Advisory Opinion: Authority of the Court to Take Sua Sponte Action to Disqualify Candidates for Infractions in First-Year Elections

CHIEF JUSTICE DODSON delivers the opinion.
JUSTICE JAMES and JUSTICE PETON join.

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

No. Fall 2019 – 001

Delivered August 21, 2019

Summary: In accordance with its holding in *Pease v. ESB*, the Court will not take disciplinary action against a candidate without a complaint by an aggrieved party.

I. Background

In the Spring 2019 general election, four candidates were disqualified by the ESB without a hearing for failing to submit financial disclosures by the final deadline. Two of these candidates appealed their disqualifications.

In the opinion deciding these appeals – *Pease v. ESB* – the Court held that: (1) the clear text of §4.16 of the Constitution requires a hearing before a candidate may be

disqualified, (2) the hearing procedures outlined in §4.3 and §4.9 are fundamentally adversarial, and (3) therefore the ESB must rely on an aggrieved party submitting a complaint and serving an adversarial role to hold a hearing and consider disciplinary action. In light of this holding, the ESB may not take sua sponte (of its own accord) action against a candidate.

The holding in *Pease v. ESB* modified the ESB's longstanding practice of issuing automatic citations. Formerly, the ESB would outline the consequences of failure to submit a timely and accurate financial disclosure – disqualification in the case of the final disclosure – and would then issue a citation without a hearing against infracting candidates. *Pease* proscribes this practice. After *Pease*, all disciplinary action taken against a candidate must be precipitated by a complaint and the issuance of a citation must be subsequent to a hearing.

However, in delivering judgment against the ESB, the Court felt the queasy discomfort of the pot reproaching the kettle.

In previous first-year elections, the Court similarly disqualified candidates without a hearing for failure to submit timely financial disclosures (Opinion No. 2018 Fall – 007). The Court also issued citations for financial disclosure infractions without a hearing (Opinion No.'s 2018 Fall – 004 & 006).

The Court, recognizing that this practice is at odds with its holding in *Pease*, seeks to remedy the disaccord by holding itself to the *Pease* standard in the 2019 First-Year Elections.

II. What *Pease* Means for First-Year Elections

The Court's chapter in the Code of Rules and Procedures (Chapter V) outlines an adversarial process for hearings similar to ESB's process in §4.3 and §4.9. Adversarial parties present a live controversy; the complainant's grievance and the respondent's interest in avoiding punishment sharpen the issue, ensuring both sides have a strong interest in presenting the best arguments.

The Court in *Pease* recognizes that adversarial parties are necessary for due process. If this is true, it is true of the Court and of the ESB equally. Therefore, the Court will be applying the holding in *Pease* to the first-year elections.

Pease means three things for candidates and students in the upcoming elections:

1. The Court will not take disciplinary action without first receiving a complaint from an aggrieved party.[1] **This is not limited to financial disclosure infractions.**

2. Complainants must be willing to present their case against the respondent in a hearing before the Court. Failure by either party to appear at the hearing will result in the dismissal of the case.

3. It is emphatically the responsibility of the **student body** and **candidates** to police their fellow students. Just as the Court will not take action in the absence of a complaint, neither will it send stool pigeons to furnish complaints against infracting candidates.

III. What *Pease* Does NOT Mean for First-Year Elections

[1] The Court generally construes the standing and grievance requirements to submit a complaint quite broadly. In practice, this means that nearly any student, candidate, or even a professor or administrator may file a complaint against a candidate.

Candidates who fail to attend or send an agent to attend the first-year candidate seminar will not be afforded a hearing; attending or sending an agent to attend is constitutive of being a properly certified candidate. Failing to do so does not result in disqualification from candidacy but rather that the student does not become a candidate in the first place.

Pease also does not mean that the Court accepts a looser construction of the financial disclosure requirements or any other provision of the election documents. Though a hearing is required to consider both the "severity" and "intent" of the infraction (§ 4.13, Campus-Wide Election Code), failure to submit a financial disclosure requires only general intent. Barring extraordinary circumstances, forgetfulness, technical issues, and the general exigencies of college life will not be arguments likely to prevail.

Finally, *Pease* does not render toothless the provisions of the election code relating to financial disclosures or maintaining lists of campaign agents and workers. Students will have the resources necessary to ensure that candidates are acting in accord with the election code and to censure those who are not.

The Court will maintain a real-time database of financial disclosures and campaign staff disclosures on the utexasvote.org website. Submittals will be timestamped and receipts for expenditures available on request. This website is open to the public and interested parties may patrol the database for late submittals or inaccurate disclosures.

IV. Conclusion

Pease does not consign first-year elections to the lawlessness of Deadwood. Even in that place of illiterate hoopleheads, some enforcement of law broadly defined

existed. The Court in applying *Pease* to first-year elections does not remove the watchman from his post but instead relies on the vigilance and probity of an informed, engaged, and interested student body.

In past elections, the Court and the ESB policed and enforced infractions related to financial disclosures and lists of campaign workers and agents. Their service was admirable but ultimately in conflict with the Student Government Constitution and principles of due process. Now, their watch is ended. It is time for the student body of the University of Texas at Austin to take the black and be the watchers on the wall.

It is so ordered.