THE UNIVERSITY OF KANSAS STUDENT COURT OF APPEALS

Chance Maginness Onward Presidential Candidate Mady Womack OneKU Presidential Candidate Jonathan Ehrlich OneKU School of Law Candidate Tomas Green KUnited Presidential Candidate Petitioners VS Elections Commission Represented by Garrett Farlow Respondent	)	12 April, 2017 Case No. 2017-04-12

ORDER AND MEMORANDUM OF DECISION

Overview of Proceedings:

A petition was received by the Court of Appeals on April 9, 2017, from OneKU Presidential Candidate Mady Womack, Onward Presidential Candidate Chance Maginness, KUnited Presidential Candidate Tomas Green and OneKU School of Law Candidate Jonathan Ehrlich (henceforth referenced as "Petitioners"). An appeal was filed before the Court calling into question the Student Senate Election Commission's (henceforth referenced as the ("Respondents") decision to bar 38 individuals from running in the Spring 2017 Student Senate election because they did not meet the

validated 25 student signature threshold to establish candidacy. The Petitioners state within the initial petition that the court must decide whether the Elections Commission has the authority to implement a strenuous procedure for reviewing signatures on the candidacy form, which ultimately held almost 50 students ineligible for candidacy in the election.

The Petitioners filed for a Writ of Certiorari on March 9, 2017 with the Court of Appeals, which was ultimately accepted by The Court. The case was accepted based on the statute found in SSRR Article IV: Section 1. However, the Chief Justice mandated two stipulations within the acceptance email of the Writ of Cert. First, the Chief Justice of the Court of Appeals asked that the three Presidential Candidates (Onward, KUnited and OneKU) who authored the filed and accepted Petition (the Petitioners) provide a list of all the individuals they would be acting on behalf. Second, she required that the individuals whom the Petitioners were representing be contacted and made aware that this case was before the Court. There were 36 names submitted: 15 from Onward Presidential Candidate Chance Maginness, 7 from KUnited Presidential Candidate Tomas Green and 14 from OneKU Presidential Candidate Mady Womack. All parties met this obligation.

In concurrence with the Writ of Certiorari filed by the Petitioners were requests for Expedited Proceedings and Injunctive Relief. As Appendix P: Rule 16 states, Expedited Proceedings “shall be granted only in extraordinary circumstances”. The Chief Justice granted Expedited Proceedings due to the extraordinary circumstances displayed within the petition, specifically the impending Spring General Elections scheduled to follow the next week. As outlined in Appendix P: Rule 15, the Court “shall have the

authority to issue injunctions to prohibit or require actions of an individual or group" bearing certain conditions are met, such as "the integrity of the student body may be compromised, the integrity of the Student Government may be compromised, the integrity of a proceeding of this Court may be compromised, and the actions or potential actions may be illegal". Injunctive Relief was granted by the Chief Justice to allow for the formerly barred students to remain on the ballot until a hearing was held.

Following Expedited Hearings procedure outlined in Appendix P: 16.3, the Chief Justice scheduled a preliminary hearing teleconference on April 10, 2017 at 2:00 p.m., and requested Brief of Arguments from both parties following the preliminary hearing. The Petitioners submitted their Brief of Arguments, on April 10, 2017 by 5:00 p.m., and per Appendix P: 16.3.a, the Respondent submitted their Brief of Arguments one day later, on April 11, 2017 at 5:00 p.m.

After the Oral Arguments concluded, the Court reviewed the names of the 36 barred individuals, which were represented by the Petitioners, with all Presidential Candidate Petitioners and the Respondents. After discussion with the Petitioners first and the Respondents second, the Court found that only 32 of the names were in question and pertained to this case. Four of the individuals were recently found to have met the 25-signature stipulation as well the other requirements as outlined within SSRR. Those four candidates would be placed on the ballot no matter the ruling of this Court. The 32 individuals that this case pertained to and were represented by the Petitioners are listed below:

