

Opinion of the Court

**THE JUDICIAL COURT
OF THE STUDENT GOVERNMENT OF
THE UNIVERSITY OF TEXAS AT AUSTIN**

★ No. 2013SA – 001

**IN RE 2013 SPRING ELECTIONS
ASSOCIATION RULE**

ON ORDER ACCEPTING PETITION FOR ADVISORY OPINION

January 11, 2013

VILLALOBOS, C.J. delivered the Opinion of the Court. WISEMAN, J., CYRUS, J., GRUENER, J., and CARLISLE, J., join.

Pursuant to the authority of the Judicial Court as the court of supreme authority and sole jurisdiction in all cases arising under the UTSG Constitution and its associated rules¹, we grant petitioner ZHAO's request for an advisory opinion interpreting and clarifying the terms and procedures of the 2012 University of Texas at Austin Student Government Election Code (hereby simply referred to as 'Election Code') as they apply to the 2013 Spring elections.

I. History

On December 3rd, 2013, Student Government Chair and University-Wide Representative, Crystal Zhao, asked the Court for an advisory opinion concerning Title III, Article III, §3.02 of the 2012 Student Government Election Code (also referred to herein as the "association rule"). In the spring 2012 semester, the association rule in the 2012 Student Government Election Code was suspended because it was deemed too broad and vague to enforce.

§3.02 states

“[o]nly the Presidential and Vice Presidential candidates that compose an executive alliance are allowed to participate in

¹ UTSG Const. Art. V, § 5.21.

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.”

Because of the circumstances of last year’s elections and subsequent suspension of § 3.02, Chair Zhao requested an “interpretation of candidate association in the current Election Code’s Title III, Article III, § 3.02.” Specifically, what “activities does the term ‘association’ include and/or exclude[?]”

In order to answer Chair Zhao’s question, it is first necessary to discuss the purpose of student government and its related elections; determine what law, if any applies to §3.02 and to then render an opinion as to how the law impacts §3.02

II. Purpose of Student Government

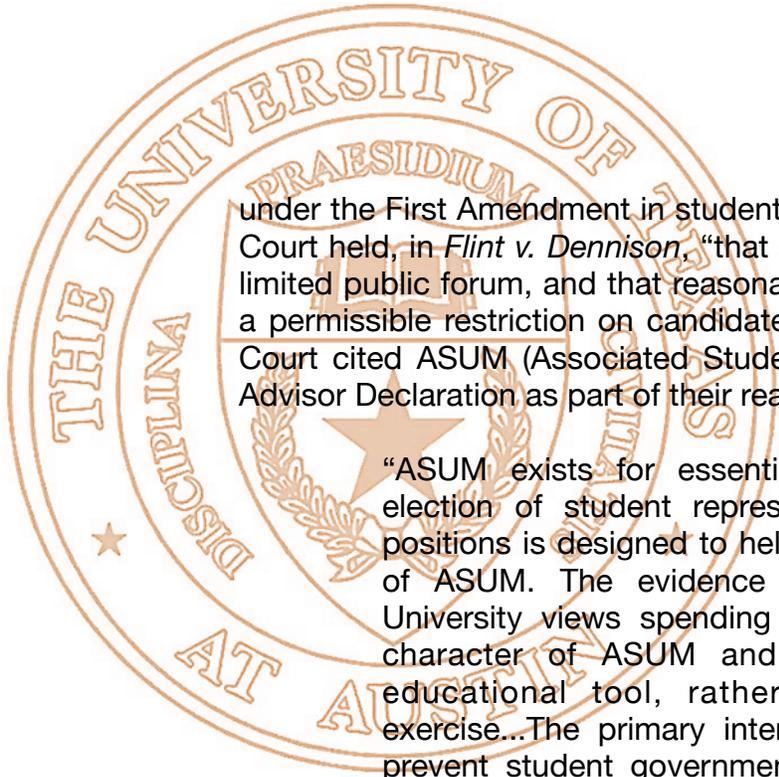
As stated, in *Gardner v. ESB*, “Though the Student Government Judicial Court is in no way a court of law, it is our duty to make a good-faith effort to comply with state and federal law, and to not infringe upon any right granted under the Texas or U.S. Constitutions. We therefore review the relevant provisions of those documents to demonstrate our rational basis for concluding that our actions fully comply with the right granted therein.”² As in the *Gardner* case, we look at applicable legal precedent for guidance to help us answer Chair Zhao’s question.

