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: 03/22/2012

Opinion

Issued March 25, 2012

Harris, C.J., delivered the opinion of the Court.

On March 21, 2012 the Election Supervisory Board (the ESB) issued an opinion[1] which found Madison Gardner and Antonio Guevara culpable on several counts of election code violations, and issued a variety of punishments, including multiple counts of disqualification. Madison and Antonio timely petitioned the Judicial Court for review. We granted the petition and held a hearing on March 25th. In their briefs and oral arguments, petitioners assert a number of procedural errors, substantive errors, and other objections.

After reviewing petitioner's arguments, we sustain the ESB's judgment of disqualification on the sole basis that petitioners failed to "file accurate financial disclosure statements" in violation of Title III Article III, Section 3.23 of the Election Code.

Because we affirm the ESB's judgment of disqualification on this basis, we need not reach petitioner's other asserted points of error. For this reason, we make no ruling at this time as to whether the ESB's judgment was correct with respect to the other asserted violations or punishments.

I. History

[1] ESB / SG 2012 – 007.

On March 19, 2012 petitioners submitted their second financial disclosure to the ESB via email. The attached financial disclosure included no expenses, and the body of the accompanying email stated:

> Attached you will find the financial disclosure for Madison Gardner and Antonio Guevara. The campaign has incurred no expenses and received no contributions since the last disclosure was submitted.

At the ESB hearing, Chair Nimmer asked the Gardner and Guevara campaign to explain why they had failed to expense a 10% fine which they had previously incurred for failing to accurately expense certain campaign supplies, and why they had further failed to accurately correct these inaccurate expenses as adjusted by order of the ESB. Petitioners characterized this error as a mistake, and stated that the omission was not intentional.

In its opinion, the ESB cited Election Code Title III, Article IV, Section 4.04 which states:

> 4.04 Total expenditures shall include all campaign expenditures and fines issued by the Election Supervisory Board.

The ESB then issued a judgment of disqualification pursuant to Title III Article III Section 3.23:

> 3.23 Failure to file accurate financial disclosure statements by the deadlines listed in this section, or falsification of financial statements, shall qualify the candidate for disqualification by the Election Board.

II. Procedural Objections

Petitioners assert two points of procedural error. First, petitioners argue that they were entitled to 24 hours' notice of their violation of section 3.23 under Election Code Title II, Article IV, Sections 4.03 and 4.04. Second, petitioners argue that Chair Nimmer was barred from raising the issue at hearing under Section 4.01 of the same Title, which states that ESB members "are prohibited from filing complaints."

Petitioner's notice argument is flawed for three reasons. First, though the election code requires that notice of the hearing and of the complaint be given

24 hours in advance, this is a weak notice requirement and does not require that each charged violation be laid out with particularity. The election code does not require that the complaint outline each alleged violation, but merely that the complaint must "state a cause of action for which relief may be granted."[2] Furthermore, the election code does not prevent new violations from being raised at hearing, and such new violations are in fact routinely raised in the ESB.[3] The ESB is not a court of law, and though certain procedural safeguards do exist to protect candidates from prejudice or insufficient process, the code is designed to permit the ESB enough procedural leeway to hear and decide complaints in a timely and efficient manner.

Second, petitioners were not in fact prejudiced or harmed in any way by having this issue raised for the first time at the ESB hearing. Complainant Carlson's complaint recited a number of violations related to petitioners' financial disclosures. As such, petitioners were clearly on notice that their disclosures would be the subject of this hearing and had adequate time to review these disclosures and prepare to defend them.

Third, it is our position that prior rulings of the ESB presumptively give notice to candidates that failure to abide by these rulings will result in a punishment. Madison and Antonio had, weeks prior, been instructed by the ESB to include their fine and corrected expenses in their financial disclosure, and failed to comply. They cannot argue that their failure to abide by the ESB's order somehow took them by surprise, since the ESB notified them of their fine long before complainant Carlson initiated proceedings against them.

Petitioners' second asserted point of error objects to the fact that Chair Nimmer, rather than complainant, raised the violation at hearing. Though members of the ESB are barred from filing complaints under 4.01, we do not read this provision to prevent the ESB from imposing sanctions which are materially related the complaint, but may not have been pleaded with particularity in the body of the complaint itself. A rule that required the ESB to rigidly abide by the wording of the complaint would rob the ESB of the power to craft an appropriate remedy for violations, and would lead to the absurd holding that complainants must know every fact of the case and must

[2] Election Code Title II, Article IV, Sections 4.02(b).
[3] *See, e.g.*, In Res Yaman Desai / Whitney Langston (ESB / SG 2012 – 001) (The complaint which resulted in Desai and Langston's disqualification was raised for the first time at hearing.)

be intimately familiar with every election code rule in order to draft an adequate complaint.

As we have stated, the ESB is not a court of law and does not have the power of discovery, subpoena powers, or other judicial luxuries which might permit a complainant the ability to carefully and specifically allege every violation. As such, practical considerations permit the ESB to raise and consider issues which are closely related to the issues raised in the complaint, but which may not have been pleaded with particularity. This is clearly a case in which the petitioners' failure to adequately report their fines and expenses was closely and materially related to the complaint, which alleged errors and omissions in petitioners' financial disclosures.