Onward	KUnited	OneKU
Eric Kros	Lizzy Langa	David Khalif
Emma Creighton	Emily Mahapatra	Noah Steilen
Elle Clouse	Carly Cole	Sara Muench
Stephanie Matthews	Daniel Lee	Camron Myers
Hunter Lindquist	Harneet Sanghera	Dylan Jones
Andrew Ferguson	Brooke Georguson	Jaidan Royal
Zachary Green	Cassidy Harden	Mitch Reinig
Seth Wingerter		Saif Bajwa
Kara Kellogg		Nick Dykmann
Tahir Meeks		Angela Griffin
		Haley Pederson
		Hugh riley
		Ben Pannell
		Antonio Lopez

Overview of the Case:

1. SSRR 7.5.9.8 stipulates that potential senatorial candidates must complete filing requirements by 5:00 p.m. on the Monday that is two calendar weeks prior to the week of the General Election. This years filing date was March 27, 2017.
2. SSRR 7.5.9.10 further states that the "filing deadline for all independent Senatorial candidates (not running under a coalition name) shall be 5:00 pm the Monday of the week before the General Election." This year's filing date was April 3, 2017.
3. The EC informed the various coalitions' communications liaisons of their list of eligible senators on the afternoon of April 3, 2017. In summary, the EC listed who would be placed on the ballot after the potential candidate met all stipulations for candidacy.
4. Members from Onward, KUnited and OneKU all had coalition candidates whom would not be placed on the General Elections ballot and could not further be considered a candidate.

5. After such emails, various individuals approached the EC in order to appeal their case. The EC did not hear such cases and referred them to the Court of Appeals.
6. On March 9, 2017, four University of Kansas Student Senate candidates filed a Petition for Writ of Certiorari, a request for Expedited Proceedings and a request of injunction with the Court of Appeals on behalf of the 32 individuals. The Petitioner's brought before the Court the questions of 1) if the Elections Commission (EC) had jurisdiction to implement such strenuous checks on the 25-signature restriction mandated within SSRR and 2) if the EC acted within its just power to remove the 32 individuals from the 2017 Spring General Elections ballot.
7. The Chief Justice of the Court of Appeals asked that the three Presidential Candidates (Onward, KUnited and OneKU) who authored the filed and accepted Petition be required to uphold two stipulations set within the acceptance email. These can be found above.
8. With the requested injunction enacted, the barred individuals were then placed on the template ballot and were technically still a potential candidate within the 2017 Spring General Election. The injunction was enacted until the Court could rule on the decision.
9. The preliminary hearing was held via teleconference at 2:00 p.m. on Monday, April 10, 2017 between the Chief Justice, Petitioners, and Respondents.
10. The Petitioners submitted their Brief of Arguments by 5:00 p.m. on April 10, 2017, and the Respondents submitted their Brief of Arguments by 5:00 p.m. the following day, April 11, 2017.

11. The hearing took place on April 11, 2017, at 5:40 p.m. in the Parlor ABC room of the Kansas Union.

The Court's Ruling:

After much deliberation and discussion, the Court has unanimously decided the following: 1) there was no violation of due process in this case; 2) the correct standards of review for appeals arising from Elections Commission decisions are de novo review for questions of law and clearly erroneous for questions of fact; therefore, 3) the Elections Commission correctly denied the students their candidacy.

1. The Court's Ruling: There is no violation of due process in this case because the Petitioners never had a protected property interest in a candidacy

The Court finds that the Elections Commission did not violate the procedural due process rights of the 32 individuals represented by the Petitioners.

When considering procedural due process claims, the court must follow a two-step process. First, the court must determine whether the individual possessed a protected interest. *Brown v. Univ. of Kansas*, 16 F. Supp. 3d 1275 (D. Kan. 2014). Second, the court must determine whether the individual was afforded an appropriate level of process. *Id.* Since this Court finds that there was no protected interest in this case, we do not need to continue to the second step.

The Petitioners argue that the 32 individuals are analogous to the law student in *Brown.* In that case, the court ruled that the law student had a protected property interest in his *continued* enrollment. *Id.* The current case is distinguishable from *Brown*.

