

THE UNIVERSITY OF KANSAS STUDENT COURT OF APPEALS

Redo Your U) April 7, 2017
Collin Cox)
Kassandra Valles)
Garrison Krotz)
Bailee Myers) Case Number: xxxx
Richie Hernandez)
)
Petitioners)
)
VERSUS)
)
Harrison Baker)
Elections Commission Compliance Chair)

RESPONDENT’S BRIEF OF ARGUMENTS

First I would like to mention the professionalism and hard work that the students involved with the Redo Your U referendum have shown. It is a thankless job to try and convince the student body to vote or anything or anyone. I also want to mention that it has been a pleasure to interact with the members of the Petitioning body in regards to working out the details of the materials the Commission had in regards to the original violation and this appeal itself. That being said I shall begin by responding to each point brought forth by the Petitioners.

1. The Commission will agree with the Petitioners that there was no precedent to this decision, however that alone does not suggest that the Commission cannot act without it. Precedent has to be set at some point through the action, or inaction of bodies that make, or interpret the rules. However, to state that the Commission does not the jurisdiction to make this decision is not accurate. Student Senate Rules and Regulations (SSRR) 7.3.5.2 states that the Commission has the ability to “enforce all Rules and Regulations relating to Student Senate elections and election campaigns, including all regulations outlined in Articles VII and IX of Student Senate Rules and Regulations”. Articles VII is the

Election Code and Article IX defines what the process surrounding referenda is. The ability to rule upon referenda is further strengthened in SSRR 7.1.2, 7.2.10, and 7.2.19.

- a. SSRR 7.1.2: This Article, known as The Student Senate Elections Code shall govern general, freshmen, special, and recall elections, referenda, and initiative. The Elections Code shall be subject to the provisions of the Student Senate Rules and Regulations, the University Code, and the Code of Student Rights and Responsibilities.
 - b. SSRR 7.2.10: “Campaigning” refers to any activity that promotes or discourages the election of one or more candidates, or promotes or discourages the passage of one or more referenda. Campaigning shall not include meetings attended by coalition members for developing a platform or conducting business related to the internal affairs of a coalition. The promotion of these meetings shall not constitute campaigning. Signature gathering also does not constitute campaigning.
 - c. SSRR 7.2.19: “General Election” shall be defined as the election and/or vote on any/all candidates, coalitions, measures, initiatives and/or referenda.
2. It is a common misconception that it is the duty of the Elections Commission to inform the electorate of the issues of the elections. It is not. Nowhere in SSRR 7.3.5; Powers and Responsibilities, does it state that Commission must educate the electorate on the issues. It does state that the Commission shall outreach to educate the Student Body about the Elections Process (7.3.5.1) but not about the issues as the Petitioners state that we do. The Commissions exists primarily to serve as an arbiter of the rules and to make sure that the Election itself is free of outside influence and undue distortion.
 3. As previously outline the Election Code does apply to referenda, especially in regards to

campaigning (7.2.10). Furthermore when looking at SSRR 7.5.1 it states that “all campaigning shall be done in accordance with the Elections Code” and that “campaigning shall not be allowed on dates and/or locations, other than those described in the Elections Code, without the express, written permission of the Elections Commission”. Since 7.5.1 only mentions campaigning, and no other part of the process, it must stand by the definition of campaigning as outline in 7.2.10. The Petitioners state that, “applying Student Senate elections rules and regulations to a referendum item, an individual, a registered student organization, and /or an institution is not in the spirit of the elections code and sets a dangerous precedent”; it is the duty of the Commission to apply rules and regulations to any individual that is campaigning. Technically speaking coalitions are registered student organizations and any individual that has a violation filed against them are individuals. We apply the rules to them without any cause for concern, as it is the letter, and spirit of the rules to do exactly that.

