

THE UNIVERSITY OF KANSAS STUDENT COURT OF APPEALS

Redo Your U
Represented by Collin Cox

Petitioner

VS

Harrison Baker
Elections Commission

Respondent

11 April, 2017

Case No. 2017-04-11(2)

ORDER AND MEMORANDUM OF DECISION

Overview of Proceedings:

After holding a hearing about possible campaign violations by Redo Your U, a referendum group, the KU Elections Commission held that Redo Your U violated the Student Senate Rules and Regulations by campaigning early. The sanction imposed for this violation was revocation of Redo Your U's right to campaign for the remainder of the election season. Upon review, we find that the Student Senate Rules and Regulations governing referenda are incomplete, and lead to absurd results. Thus, we REVERSE the holding of the KU Elections Commission.

Overview of the Case:

1. Redo Your U (RYU) is a student referendum group formed to improve buildings and properties of the University of Kansas.
2. Approximately four years ago, RYU began planning to renovate the KU Memorial Union, a project that will putatively cost \$45 million dollars over thirty years.

3. On or around October 2016, RYU began the process to campaign for a student referendum ballot initiative, slated for the 2017 Spring Elections.
4. On March 4, 2017, the KU Elections Commission (KUEC) had its fourth chair acclimated by the KU Student Senate, and in doing so completed the acclimation process for the 2017 KUEC for the Spring Elections.
5. On April 5, 2017, the KUEC heard oral arguments in a complaint filed by KU Against Rising Tuition, alleging – among other things – campaign violations for campaigning before the official 2017 Spring Elections start date.
6. KUEC held that under Student Senate Rules and Regulations (SSRR) 7.2.10, RYU's advocacy activity fell within the definition of campaigning.
7. KUEC further held that the appropriate sanction under SSRR 7.7.2.3.5 was disqualification and removal from the ballot; however, KUEC instead chose to revoke RYU's ability to campaign for the remainder of the season.
8. On April 6, 2017, this Court received the petition for certiorari from RYU, along with a request for expedited proceedings and an injunction till the Court came to a decision.
9. The petition was accepted and the expedited proceedings request as well as injunction was granted on April 7, 2017 under SSRR Art. 4, Section 1.

The Court's Ruling:

This court unanimously agrees that the SSRR's regulations on referenda and referendum groups are incomplete, and application of the rules as they currently exist lead to absurd results. We note that the KUEC has been faithful stewards and executors of the rules it has been given, however we cannot uphold an interpretation of incomplete rules. Therefore,

this Court holds that 1) the SSRR rules are incomplete towards referenda, 2) this incompleteness leads to absurd results which cause undue harm.

1. ***The Student Senate Rules and Regulations on referenda are incomplete because they are written in a patchwork fashion that cannot be made whole.***

It is the duty of a court to give every clause and word in a statute meaning. *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1882). Courts must also yield to the ordinary meaning of a statute, unless such a reading ends in an absurd result. *Public Citizen v. Department of Justice*, 491 U.S. 440, 454 (1989). This includes striving to avoid an interpretation which implies that a legislating body was unaware of the the impact of the language it employed. *Montclair*, 107 U.S. at 152. All laws should receive a sensible construction that avoids injustice or harm, unless such a construction is impossible. *United States v. Kirby*, 74 U.S. 482, 486 (1869).

There is no sensible construction of the SSRR's rules towards referenda. The Student Senate Elections Code governs "general, freshmen, special, and recall elections, referenda, and initiative[s]." 7.1.2. Any person may file a complaint about the election code to the elections commission. 7.4.1. Campaigning is defined as any activity that promotes, among other things, the passage of one or more referenda 7.2.10. All campaigning must be done in accordance with the elections code. 7.5.1.

So far, so good. Referenda and referendum groups appear to be under the authority of the KUEC, especially when these groups are campaigning. Thus, any infraction should fall within their ability to discipline. This is where the KUEC stopped its reading of the SSRR, and relied upon these regulations as authority for its holding that RYU violated the elections code.

But this is an incomplete reading. The absence of clear procedures and oversight authority for referendum make the general regulations in the preceding paragraphs meaningless. A referendum vote can occur at any time of the school year through a special election 9.6.2. A special election is defined as any election ordered by 2/3 of the Student Senate that is not regularly part of the scheduled Student Senate elections 9.3.3.

There are no regulations that outline who administers, runs or oversees special elections. One might assume this would naturally fall under the scope of the KUEC, but the Respondent noted in oral arguments that the KUEC is not a year-round appointment. Instead, it exists only for Student Senate elections and Freshmen elections. The Respondent further observed that it is uncertain who would have oversight of a special election referendum vote, but it is not defined specifically as KUEC's responsibility.

This poses real problems. Looking at SSRR, it is within KUEC's general authority to oversee a referendum campaign. But how can it oversee a referendum campaign when it doesn't exist? Absent year-round appointments for members of the Elections Commission, there are gaps in the SSRR which give no campaign oversight to a referendum group. And this makes no sense: the purpose of the election code is to ensure fair proceedings by all parties. But currently the rules have no enforcement agency during parts of the year, and thus functionally no rules. Nor is there any way for a referendum group wishing to comply with the rules to do so, as there is no clear agency they can approach to ensure compliance when the KUEC isn't formed.