The free speech clause of the First Amendment is implicated when, as here, questions are raised regarding a person’s speech rights on public property. Speech rights on public property depend on the nature of the property or “forum”. Court’s engage in “forum analysis” to determine what the bounds are for government regulation of such speech. Student government elections in the public university context have been held to be limited public forums that are subject to certain campaign related limitations. Two circuit courts have upheld the constitutionality of campaign rules in student government elections when they were challenged based on the First Amendment of the United States Constitution. *Flint v. Dennison*³ and *Alabama Student Party v. Student Gov’t Ass’n of the Univ. of Alabama*⁴. In *Alabama Student Party v. Student Gov’t Ass’n of the Univ. of Alabama*, the Eleventh Circuit Court “held that significant restriction on the time, place and manner of campaigning were permissible

² 2012SE-005.

³ 488 F.3d 816, 833 (9th Cir. 2007).

⁴ 867 F.2d 1344 (11th Cir. 1989).

The seal of The University of Texas at Austin is visible in the background. It features a central five-pointed star surrounded by a wreath. The outer ring of the seal contains the text "THE UNIVERSITY OF TEXAS AT AUSTIN" and "DISCIPLINA".

under the First Amendment in student government elections.”⁵ The Ninth Circuit Court held, in *Flint v. Dennison*, “that student government elections constitute a limited public forum, and that reasonable, view-point neutral spending limits are a permissible restriction on candidates’ free speech rights.”⁶ The Ninth Circuit Court cited ASUM (Associated Student of The University of Montana) Faculty Advisor Declaration as part of their reasoning for judgment:

“ASUM exists for essentially educational purposes...the election of student representatives to ASUM leadership positions is designed to help further the education purpose of ASUM. The evidence before us clearly shows the University views spending limits as vital to maintain the character of ASUM and its election process as an educational tool, rather than an ordinary political exercise...The primary intent of the spending limits is to prevent student government’s being diverted by interests other than ones educational. It is thus obvious that the purpose of imposing the spending limit on student candidates [serves] pedagogical interests in educating student leaders at the University.”⁷

The Ninth Circuit ruled that because student elections are a form of limited public forum and have an education purpose at an institution of higher learning, they can be subject to reasonable restrictions “in order to maintain equal access to the pedagogical benefits of ASUM participation throughout the student body.”⁸

With this background, this Court now turns to the mission and purpose of The University of Texas at Austin and The Student Government at the University of Texas.

First, as reflected in the Texas Constitution, The University of Texas at Austin, as its fundamental purpose, officially serves the State of Texas as a public institution of higher education.⁹ In addition to the legal underpinnings that sustain this position, the University’s educational purpose is indisputably

⁵ 2012SE-005.

⁶ *Id.*

⁷ 488 F.3d 816, 833 (9th Cir. 2007).

⁸ *Id.*

⁹ “ESTABLISHMENT OF UNIVERSITY; AGRICULTURAL AND MECHANICAL DEPARTMENT. The legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas," for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department.” Art.7 Sec. 10, Texas Constitution; see also Chapter 65, Texas Education Code.

supported by the University's Mission Statement¹⁰ and core values¹¹. Second, The University of Texas Student Government elections and the entity itself serve an inherently educational purpose. Because of this, we believe certain restrictions on elections, a limited public forum, are necessary to preserve the educational purpose of Student Government and their related elections. The role of Student Government at the University of Texas is to serve as the official voice of students. However, past experience informs this Court that many students simply are not able to compete for positions in Student Government when facing off against more advantaged students. The inequitable access to money and other campaign-related resource have, in times past, made the accomplishment of a fair campaign very difficult if not impossible to accomplish. Similarly, students who are already a member of an organization or club that could provide administrative and organizational support valuable to any campaign has a significant advantage over the student who does not have such an affiliation. The practical effect of such disparity is to discourage less advantaged students from even attempting to participate in the Student Government election process. This effect harms the process by limiting the educational experience as well as the choice of candidates and viewpoints to a comparatively few students. More importantly, an absence of limitations, specifically association limitations in this case, could diminish the educational aspects of this body and of student campaigning and disregard the mission and core values of our university. The University of Texas, like The University of Montana, "uses [student government] primarily as an educational tool—a means to educate students on principles of representative government, parliamentary procedure, political compromise, and leadership."¹²

