

THE STUDENT GOVERNMENT SUPREME COURT
THE UNIVERSITY OF TEXAS AT AUSTIN

In Re: Guzman v. ESB

JUSTICE BIRENBAUM delivers the majority opinion. CHIEF JUSTICE MOORE, and JUSTICE BINDEMAN join. JUSTICE RICHARD abstains.

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

No. 2018 Spring– 002

Delivered February 21, 2018

The Petitioner, Alejandrina Guzman, filed an appeal as an affected party of the ruling promulgated by the Election Supervisory Board (ESB) in ESB Resolution 2018-002. ESB Resolution 2018-002 issued Class D violations for thirteen candidates who failed to attend the Candidate Seminar on February 13th, 2018 at 9PM, thereby resulting in this disqualification of those thirteen candidates per the authority granted to the ESB in 2018 Campus-Wide Election Code Sections 4.13, 4.12, 7.9(b), 7.10, and 1.8.

ON FILING AND CANDIDACY

To frame this case, the Court must first consider whether the disqualified parties were candidates prior to the candidate seminar such that the ESB had jurisdiction over them. Candidacy status is governed by the Student Government Constitution, Student Government Election Code, and Campus-Wide Election Code. Per the language in these governing documents, the rights and requirements of candidates differ from the rights and requirements of students who have filed for candidacy.

This Court and the ESB function in varying capacities to oversee actions taken by candidates, their workers and agents, as well as allow for the



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exercise of rights by Student Government constituents (per Section 1.2 of the Student Government Constitution). However, language within the governing documents does not allow the ESB or this Court remedial jurisdiction over students who are not candidates, candidate-affiliated, or current members of the Student Government, except to the extent of hearing complaints brought by students against such parties.

This Court finds that candidacy begins before the Candidate Seminar. According to Section 7.4 of the Campus-Wide Election Code:

SUBMISSION OF CAMPAIGN AGENTS. Each candidate shall be required to submit to the Election Supervisory Board a list of agents they have authorized for their campaign on or before the Candidate Seminar date.

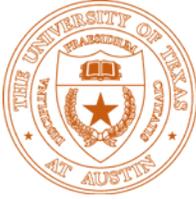
The plain meaning of Section 7.4 is that candidacy is determined before the Candidate Seminar. There is reference to persons described as “candidates” and behaving as a candidate before the seminar.

Additionally, this Court finds that candidacy does not begin when campaigning begins, as per Section 8.2 of the Campus-Wide Election Code:

UNAUTHORIZED CAMPAIGNING. All candidates are prohibited from campaigning, soliciting, or otherwise bringing attention to their campaign or election before the campaign period.

Due to the language employed in Sections 7.4 and 8.2 of the Campus-Wide Election Code, this Court finds that students who have filed for candidacy must receive candidate status prior to the Candidate Seminar. Such a finding reinforces the definition of candidate in Section 2.7 of the Campus-Wide Election Code. As such, these students, as candidates, are held to the standards outlined in all governing documents even prior to the Candidate Seminar per Section 1.7 of the Campus-Wide Election Code and Section 3.5 of the Student Government Election Code.

Therefore, this Court finds that there must be a point in time before the Candidate Seminar where students are officially considered to be candidates and not merely students who have filed to be candidates. Section 3.1 of the Student Government Election Code notes:



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ELIGIBILITY. Eligible individual students may file as candidates for a position in their respective school or file for a position as a University-wide representative. (a) Only eligible students, as recognized by the Dean of Students in interpreting the provisions of the Student Government Constitution and this election code, may have their filing officially certified and be registered as a candidate by the Election Supervisory Board.

Additionally, Section 7.13 of the Campus-Wide Election Code states:

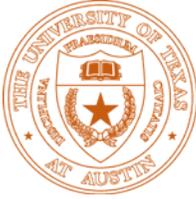
CANDIDATE ELIGIBILITY. Each group will be responsible for certifying each candidate's eligibility before the Candidate Seminar. (a) Candidates who fail to meet eligibility requirements will be disqualified immediately and notified of this action in writing.

This Court finds that candidacy is determined by certification of eligibility by the Office of the Dean of Students. Because candidates do not receive any other indicia notifying them of the determination by the Dean of Students, this Court finds that under Section 7.13, the notification of candidacy is sufficient to demonstrate candidacy status. The notice, delivered to candidates as an email, contains an acknowledgement by the organizing body of the election, the ESB, of the agreement students who have filed for candidacy have made, which includes both their adherence to the governing documents for the election as well as the acknowledgement of their rights as candidates and students alike. Therefore, the Court considers this receipt a sufficient indication of candidacy, meaning the disqualified parties in this case were candidates such that the ESB had the jurisdiction and authority to issue penalties.

