and of itself. Meaning, although this is an unfortunate turn of events to which I am personally empathetic, a claim that questions the ESB's logic or judgment on a subjective basis (anything that's not a procedural violation) is unconstitutional. I'm sorry that the petitioner was disqualified, but alas mere dissatisfaction with the ESB's chosen punishment is not grounds for appeal.

First, we would like to emphasize the language "may" as stated in the Constitution.[2] This means that the Court may grant review to a petitioner, but is not required to do so. Second, if we grant review, it must be because there is concern that there is a legitimate basis for the petition for review

[1] Minutes of Election Supervisory Board Hearing 4, Spring 2012 ESB at 4 ("We admit this was an unintentional mistake. . . . We are here to defend ourselves on the grounds that the violation was in no way intentional.")

[2] UTSG Constitution § 5.45.

resting on some putative contravention of the Constitution, the Election Code, or another rule, regulation, or bylaw pursuant to the Constitution.

While Petitioner's brief does specify points that implicate "Constitution, the Election Code, or another rule," we find that Petitioner did not raise any question of reviewable error. Thus, we decide not to review the decision of the ESB in this case. Petitioner raised six points, which we will discuss in turn:

Petitioner's Argument 1: The ESB erred in finding that the alleged "violation" of our campaign was "intentional."

Petitioner asserts that the ESB made a mistake of law in finding that the violation was intentional. We find this point to be irrelevant.

§3.02 states that no association "of any kind" will be tolerated. No portion of §3.02 requires intent, knowledge, or even recklessness on the part of the violating party. Thus we hold that the ESB correctly ignored petitioner's intent in making its ruling.

Petitioner's Argument 2: The Election Board Member "assigned" to Executive Alliances failed to perform his Responsibility as outlined in Article III Subchapter B 3.11 which states that he is "responsible" for our "questions, complaints and financial statements" in his explicit approval of our media.

Petitioner asserts that because the offending material was approved by their assigned ESB member, per the Election Code, they cannot be held in violation of the code based on that media.

Petitioner raises Article III Subchapter B §3.11 of the Election Code, which states that representatives will be assigned to candidates "for whose questions, complaints, and financial statements they are responsible." This section of the code does not, implicitly or explicitly, relieve petitioner of his duty to comply with the rest of the election code.

This clause does not state or imply the decision of the assigned representative is final or binding on the ESB. To state otherwise would remove any responsibility for self-policing from the candidates should the ESB representative make any error. Similarly, Article IV Subchapter B §4.06 states that material must be submitted for approval prior to display.

However, again this clause does not state or imply the decision of the representative is final or binding on the ESB.

To hold that §3.11 immunizes a candidate from violations with respect to submitted material would place an inordinate and unwarranted burden on the assigned ESB representative to scour these materials for any possible violation. Instead, this section is intended to be a convenience to both the ESB and the candidates. Though sometimes this submission and review process will prevent accidental or ignorant violations of the code, this process cannot possibly be expected to catch all violations, and therefore leaves the ultimate responsibility for campaign materials to the candidate.

Argument 3: The Election Board failed to fulfill their responsibility as defined in Article IV Subchapter B, Section 4.12.

Petitioner argues that because this specific violation was not covered at the Candidate Seminar. At the Candidate Seminar, per Article IV Subchapter B § 4.12 "the Election Board shall clearly define what would constitute each class of a violation." Petitioner states that failure to specifically define §3.02 at the Seminar is reversible error, as laid out in our advisory opinion 2010-001.

However, no reasonable reading of the Election Code could require the ESB to restate the Election Code exhaustively, or else any omission would itself abrogate the Election Code, which is beyond the ESB's authority. Rather, we consider Petitioner to be on notice as to the severity of any violation of §3.02, as it states plainly that any violation can result in disqualification.

Petitioner's Argument 4: The ESB failed to "gather the information necessary to make a decision, order, or ruling"

Petitioner asserts that the ESB failed to conduct a full and thorough investigation of the facts. The ESB serves as the primary fact-finder with regards to election code violations, and as such we will not disturb or question their findings of fact unless such findings are clearly clouded by bias, or are arbitrary, capricious, or without support in the record. Petitioner does not allege this to be the case, and we see no basis upon which to draw this conclusion.

Further, the Court takes judicial notice of the facts stipulated by Petitioner. We hold that these facts, as they were properly considered by the ESB, would

not affect the validity of their decision. The ESB correctly interpreted and applied the definition of "candidate association" as the phrase is used in the election code.

