



THE STUDENT GOVERNMENT SUPREME COURT
THE UNIVERSITY OF TEXAS AT AUSTIN

In Re: Pease v. ESB

JUSTICE SLAGLE delivers the dissenting opinion.

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

No. 2019 Spring – 001

Delivered March __, 2019

I respectfully dissent. I disagree with the majority's decision to reinstate candidates who were disqualified and issued a Class D Violations for failing to turn in their final financial disclosures. Additionally, I disagree with their interpretation of Section 4.16 of the Campus-Wide Election Code:

CONSEQUENCES OF A CLASS D VIOLATION OR OTHER DISQUALIFICATION 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.

According to Section 4.16 of the Campus-Wide Election Code, after the Board hears a case in compliance to Section 4.1 through 4.1 (b) then the Board can issue a Class D violation. However, this does not mean that the Election Supervisory Board is required to hear a case before issuing a Class D Violation and disqualifying a candidate when no complaint has been filed. If the Election Supervisory Board defines what qualifies as a Class D Violation and disqualification



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through advisory opinions and verbal and oral communication at the candidate seminar then the ESB may issue Class D Violations and disqualifications of candidates without a hearing, stated in section 4.13 of the Campus-Wide Election Code:

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 violation.

The majority argues that Section 4.16 requires a hearing for a Class D violation or “other disqualification ruling.” However, I do not find this to be true. Cases are heard when a complaint has been filed by a student as stated in Campus-Wide Election Code, Section 4.1 through 4.1 (b):

FILING OF COMPLAINTS. Members of the Election Supervisory Board are prohibited from filing complaints. (a) Any other student may file a complaint with the Election Supervisory Board. (b) All complaints must be filed under the name of the student filing the complaint.

Sections 4.9 through 4.9 (a) of the Campus-Wide Election Code lay out the ESB hearing procedure, stating that the complaining and responding parties appear physically before the Board:

ESB HEARING PROCEDURE. The Election Supervisory Board shall determine the format for the hearing but must require that both the complaining and responding parties appear physically before the Board to discuss the issues through a complaint, answer rebuttal, and rejoinder format, when applicable.

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



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The ESB cannot legitimately hold a hearing without a complaint and two parties present in front of them. The ESB cannot hold a hearing against its past decisions; however, any party can appeal a decision of the ESB, Campus-Wide Election Code, Section 5.1:

APPEAL OF ESB DECISION. Any party adversely affected by a decision of the Election Supervisory Board may file an appeal with the entity with appellate jurisdiction within twenty-four (24) hours after the adverse decision is announced unless the Election Supervisory Board's decision takes place during a voting period. During the voting period, an appeal must be filed within eight (8) hours after the adverse decision.

Both Pease and Ainsworth failed to file their appeals within the eight (8) hour timeframe (the Board's decision took place during a voting period). The ESB decision to issue a Class D Violation was issued at 9:45 p.m. on Tuesday, March 5, 2019. Ainsworth submitted her appeal to the Supreme Court at 6:05 p.m., on March 6, 2019. Pease submitted her appeal to the Supreme Court at 3:49 p.m., on March 6, 2019.

In this year's Campus-Wide Election, the Election Supervisory Board wrote Advisory Opinion 2019-003 in accordance to Section 7.12 of the Campus-Wide Election Code:

CAMPAIGN EXPENDITURE RECORDS. Each candidate must keep accurate and up-to-date records of all campaign receipts and expenditures. A template for financial disclosures for use by all candidates will be developed by the Election Supervisory Board and provided to each group by the first day of filing.

Advisory Opinion 2019-003:

“Failure to submit any Financial Disclosure forms by their respective deadlines will be recognized as a failure to comply with the Campus-Wide Code and will result in the following violations:

(a) Failure to submit the first Financial Disclosure Form by the Deadline will be a Class A Violation (referenced from Sec. 4.13 of the Campus-Wide



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Election Code “DEFINING CLASSES OF VIOLATIONS”) – a 5% decrease of your campaign spending limit.