ON CANDIDATE AGREEMENTS

Per the notice of candidacy email receipts presented by Petitioner Guzman's representative, candidates have agreed to two distinct agreements.

First, candidates have agreed to clauses under the "Candidate Agreements" header with the Election Supervisory Board. One of such agreements reads:



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I pledge to abide by all the rules and regulations expressed by the Election Code, and the Institutional Rules on Student Activities and Services of The University of Texas at Austin.

This Court finds that the Election Supervisory Board has broad authority to decide the nature of violations of election code and resulting punishments. Such a finding is corroborated by Section 2.19 of the Campus-Wide Election Code:

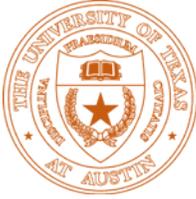
‘Campus-wide elections Filing Agreement’ refers to the document signed by the candidate that acknowledges the candidate is aware of and will adhere to the Campus-Wide Elections Common Code.

Further, the Court finds that the only notice the ESB is required to provide regarding what constitutes each class of violation is provided at the Candidate Seminar. Section 4.12 of the Campus-Wide Election Code states:

DEFINING CLASSES OF VIOLATIONS. Within the ranges established by the Election Supervisory Board, the Election Supervisory Board shall select the amount of the fine or length of the suspension most appropriate to both the severity of the infraction and the intent of the violator as determined by the Election Supervisory Board. At the Candidate Seminar, Election Supervisory Board shall clearly define what would constitute each class of a violation.

Because candidacy is determined prior to the Candidate Seminar, candidates are required to abide by the Election Code despite the pendency of the Candidate Seminar. According to Section 3.11 of the Student Government Election Code:

JURISDICTION OF CODE. Candidates, their agents, and workers are subject to governance by this code throughout the duration of the candidate’s endeavoring to be elected to office in accordance with TITLE II, Sec. 3.8. (a) Candidates may still be held responsible and sanctioned for electioneering activities that violated the provisions of this code and its associated rules



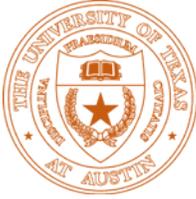
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before the Candidate filed for office and was registered as a candidate by the Election Supervisory Board.

There is also a second agreement referenced in the notice of candidacy email. Candidates have agreed to the “Campaign Organization and Protected Marks Agreement” with the Office of the Dean of Students. This agreement outlines what each student must do “[t]o be added to the ‘Campus Elections’ student organization.”

The “Campaign Organization and Protected Marks Agreement” specifically indicates attendance at the Candidate Seminar as one of its mandatory requirements. The consequences for not following all mandatory requirements are clearly outlined as a loss of these privileges, among others:

Students may reserve space on campus under the ‘Campus Elections’ student organization; Fees accrued (special equipment, damages, etc.) when utilizing reserved space is the responsibility of listed candidate and delegate; The listed candidate must schedule and complete event consultations for outdoor events; Students may check out tables for the West Mall and Gregory Plaza; Students may reserve space in the Jester Concourse; Students may post approved flyers on kiosks using the ‘Campus Elections’ student organization...During the campaign season, the dates listed below, students may use and display certain protected marks on campaign materials. Campaign print and web materials must be removed within 24 hours of the announcement of the election results. The images are available for download from the ‘Campus Elections’ student organization's HornsLink page. The provisions are as follows: Only the following protected marks are eligible for use (without alterations) during the campaign period, pending approval per the Election Code: UT Tower (including photos of the tower) Burnt Orange color ‘Hook ‘em Horns’ Slogan and Hand Sign Marks must only be used internally for campaign use on: Non-permanent printed materials (fliers, postcards, posters) Electronic materials T-shirts, hats, permanent banners, and other objects must go through the University's Trademark online approval process (<https://portal.trademarks.utexas.edu>) Campaign Season Dates January 16, 2018 – February 13, 2018: May utilize protected marks to create campaign print and digital materials, but may not display. May submit space reservation requests February 14, 2018 – March 1, 2018: May fully utilize privileges of ‘Campus Elections’ student organization and display print and digital materials, including the protected marks March 2, 2018:



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All privileges of 'Campus Elections' student organization end and campaign materials utilizing protected marks must be removed within 24 hours of the election results announcement, except if a candidate is participating in a run-off election. March 2, 2018 – March 8, 2018: Privileges of 'Campus Elections' student organization may be extended for candidates participating in a run-off election. March 9, 2018: All privileges of 'Campus Elections' student organization end and campaign materials utilizing protected marks must be removed within 24 hours of the election results announcement, except if a candidate is participating in a run-off election.