Argument 5: The individual in the disputed campaign material is not a "candidate" under Title III of the Student Government Election Code, and the individual is not running in an "election" as used in Title III of the Code.

Petitioner asserts that Carissa Kelley is not a candidate as contemplated by §3.02. This question of law was not raised in the proceeding below, and is thus not reviewable. Nevertheless, we find the following *dicta* to be instructive to future courts.

Petitioner states that Title III Article 1 Section 1.01 and §3.02, read in conjunction, mean that only candidates running for Student Government positions are barred from associating. Title III, Article 1, Section 1.01 states: *"Title III shall only apply to Campus-Wide elections of the Student Government at the University of Texas at Austin"* (emphasis added). However, we believe that the most reasonable interpretation of this language would hold that Petitioner, as a candidate for a Student Government office, was barred from associating with any candidate in any other campus-wide election. Thus, whether or not Ms. Kelley is a Student Government candidate is irrelevant to the case presented.[3]

Argument 6: The disqualification imposed by the ESB is not an "equitable remedy" for the alleged violation.

Petitioner asserts that the ESB's punishment is disproportionate to the extent of the violation. However, the ESB is granted wide discretion in these matters. Article B Section 5.05 states that "[t]he Appellate Court shall have full authority to fashion an equitable remedy appropriate to the circumstances of the case." In recognition of the ESB's wide discretion, we will apply an "abuse of discretion" standard to questions of punishment severity. Like findings of fact, ESB decisions with respect to punishment will only be overturned if influenced by bias, caprice, or woefully insufficient evidence. Such problematic motives are clearly not present in the case before us.

[3] We do not consider the question of whether §3.02 similarly bars Ms. Kelley from associating with Petitioner, as it is beyond the scope necessary to answer the questions presented.

The Election Code expressly permits the punishment chosen by the ESB when it states that "[c]andidates found in violation of this rule can be subject to immediate disqualification."[4] We do not feel that it would be proper to contravene the ESB when it rests on such a sound legal footing.

Furthermore, even if a lighter punishment, such as a fine, had been chosen by the ESB, this would still have warranted disqualification. The Gardner and Guevara alliance was already operating within a small margin of their budget limit, and even a relatively small fine would have pushed them over this limit, properly resulting in disqualification.

Conclusion

Because we do not find a question presented that is appropriate for review by the Judicial Court, we exercise the discretion granted by Article V of the Election Code and by §5.05 of the Student Government Constitution. We deny the petition for review presented to the court.

It is so ordered.

NIMMER, J., took no part in the consideration of this order.

Harris, C.J., concurring in part and dissenting in part.

I unequivocally support the majority's holding with respect to each and every substantive issue in this case. I write separately to register my procedural objection to the majority's decision to deny review. Though I agree that Petitioner Gardner's case may be summarily dismissed on the basis that it raises no reviewable points of error, I feel that we should set a precedent of always reviewing Election Supervisory Board decisions to disqualify a candidate regardless of the merits of the petitioning candidate's arguments.

The Student Government Constitution clearly gives the Judicial Court the option to hear or deny election appeals at its discretion, as explained in Justice Smullen's well-reasoned majority opinion. In relevant part, the Constitution states:

[4] UTSG Election Code §3.02.

> Decisions of the Election Supervisory Board may be appealed and heard by the Judicial Court on the basis that the decision of the Board contravenes this Constitution, the Election Code, or another rule, regulation, or bylaw pursuant to this Constitution.[5]

Just as a candidate "may" file an appeal (but is not required to do so), the Judicial Court "may" grant an appeal if we feel such an appeal is warranted, but we may likewise choose to deny an appeal that lacks merit.

Though I agree with my colleagues that Gardner's appeal raises no reviewable questions, I would hold that we should always grant review in the case of disqualification. Disqualification is a final and damning indictment of a candidacy, and as such it should be considered to be a very grave and infrequent remedy. Even in cases such as this one, in which disqualification is clearly warranted, the disqualified candidate should enjoy the procedural safeguard of a full hearing in which he or she may register his or her grievances with a higher tribunal.

The ultimate question before us is this: did the ESB commit any error of law in its decision? The clear answer is "no." It is an unfortunate but necessary reality of any functioning campus election system that even unintentional violations, when they are sufficiently severe, will sometimes result in disqualification.

Though I join the majority's position, I urge future courts to take a permissive stance with respect to review in these cases.

[5] UTSG Constitution § 5.45.