To have a protected property interest under the due process clause, an individual must have more than a unilateral expectation of it; he/she must, instead, have a legitimate claim of entitlement to it. U.S. Const. amend. XIV. Unlike the law student's legitimate expectation of his *continued* enrollment, the 32 individuals in this case do not have a legitimate claim of entitlement to candidacy in this election. Because these 32 individuals did not meet the filing requirements, they never achieved the status of "candidate" and therefore have no legitimate property interest in their possible candidacies.

SSRR 7.5.7.1 states "[a]ny person meeting the qualifications for office, outlined in Section 4.3, may become a candidate by complying with the following requirements." The Court interprets this language as requiring students to comply with the rules outlined in 7.5.7.1 before achieving the status of "candidate." One of the requirements set forth in 7.5.7.1 is that students must file, along with a declaration of candidacy, "a petition with twenty-five (25) signatures *from students that are eligible to vote for said candidate*." SSRR 7.5.7.1.2 (emphasis added). Because the 32 individuals in this case did not meet this filing requirement, they have failed to comply with the requirements for candidacy.

Petitioners also argue that students who file as candidates have a significant property interest in their candidacy when they begin campaigning. An individual may begin campaigning once they have filed as a candidate. SSRR 7.5.7.1.6. Under this Court's interpretation of the filing requirement in SSRR 7.5.7.1.2, a student has not "filed" until the materials they have submitted are validated by the Elections Commission. Therefore, students should not begin campaigning until they have been officially "filed" as a candidate. To avoid further confusion, this court recommends that Student Senate amend SSRR to either allow students to campaign once they have

submitted the required candidacy application materials or make students wait to campaign until the Elections Commission officially grants them candidacy status.

Turning in the required forms is simply an application to file. Under this court's interpretation of SSRR 7.5.7.1.2, the student has not "filed" until the materials they have submitted are validated by the Elections Commission. Because the 32 individuals in this case did not have their materials validated by the Commission, they did not have any protected property interest in their potential candidacies. Therefore, the Elections Commission did not violate the Petitioners' procedural due process rights.

2. The Court's Ruling: The appropriate standards of review in this case are de novo for the SSRR, and clearly erroneous for questions of fact arising from the Elections Commission.

This Court has never squarely addressed the standard of review it should give to appeals arising from decisions by the Elections Commission. Due to the contentious nature of Student Senate elections, particularly those that appeal before us, it is important that we provide a standard that students can rely upon for any future cases or controversies. Thus, we adopt the de novo standard of review for questions of interpretation of the SSRR. We also adopt the "clearly erroneous" standard of review for any prior findings of fact made by the Elections Commission.

The standard of review is the deference an appellate court gives to a lower reporting agency or body. 1 Fed. Appellate Prac. Guide 2d § 4:1 (2011). De novo is from the Latin, meaning "anew, fresh; a second time." Black's Law Dictionary, 435 (6th Ed. 1990). The de novo standard of review is defined as an independent, new review without

deference to any prior decision. *Zervos v. Veriz*on N.Y., Inc., 252 F.3d 163, 168 (2d Cir. 2001).

The clearly erroneous standard of review means that although there is evidence to support a contrary decision than the lower body's decision, the appellate court is left with the lower body's decision unless there is a definite and firm conviction that a mistake has been made. *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948). This standard exists because a hearing on the merits of the facts should be "the 'main event' . . . rather than a "tryout on the road.'" *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977).

The de novo makes sense for this Court. We have the sole authority to interpret what the words in the SSRR mean. SSRR 4.1.1. Because we have been vested with the authority to interpret and decide all issues arising from the SSRR, we must have the authority to review any prior determinations made towards the SSRR fresh, and anew. Since a direct translation of de novo means both fresh and anew, it is precisely the correct choice for the Court now, and for this Court in future disputes.

The clearly erroneous standard also makes sense when dealing with contested findings from the Elections Commission. All alleged violations of the Elections Code are heard by the Elections Commission. SSRR 7.4.1. The operations of the Student Senate elections and all related matters are under the authority of the Elections Commission. SSRR 7.3.1. During an Elections Commission hearing, they have the ability to hear and decide questions of fact, including: testimony, documents, and other evidence. SSRR 7.4.3.1, 7.4.3.2.