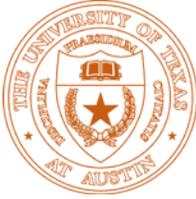
The Court finds that failure to attend the Candidate Seminar or obtain an excused absence immediately prompts the revocation of privileges afforded per the "Campaign Organization and Protected Marks Agreement." As a result, candidates may not join the Campus Elections organization, or exercise any privilege of membership. Meanwhile, by signing the Candidate Agreements, students give the Election Supervisory Board the authority to determine the nature, severity, and intent of violations and issue punishments to its discretion are made in the form of rulings.

The Election Code grants broad deference to the ESB in determining the punishment applicable for different violations of the Code. The Code requires that the determination be based upon intent and severity, but does not provide guidance for how such terms should be defined. Because the ESB is granted this broad power under the Election Code, it is entitled to determine whether non-attendance at the Candidate Seminar is a severe enough violation with the requisite intent to justify disqualification. Because there is no hearing record associated with any disqualified party, the Court cannot review the legitimacy of the determination at this time.

ON PRECEDENTIAL VALUE OF ESB ACTIONS

The Court also entertained arguments from Petitioner Guzman's representatives regarding the precedential value of ESB actions. The Court would like to note a conflict within the Campus-Wide Election Code's statutes on the matter.

Section 1.10 of the Campus-Wide Election Code states:



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RELEVANCY OF RULINGS. Rulings made by the Election Supervisory Board during any election period are relevant only to that election and associated runoff elections.

While Section 4.10(c) of the Election Code states:

Written opinions shall set a precedent for a time period of three election cycles for Election Supervisory Board rulings and shall guide the Election Supervisory Board in its proceedings.

According to Section 1.9 of the Campus-Wide Election Code:

SINGLE AND SEPARATE APPLICATION. Each election under this code shall be considered a single and separate application of this code.

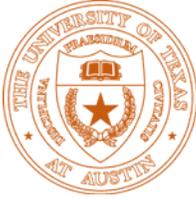
According to Section 5.18 of the Student Government Constitution:

PRECEDENTIAL VALUE OF SUPREME COURT OPINIONS. Published Opinions and rulings of the Supreme Court shall have binding precedential value over subsequent proceedings of the Election Supervisory Board.

This Court finds that despite the ESB rulings may not have precedential value beyond the election cycle in which they are decided. It is contradictory to suggest that past ESB rulings are neither relevant nor binding to its decisions, yet still hold precedential value. Thus, as is necessary to interpret the Campus-Wide Election Code and the Student Government Constitution, Section 4.10(c) is declared unconstitutional and no longer has effect.

This Court determines Section 4.10(c) null and void in the context of both the Campus-Wide Election Code and the Student Government Constitution.

ON ROLES AND OBLIGATIONS OF THE ESB



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The representatives of Petitioner Guzman argue that there was no hearing held by the ESB on the ruling issued in ESB Resolution 2018-002, a claim confirmed by the Election Supervisory Board.

The Court recognizes that the ESB has two distinct functions: a regulatory function and a judicial function. These functions are distinct but are performed by the same body, the ESB.

This Court recognizes that the ESB has been granted plenary authority by the Election Code to oversee the campus-wide elections. The ESB is empowered, and required, to enforce the Election Code during these elections. The ESB is unable to rely merely upon adversarial hearings of complaints brought by aggrieved parties, because the ESB itself is in the best, or only, position to observe certain violations. For example, the ESB cannot rely upon complaints to enforce rules regarding financial disclosures, because parties are required to submit those disclosures to the ESB. The ESB is also in the best position to enforce rules regarding attendance at events the ESB hosts. It is therefore incumbent upon the ESB to promulgate rules, establish a procedure for the enforcement of those rules, and serve as a watchdog to prevent and respond to any violation of the rules. The Court recognizes that the regulatory role of the ESB has been its primary duty in recent elections.

These regulatory functions are wholly unlike judicial functions. Courts, generally, are not proactive as to future misconduct, but reactive to past misconduct. Courts are not watchdogs; they are arbiters. Courts, generally, do not create rules or statutes, but subsequently apply them to resolve disputes. This is where the regulatory role of the ESB stands in contrast from that of a court.

However, the ESB is also empowered and required to serve as judicial functions when required. When complaints are raised by an aggrieved party against a candidate, the ESB is the court of original jurisdiction for such a dispute. The ESB is tasked with hearing the complaint, and receiving arguments and testimony from any witnesses, as well as making findings of fact and determining an outcome. These functions are court-like in nature.