(b) Failure to submit the second Financial Disclosure Form by the deadline will be a class D Violation (referenced from Sec. 4.13 of the Campus-Wide Election Code “DEFINING CLASSES OF VIOLATIONS”) – disqualification.

(c) Failure to submit both Financial Disclosure forms by the second deadline will be a class D Violation (referenced from Sec. 4.13 of the Campus-Wide Election Code “DEFINING CLASSES OF VIOLATIONS”) – disqualification.”

At the candidate seminar Election Supervisory Board member Nicholas Eastwood presented and read a PowerPoint slide at the required Candidate Seminar:

Financial Disclosures

- Please turn them in on time
- Sanctions for not doing so:
 - 1st financial disclosure: Class A Violation – 5% fine
 - 2nd financial disclosure: Class D Violation – Disqualification
 - Not Turning in Both by 2nd Deadline: Class D Violation – Disqualification

The Campus-Wide Election Code reads that candidates must keep accurate and up-to-date records of all campaign receipts and expenditures, the Board’s issuance of Advisory Opinion 2019-003 explicitly tells candidates the consequences of not submitting financial disclosures. If one were to argue that issuing a Class D violation does not follow ‘due process,’ one should look to the warnings that the candidates were issued through the emails sent to candidates in addition to the instructions issued at the Candidate Seminar and through Advisory Opinion 2019-003:

ESB Member, Mariano Bracamontes Akle sent an email to Pease at 10:12:47 PM on March 3, 2019, which read:

- “The election voting will begin in just a few hours. However, there are a few things to keep in mind.
- 1) Voting will end on Tuesday at 5 pm



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2) Your Financial Disclosure #2 is due this Tuesday
at 4:30 PM”

EBS Member, Nicholas Eastwood sent an email to Ainsworth at
8:14 p.m., on March 3, 2019:

“Please be sure to submit your second financial
disclosure before the deadline tomorrow [sic]. You
don’t want to get DQ’ed!”

Both Pease and Ainsworth were reminded through an additional
email about the final Financial Disclosure from the ESB Chair,
Dakota Park-Ozee at 3:53 p.m., on March 5, 2019:

“If you are receiving this email, you have not turned
in your second financial disclosure. These are due
today @ 4:30 p.m. This is in less than 40 minutes.
Recall that, per this advisory opinion, the penalty for
failing to submit or submitting late is a
disqualification.

Please get these in!”

The ESB released “ESB Resolution: 2019-004” in which Caroline
Pease, Holly Ainsworth, Nico Rago, and Winston Hung were all
issued a Class D Violation for failing to submit their final Financial
Disclosure. All of these candidates ended up winning their
respective race. Two of these candidates won uncontested, and the
other two beat other candidates that had turned in their final financial
disclosures.

Additionally, Section 5.18 of the Constitution of The University of
Texas at Austin Student Government reads:

**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.

The Supreme Court issued an opinion on September 26, 2018,
during First-Year Elections which resulted in four candidates
receiving a Class D Violation and disqualification for failing to
submit their third and last financial disclosure on time. The Court



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issued an opinion (No. 2018 Fall – 002) and presented a slide during the candidate seminar on September 18, 2018, which stated that all candidates who fail to submit their third financial disclosure prior to its deadline will have a Class D Violation levied against them and receive a disqualification from the race. Section 5.18 of the Constitution of The University of Texas at Austin Student Government counsels the ESB to obey Supreme Court precedent, which ESB did. If the Court wished to have the ESB follow a different opinion, the court should have issued an opinion before the Campus-Wide Election.

Being elected to serve as a representative in The University of Texas' Student Government is a respectable privilege. When candidates do not follow the rules and win seats, it devalues not only the prestige of being in student government but also the time candidates put into running in the election. Additionally, it discourages candidates that follow the rules from participating in UT's Student Government.

The purpose of a university education is to prepare students for the workforce, and from experience, no employer will send multiple reminders to an employee to turn in a simple form. These candidates were fortunate to have received reminders in addition to the reminder they received at the required candidate seminar. If a candidate wants to represent his or her possible constituents, he or she should go through the effort to understand the rules of the election to show UT students that he or she is responsible enough to represent them in an honorable fashion.