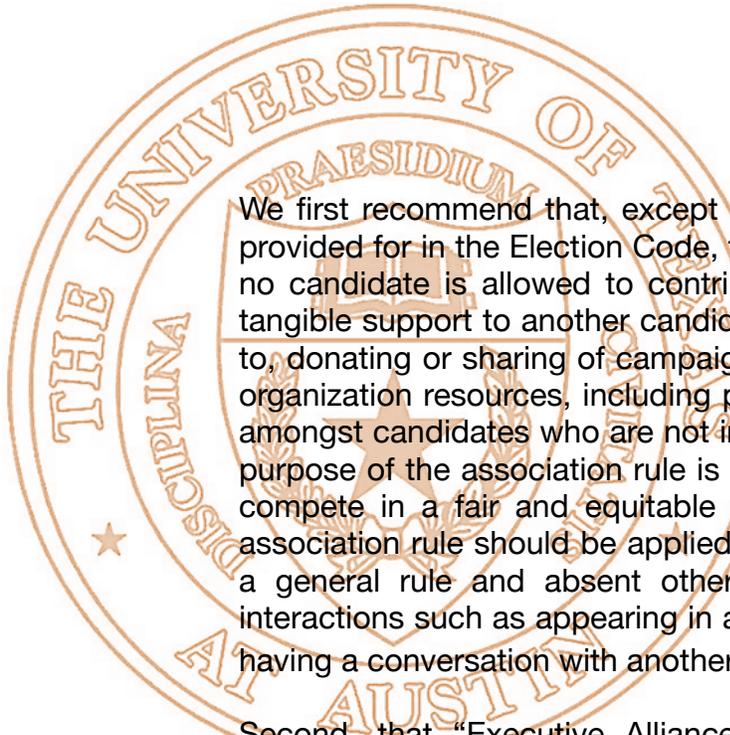
III. Conclusion

With the discussion above in mind, this Court believes association limitations are permissible in order to maintain the integrity and the educational purpose of student government elections as long as the scope of such limits are reasonably understandable to those subject to them and applied in a fair and equitable manner.

¹⁰ "The mission of The University of Texas at Austin is to achieve excellence in the interrelated areas of undergraduate education, graduate education, research and public service. The university provides superior and comprehensive educational opportunities at the baccalaureate through doctoral and special professional educational levels. The university contributes to the advancement of society through research, creative activity, scholarly inquiry and the development of new knowledge. The university preserves and promotes the arts, benefits the state's economy, serves the citizens through public programs and provides other public service"

¹¹ The University of Texas at Austin's core values are Learning, Discovery, Freedom, Leadership, Individual Opportunity, and Responsibility.

¹² 488 F.3d 816, 833 (9th Cir. 2007).



We first recommend that, except in cases of a bona fide executive alliance as provided for in the Election Code, the prohibition against association means that no candidate is allowed to contribute financially or provide any other form of tangible support to another candidate. This generally includes, but is not limited to, donating or sharing of campaign materials, campaign money, and campaign organization resources, including people, or jointly soliciting votes between and amongst candidates who are not in a bona fide executive alliance. Because the purpose of the association rule is to encourage a diverse slate of candidates to compete in a fair and equitable election on the basis of their positions, the association rule should be applied only to further this purpose. For example, as a general rule and absent other facts, insubstantial appearances or social interactions such as appearing in a non-campaign based photography or simply having a conversation with another candidate would do not violate §3.02.

Second, that “Executive Alliance” refers to an alliance or any other joint, collaborative campaign plan or activity solely between a presidential and vice-presidential candidate in elections governed by the Election Code. No other candidates for any other position in an election subject to the Election Code may form an executive alliance.

Third, these two eligible students, one seeking the office of the President and the other the office of Vice President, may create an executive alliance as defined above, and pursuant to the Election Code file jointly as candidates for the offices of President and Vice President. Candidates who properly form and conduct executive alliances under the Election Code are not subject to the restrictions of §3.02.

Fourth, only the Presidential and Vice Presidential candidates whom have jointly filed under this Election Code as an executive alliance are allowed to participate in campaigning together, endorse each other and otherwise engage in joint, collaborative campaign planning or activities. All other candidates in the election must campaign separately, without written or verbal endorsements, collaboration, financial or other tangible support from any fellow candidate.

By “[i]mposing limits on [association, it] requires student candidates to focus on desirable qualities such as the art of persuasion, public speaking, and answering questions face-to-face with one's potential constituents.”¹³ If we allow unrestricted association between candidates outside of the executive alliance context, none of these qualities can be learned or improved if winning is based on who you team up with. Candidates would not need to campaign, talk to future constituents and address their needs, or critically think if all they have to do is team up with a few other friends in order to win a seat in the Assembly. Student Government through the election procedure and subsequent service in

¹³ *Id.*

the Assembly is a forum to learn and improve your negotiation, public speaking, writing and responsible leadership among many other qualities.

Lastly, the Court holds that even though the section in-question holds both the definition of “association” and the consequences of an infraction of this part of the Election Code – the two are severable and the Court must not address both in order to address either. As such, the Court chooses to only address the question of the scope, intent, and foundation of “association” and chooses, in exerting judicial restraint, to not rule on the issue of the consequences for infracting this part of the Election Code.

The advisory opinion on this matter is not a ruling on any specific conduct and it is offered for general guidance only. There is no live case or controversy for us to consider and thus no facts have presented to us on this matter. Each election complaint should be considered based on the individual circumstances and facts.