Despite the distinct functions the ESB plays in its supervision of the elections, this Court takes notice that the rules describing the powers and responsibilities in the Elections Code do not distinguish between the roles in their application. Thus, the Court must take every statute governing the function of the ESB in their issuance of decisions,



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opinions, orders, or rulings as applying to both roles the ESB. As stated in Sections 4.15 and 4.16 of the Campus-Wide Election Code:

CONSEQUENCES OF A CLASS B OR C VIOLATION. If, after a hearing, the Election Supervisory Board finds a candidate, or a candidate's agents or workers, has committed a Class B or Class C violation, the Election Supervisory Board may restrict the candidate, or the candidate's agents or workers, from engaging in some or all campaign activities for some or all of the remainder of the campaign period. If an order is issued covering only part of the remaining campaign period, it shall take effect within twenty-four (24) hours so that after its termination, the candidate will have an opportunity to resume campaigning during the days immediately prior to and including the election days.

CONSEQUENCES OF A CLASS D VIOLATION OR OTHER DISQUALIFICATION RULING. If after a hearing, the Election Supervisory Board finds that provisions of this code or the decisions, opinions, orders, or rulings of the Election Supervisory Board have been violated by a candidate, or a candidate's agents or workers, or has committed a Class D violation, the Election Supervisory Board may disqualify the candidate.

The Court finds that the function of this hearing is clearly defined per Section 4.9(a) in the Campus-Wide Election Code:

The purpose of the hearing is to gather the information necessary to make a decision, order, or ruling that will resolve an election dispute...

Furthermore, the Court finds Section 2.17 of the Campus-Wide Election Code relevant to this matter:

'RULING' refers to any decision or ruling issued by the Election Supervisory Board resulting from a hearing.

Per the instructions and justifications given in Campus-Wide Election Code Sections 4.15, 4.16, 4.9(a), and 2.17, this Court finds the ESB in violation of procedure and remands with instruction. This Court instructs



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the ESB to conduct a hearing in accordance with Chapter IV Subchapter A of the Campus-Wide Election Code, which applies a procedure to be used for all violations. Duties of the ESB in acting in accordance with Chapter IV Subchapter A of the Campus-Wide Election Code include, but are not limited to, providing: appropriate notice to candidates, appropriate timeframe for the hearing, appropriate hearing procedure, and appropriate adherence to decision timeline.

FINDINGS AND RULING

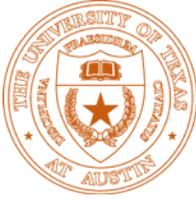
In summary, this Court has made the following findings:

Regarding candidacy, this Court finds that candidacy is determined by certification of eligibility by the Office of the Dean of Students. Under Section 7.13 of the Campus-Wide Election Code, and because it is the only indicia candidates receive to memorialize their candidacy, the Court holds that receipt of the candidacy confirmation email is sufficient to demonstrate candidacy under the Election Code. This serves as an acknowledgement by the organizing body of the election, the ESB, of its agreement with the aspiring candidate, and the rights and responsibilities of the candidate. Therefore, the Court considers this receipt a sufficient indication of candidacy. As a result, the status of candidacy is effective from at least the time of that receipt.

Regarding agreements made by candidates upon filing, this Court finds that failure to attend the Candidate Seminar or obtain an excused absence precludes the privileges afforded per the "Campaign Organization and Protected Marks Agreement" and membership of "Campus Elections" as an entity created and maintained by the Dean of Students. Meanwhile, by signing the Candidate Agreements, students give the Election Supervisory Board the authority to determine the nature, severity, and intent of violations and issue punishments as such determinations are made in the form of rulings.

Regarding the precedential value of ESB rulings, this Court determines Section 4.10(c) unconstitutional, null and void due to conflict within higher structure of the Campus-Wide Election Code and the Student Government Constitution.

Regarding the procedure of ESB's ruling issuance, this Court finds that the ESB did not apply appropriate procedure in issuing ESB Resolution 2018-002 as it failed to conduct a hearing prior to issuance. As such, this



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Court reverses ESB Resolution 2018-002 and remands with instructions to the ESB for proper hearing. This Court instructs the ESB to conduct a hearing in accordance with Chapter IV Subchapter A of the Campus-Wide Election Code, which applies a procedure to be used for all violations. Duties of the ESB in acting in accordance with Chapter IV Subchapter A of the Campus-Wide Election Code include, but are not limited to, providing: appropriate notice to candidates, appropriate timeframe for the hearing, appropriate hearing procedure, and appropriate adherence to decision timeline.

It is so ordered.