From these SSRR sections, the Student Senate plainly meant for the Elections Commission to be the primary arbiter of all factual disputes arising from alleged

campaign violations. This makes sense - it is the Elections Commission's job to oversee the election, after all. Because the Student Senate's intent is obvious, this Court should respect that intent and defer to the Elections Commission on factual matters - unless it can be shown that their result met the high threshold of being clearly erroneous.

This high threshold is correct here. Were it otherwise, and this Court was able to hear questions of fact de novo, it would effectively abolish the Elections Commission's authority under the SSRR to decide questions of fact. Instead, the Elections Commission would merely become a tryout on aggrieved student's road to judicial satisfaction. But the Elections Commission is much more than a tryout, they are critical to the healthy functioning and operation of any election. The SSRR makes that plain, and this Court is a faithful agent of the SSRR.

So, this Court adopts the de novo standard of review for questions of the SSRR, and the clearly erroneous standard of review for questions of fact arising from prior determinations of the Elections Commission. The establishment of this standard is long overdue. All students and student agencies can rely upon the implementation of these standards in future hearings of this Court.

3. The Court's Ruling: The Elections Commission correctly denied the Petitioners' requests for candidacy because the Petitioners failed to meet the requirements set forth in the SSRR.

The operations of the Student Senate elections and all related matters are under the authority of the Elections Commission. SSRR 7.3.1. This includes the review of signatures, and students wishing to run for Student Senate are required to collect 25 valid

signatures. SSRR 7.5.7.1.2. Valid signatures are signatures from individuals who are eligible to vote for the candidate in the general elections. *Id.*

The Elections Commission rightly decided that the students listed in this petition did not complete the requirements necessary to be a candidate. Every single signature of every single student wishing to declare candidacy was checked to ensure the signature was from active students, and that the students were eligible to vote for the student named in the petition. This was no small task. The Respondent notes that over two thousand signatures were evaluated. This highlights diligent behavior focused on fairness.

And the Elections Commission was within their authority to scrutinize the signatures this closely. All operations pertaining to elections are under the authority of the Elections Commission. SSRR 7.4.1. And since 25 eligible signatures are required for a student to be a candidate for Student Senate, it is within the Elections Commission's authority to scrutinize every single signature. If anything, the fact that every signature of every candidate was scrutinized only strengthens the Respondent's claim that their behavior was focused on a fair and accurate implementation of the Elections Code.

The Petitioners have made no evidentiary showing that any decision by the Elections Commission about a signature was wrongly decided. In oral arguments, the Petitioners conceded that this was not a question about incorrectly decided signatures, but rather a question about due process and policy. Since there is no evidence that any signature is in fact valid, the Petitioners fail to meet the clearly erroneous standard of review - nor any other.

As to the Petitioners other arguments, the due process questions has been disposed of above, and the policy argument fails because it is not compelling. The

Petitioners request this Court to abrogate any signature requirement, but also noted that it is not the role of this Court to legislate from the bench. But abrogating a requirement plainly stated in the SSRR because we disagree with the policy of the requirement places us in a position above the Student Senate. We refuse this interpretation of our role, and re-emphasize that we are faithful agents of the SSRR - not its sovereign.

Though this decision is disappointing for the individuals who were barred from candidacy in this election cycle, there are still opportunities to get involved in Student Senate. We hope that this ruling will not discourage these individuals from getting involved in the future. There are always seats opening up for various reasons, particularly at the beginning of the school year. Additionally, there are seats that remain unfilled after the Spring election. We urge these individuals to take advantage of these additional opportunities to stay involved with Student Senate in the future.

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With that being said, it is hereby decided unanimously by the Court to move forward with the above route of implementation.

It is so Ordered,

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Chief Justice Michaeli Hennessy

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Pro Tempro Sara Prendergast

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Justice Jake Vance

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Justice Annie Calvert

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Justice Joseph Uhlman