Furthermore, we believe that the ESB is specifically empowered by the code to *sua sponte* raise omissions and errors in financial disclosures without a complaint having been filed. Title III Article III Section 3.23, upon which the ESB based its judgment of disqualification, specifically empowers the ESB to disqualify a candidate who fails to file accurate or timely financial disclosures, and contains no notice or hearing requirement. It would be an absurd reading of 3.23 to require that a non-ESB member must file a complaint in order to enforce this section, since no one but the ESB is able to know whether the disclosure was timely. If the ESB could not enforce this section *sua sponte*, it would be forced to recruit straw-man complainants to file under this section, a result which we think could not possibly have been intended by the code authors.

For the foregoing reasons, petitioners' procedural objections are without merit.

III. Substantive Objections

Petitioners argue that the ESB erred substantively in failing to correctly consider their intent (or lack thereof) with respect to the omissions in their financial disclosure. Though Section 3.23 contains no mental state requirement, we believe that some threshold level of *mens rea* is necessary to support a disqualification under this section, since not every trivial or accidental violation will result in disqualification.

Petitioners argue, based upon previous years' ESB precedent,[4] that a "willful or blatant" violation standard should be applied to this section. This argument is flawed. Though last year's version of the election code contained this "willful or blatant" language, it was amended out of the code for this year, reflecting intent on the part of the Assembly to do away with this incredibly high standard.

The ESB instead argues that a finding of gross negligence, as evidenced by repeated or especially careless violations, should govern. We agree that this is a sufficient standard to prevent trivial violations from resulting in disqualification, while adhering to the intent of the Assembly in deleting the "willful or blatant" language.

The ESB found gross negligence, as evidenced by petitioner's submission of a blank financial disclosure, petitioner's failure to comply with a clear ESB order imposing a fine, and petitioner's previous failure to correctly expense materials used in the campaign. We grant the ESB deference with respect to its findings of fact, and petitioner does not allege any basis[5] for us to question this deference. In light of this finding, the ESB correctly concluded that petitioners violated section 3.23.

Petitioners also assert that they in fact had prepared a proper disclosure but accidentally attached a blank disclosure in their email to the ESB. This is irrelevant. Whether the petitioners were negligent in failing to correctly update their disclosure or negligent in attaching a blank disclosure, they were negligent nonetheless. Furthermore, petitioners did not raise this argument at the ESB nor in their briefs, and as such we believe this argument would have been waived even if it had merit. Additionally, the affirmative statement "[t]he campaign has incurred no expenses and received no contributions since the last disclosure was submitted" is corroborative of the ESB's finding of negligence, as opposed to an honest mistake.

IV. Objection to Punishment

Petitioners argued at hearing that the ESB's punishment of disqualification was too severe, and that we should be guided by a "veil of reasonableness" with respect to punishment severity.

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[4] *E.g.* ESB 2011-009.

[5] Such as bias, caprice, or insufficient evidence.

We agree that the ESB is required to act reasonably with respect to punishments, but we think that the ESB was presumptively reasonable in following the code. Section 3.23 provides that "[f]ailure to file accurate financial disclosure . . . shall qualify the candidate for disqualification by the Election Board." This language specifically empowers the ESB to disqualify a candidate for violations of this section. It is one of very few sections of the code that explicitly provides for this remedy. As such, when culpability is found under 3.23, a punishment of disqualification is presumptively reasonable.

V. State and Federal Constitutional Protections

Though the Student Government Judicial Court is in no way a court of law, it is our duty to make a good-faith effort to comply with state and federal law, and to not infringe upon any rights granted under the Texas or U.S. Constitutions. We therefore review the relevant provisions of those documents to demonstrate our rational basis for concluding that our actions fully comply with the rights granted therein.

In particular, it is our opinion that the rulings of the ESB and judicial court comply with the free speech guarantees contained in these documents.[6] No case on point exists in Texas or the Fifth Circuit with respect to the interplay of free speech guarantees and financial regulations in college or university student government elections. However, Texas courts, in interpreting the Texas Constitution, look to federal precedent from other jurisdictions as persuasive.[7]

At least two circuit-level federal cases have upheld the constitutionality of spending and campaigning rules in student government elections. In *Flint v. Dennison*[8] the Ninth Circuit held that student government elections constitute a limited public forum, and that reasonable, view-point neutral spending limits are a permissible restriction on a candidates' free speech rights. Furthermore, in *Alabama Student Party v. Student Gov't Ass'n of the*

[6] U.S. Const. amend. I; Tex. Const. art. I, § 8.
[7] *See, e.g.* Texas Tech University Health Sciences Center v. Rao 105 S.W.3d 763, 769 (Tex. App.—Amarillo 2003, pet. dism'd) ("Even though a difference exists between the two [free speech] guarantees, federal cases have historically been looked to by Texas courts as an aid in determining free speech questions.")
[8] 488 F.3d 816, 833 (9th Cir. 2007).

Univ. of Alabama[9] the Eleventh Circuit held that significant restrictions on the time, place, and manner of campaigning were permissible under the first amendment in student government elections.

For these reasons, we believe that the UTSG Election Code fully complies with the U.S. Constitution, and, under the same rationale, complies with the Texas Constitution as well.

VI. Conclusion

Because we find no error in the ESB's judgment of disqualification under Title III Article III Section 3.23 of the Election Code, and because we believe that this judgment complies with the Texas and U.S. Constitutions, we affirm the ESB's ruling with respect to this judgment, and decline to reach petitioner's other arguments.

The ESB's judgment of disqualification is AFFIRMED.

The Gardner and Guevara executive alliance is hereby DISQUALIFIED.

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

[9] 867 F.2d 1344 (11th Cir. 1989).