The Commission also agrees that the Redo Your U campaign is not a coalition, and as stated by the Petitioners we drew that brightline in our deliberations at the original hearing. To make it very clear, we agree that campaign materials do not apply to referenda. The specific section (7.2.13) that defines what campaign material[s] are makes no mention of referenda. Campaigning can be completed without the use of materials, and that was the brightline and justification that the Commission used in our decision. It was proven to us by the original Complainant that Redo Your U campaigned through the use of tabling, individuals, and personal interactions, which are not campaign materials, but still constitute actual campaigning as it “encouraged” the passage of “one or more referenda”. I would also like to clarify the statement, “we must discount the evidence presented as materials”. The context

surrounding that comment is that KU ART presented a stack of screenshots and paragraphs below each of them stating why they were classified as early campaigning. The Commission entered Executive Session and decided that we would reject the paragraphs but keep the photos as evidence. It would not be an undue burden as Redo Your U should be aware of what is on their social media. We did not reject the entirety of the evidence presented. It is clear by this explanation that the Commission was well within its rights to restrict the campaigning of the Redo Your U campaign as it does fall under the SSRR and our purview as the Commission. I find issue with the statement that it would be a “dangerous precedent” to allow this standing to continue. There are no new restrictions that have to be followed and to be honest any campaign, as they call themselves, fall under the Elections Code and must follow said code just as all other campaigns do. In reality keeping the decision as is would strengthen the integrity of the Election as it would clearly indicate that the Commission has the full authority of the letter of the rules and regulations.

Their statements on the Commission’s duties to inform candidates about the rules and regulations do not apply to referenda as they only apply to coalitions. The Petitioners state that they read the SSRR prior to outreach efforts and “understood that rules regarding campaigning defined only as they relate to coalitions and candidates, and not to referenda and initiative. However, the definition of campaigning has not been changed after the Commission took office. We passed some changes, but that was not one of them. While I am uncertain as to the length of time in which that rule has had that particular language I am willing to believe it was before even the start of this year.

The Commission agrees that referenda serve a very important part in the process of making legislation and creating change on campus. We agree that they exist to give power to

the Electorate, something that the Commission is sworn to uphold. However, we also have a duty to protect the Electorate from any undue influence in the Election. We exist to level the playing field between every candidate, coalition, referenda, and/or initiative. The Elections Commission is empowered by the Rules and Regulations of Student Senate, but we are also not a part of the Senate body. We not ex-officio members, we retain no rights within the chamber save the ability to draft legislation to be considered by the Body. To suggest that Student Senate still retains power over the referenda is not accurate. It is the Commission that retains that power, and its sole purpose is to create an atmosphere in which “free and fair elections” can be held.

To suggest that the potential for “negative referenda” is increased is simply inaccurate. Referenda are almost always legislation that is created through Student Senate and is subject to the review and veto power of the Student Body president. As it is within Student Senates abilities to create a “self-check” upon its own powers I personally do not have much fear for the future of referenda in Student Senate Elections.

In response to the statement in regards to halting only one group, we do not have the power to do so. If Redo Your U filed against KU ART we would have the authority to do so. Since we cannot simply place restrictions without a basis we could not also suspend KU ART’s campaign. However, it must be noted that we suggested to KU ART that out of the sake of fairness and equity that they scale back, or even cease their campaigning, something they chose themselves not to do.

The Student Senate is not the arbiter of the Election Code. That power lays solely with the Elections Commission and as is posted all over the Student Senate Office all questions regarding the Elections must be directed to the Commission. While I will admit that there

was no Commission first semester that is not a failure of the current Commission. That is a failure of the power structures within Student Senate to hold true to their duties. However, that is not a reason in which to punish the current Commission. Student Senate may have overstepped its bounds in directing the Redo Your U campaign to begin campaigning when it did. This was not overstep of power; then it was a lack of communication that should have made it very clear how campaigning is defined in SSRR.

The Commission recommends that it protects and strengthens the integrity of the Election Code by supporting the decision made in regards to preventing the campaigning of the Redo Your U referendum. Referenda clearly fall under the jurisdiction of the Commission and the definition of campaigning is clear in that referenda are under its purvey. While campaign materials may not, there is more than one way to “promote or discourage the passage of one or more referenda”. Thank you for your time and consideration.

Respectfully Submitted,

/s/

Harrison Baker

Compliance Chair, Main Respondent