This is exactly what happened here. RYU noted in oral arguments that they had read the SSRR and believed the Student Senate was their oversight during a non-election

cycle. This is a reasonable inference: there is intuitively no better authority on the elections code than the body who made the code. But it is an incorrect reading of the SSRR. And despite RYU's best efforts, the moment KUEC was formed on March 7, RYU was in violation of the elections code. In practical effect, this is nonsense. It is, however, a correct, literal reading of the SSRR. And this nonsensical but literal reading of the SSRR is only the beginning to the absurd results.

2. *The SSRR's incompleteness towards referendum groups leads to absurd results that cannot be reconciled through judicial interpretation.*

It is the role of the judiciary to say what the law is. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). But only the legislature can make the law. U.S. Const. Art. I. This Court recognizes that making any claims to itself as the U.S. Supreme Court would be more than a little presumptuous, and that the KU Student Senate is a far cry from the U.S. Congress (KU Student Senate gets more accomplished). However, American jurisprudence has deeply embedded foundations that make the institution of this Court - and the institution of our entire university – possible. Adhering to those foundations is prudent, and those foundations do not allow this Court to reconcile absurdities in the SSRR to fit the Court's desires.

And absurdities abound. Consider: Redo Your U has been planning and organizing for four years. This sort of deliberateness is exactly what should be expected of an organization advocating for a \$45 million dollar project. However, under a current reading of the rules, campaigning for their project can only occur when the KUEC allows it – which currently means only when the KUEC exists, and only on the start dates it provides, which is usually within two months of the election date. So under the current SSRR, major projects that have been planned for years and have impacts that last decades cannot interact

with students until a few weeks before the election because a five-member student-run administrative agency only exists during that time.

But the flipside doesn't make any sense, either. If RYU's referendum component doesn't kick in until they're physically on a ballot, then it could proceed unregulated. For the last four years RYU could have potentially campaigned for itself year-round, even during the three previous Student Senate elections in which it was not on the ballot, only to break campaigning rules one month before the election in which it was finally listed. This is because, according to the SSRR, KUEC only has authority over the current ballot. So as long as the RYU wasn't slated to be on the ballot, KUEC wouldn't have the ability to regulate their campaigning.

This makes little sense. If RYU was in violation, they have been in violation since October. If RYU has been violating campaigning laws for over six months, this represents one of the biggest, and most egregious, violations of elections law in KU's history. KUEC held that removal from the ballot was overly punitive for RYU's early campaigning violation – an unexpected result for a violation of such a magnitude. KUEC instead suspended RYU from further campaigning – but that doesn't make sense, either. If RYU committed a major breach, they deserve a major reprimand. But if their infraction is minimal and accidental, then their reprimand should be minor. The result instead is the best middle-of-the-road approach KUEC could find in the SSRR.

This is the true absurdity. No reasonable person believes RYU is a dastardly referendum group because they made a website six months ago for a \$45 million dollar proposal. The current state of the SSRR's verbiage towards referendum makes organizations coordinating major projects like RYU practically impossible to manage without running

afoul of elections rules, and practically impossible for Elections Commissions to regulate while staying within their mandated scope. Compound this with absence of reasonable discipline options open to the KUEC for referendum violations, and you end up with even more impossible decisions for the KUEC to make.

What we end up with is an elections rulebook for referenda that looks great, but falls apart the moment it is touched. The broad-scope rules towards referenda look clean, bold, and well-defined, until the closer one gets to real-world applications, the broad-scope rules fall apart because they aren't supported by specific regulations that would make the system work. Unfortunately, rules are made systems that work in real-world applications - and as SSRR currently exists towards referenda, the gaps are so large that written rules fall in and disappear. Any attempt by this court to fill in those gaps would be legislating from the bench, and that is not this Court's role.

As a final note, the KUEC must be commended for their careful stewardship in this election. Their work this year began under a situation that was far less than ideal, and it is a longstanding joke that KUEC are the "most hated people on campus" every spring. Despite this, 2017's KUEC has attempted to execute the elections rules as they appear in the SSRR – and because the SSRR is a 200-page document which receives partial edits every year, this is no mean feat. This faithfulness to the SSRR's text is exactly the sort of behavior that every administrative agency could learn from.

Conclusion:

Our announcement today that the current SSRR rules towards referendum are unenforceable is not set in stone. It is the Student Senate's authority to amend the SSRR as it sees fit, and should it do so, any subsequent revisions will render the applicable parts of this

opinion moot. This Court will continue to give deference to the Student Senate, and we will strive to be dutiful agents of the SSRR. However, we cannot legislate from the bench, and we cannot fill in gaps in the rules. Since we also cannot allow undue harm to occur to students of this University, any absurdities in the SSRR caused by gaps must be discarded. Thus, we REVERSE the holding of the KU Elections Commission.

It is so Ordered,

Justic Joseph Uhlman

Pro Tempore Sara Prendergast

Chief Justic Michaeli Hennessy

Justice Annie Calvert

Justice Jake Vance