

Mady Womack)	April 8, 2017
OneKU Presidential Candidate)	
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Chance Maginness)	
Onward Presidential Candidate)	Case Number: 2017-

PETITIONER’S BRIEF OF ARGUMENTS

The question before the Court is one that is extremely time-sensitive and critical to the integrity of the Student Senate elections process. At the moment two students are barred from appearing on the ballot, based on a severe overreach of authority by the Student Senate Elections Commission (hereinafter “the Commission”). The Court must step in to reinforce the limitations of power set forth by the Student Senate Rules and Regulations. With the election less than a week away, it is imperative that the Court decide if the Commission has the authority to declare students invalid to run in the Student Senate Spring General Election based on their performance on their first attempt at taking the Elections Quiz.

The question is presented to the Court for numerous reasons. First, Student Senate Rules and Regulations (hereinafter “SSRR”) 7.3.5.11 establishes the existence and use of the Elections Quiz. However, it only states that “any student who does not complete the workshop or the quiz shall not be allowed to run in the election.” The Commission interprets the phrase “complete ... the quiz” as meaning that students must achieve a score of 80% on their first, and only, take of the Elections quiz. For the Commission to apply these standards, is a gross overreach of their interpretative ability. SSRR 7.3.5.11 does not place a minimum score that must be received on the Quiz as a prerequisite for being allowed to run in the Election and only requires that potential candidates complete the Quiz. Therefore, the 80% threshold is arbitrary with no basis in SSRR or common law, so they should have to defend it. Additionally, the rule does not limit potential candidates to one quiz attempt, just as it does not limit potential candidates to only be able to attend one workshop. SSRR

7.5.7.1.8.1 is the only other rule that addresses the Quiz, yet it too only attests that the quiz must be completed before the prescribed deadline. Given that neither of the two applicable rules set completion standards or restrict access prior to the publishing of the Quiz and before its deadline, the broad interpretations of the Commission represent a dangerous exercise of authority that has hampered student involvement in the Election. As a result of this interpretation, two students remain ineligible to run in the Election, resulting in significant harm to both of the students, voters within their potential constituencies, and the Petitioners.

The current interpretation would also pose a dangerous precedent in future elections by allowing the Commission to bypass Student Senate in order to insert arbitrary rules and requirements into SSRR that limit student participation. Failure to strike down this egregious overstep would be to allow the Commission broad legislative power that would violate the finely wrought procedure that SSRR has created. SSRR 7.3.5.9 states that “the Elections Commission shall use its best judgment to uphold the integrity of the elections if there are discrepancies or omissions in the Elections Code.” For the Elections Commission to activate this grant of power, the Petitioner’s argue that the Commission must prove the following:

1. That the integrity of the election will be vitally compromised if the Commission fails to implement their desired restriction.
2. That a substantial discrepancy or omission exists.
 - a. Additionally, that that stated discrepancy or omission was not a purposeful move by the Student Senate to not regulate a particular action or area of campaigning.
3. That the Student Senate would be unable to rectify this situation through its normal procedures, and thus require that the Elections Commission unilaterally step in.

. Implicit in this would be proof of communication between the Elections Commission and Student Senate, to which the Student Senate would either refuse, without cause, to take on this issue, or states its inability to rectify the situation.

4. That if the Student Senate is unable to rectify this situation through its normal procedures, that the Elections Commission has done only that which is absolutely essential to correcting the omission or necessity.

. Implicit in this would be proof that they exercised the least restrictive means available to them.

We ask that the Court adopt this test as a reasonable limit on this rule, and as a necessary safeguard for the separation of powers within Student Senate. Additionally, this test would uphold the fairness of any future Election by ensuring that the Commission is not creating unfair, inequitable rules that burden candidates entry to, and performance in, the Election.

Should the Court adopt this test, it will find that the Commission would fail every nexus. First, the only way the integrity of the Election is compromised is if the Commission is removing students from the ballot for failure to meet some arbitrary limit. A student not getting a score of 80% the Elections Quiz on their first go of a quiz does not prove that they are unfit to serve or unfit to run. While it is very likely a large majority of the U.S. Congress cannot tell you all of the rules restricting their campaigning, many of them are still good members of Congress. Second, no substantial discrepancy or omission exists. The Student Senate formulated an entire rule/regulation when it said that the potential candidate must complete the quiz. While all rules should be left with enough room for a judicial body to interpret them, the term “complete” is finite. It does not convey a threshold or a limit on trying, it conveys a goal that must be achieved. Third, the Commission never approached Student Senate to request guidance as to how the quiz should be determined to be

completed. They ruled on their own, without communication with the Student Senate, and therefore without regard to the separation of powers that so limits the Commission's ability to regulate.

Fourth, if they were to prove that Student Senate could not rectify this, they would fail to prove that they did only that which would be absolutely essential using their least restrictive means. Barring candidates from running is neither essential, nor least restrictive. The least restrictive means they could have employed would be to making sure that every candidate took the Quiz, and thus fulfilled the requirement to "complete" the Quiz. Additionally, implicit in this is the Commission allowing the use of retakes. Anything else is an unnecessary burden on the fairness of the election.

Additionally, it's worth noting that over the course of the past few years, the Student Senate has removed interpretive power from the Commission; signaling a desire by the legislative body to reign in this executory body. Previously the Commission was allowed to add regulations where it deemed them necessary. The Court will notice that no such rule exists any longer in SSRR. For the Court to fail to follow in the footsteps of the Senate would be to upset the balance of power between the branches, and would be akin to the Court granting power to the Elections Commission that it does not have.

At this moment, no possibility exists that the Commission and the Petitioners could handle this issue without Court intervention, since the Commission has repeatedly stated that they will not reconsider their interpretation. Given that the proper appellate body for decisions of the Commission is the Court, it must exercise its duty and present a fair and equitable remedy. The increasing proximity to the start of the Election necessitates a swift ruling and immediate action by the Court. The Court has a few remedies at its disposal that would rectify the current question in the brief period of time before the Election commences. The Petitioners offer the following potential remedies:

1. The Court could strike down the Commission's restriction that limits potential candidates to one Quiz attempt AND strike down the Commission's 80% standard for passing the Quiz. The Court would then enforce that given that the Commission did not prove any nexi of the three pronged test for using its rule-making power and that any rule it creates is invalid. This would require that the Court direct that any individual who took the quiz and submitted it, which would be the very definition of "complete", be placed back on the ballot. We find this remedy to be the most appropriate, as it would maintain the balance of power, allow for the students to be placed back on the ballot, and send the message to future Election Commission's that it should defer to Student Senate whenever possible.
2. The Court could strike down the Commission's standard of scoring 80% or higher on the Quiz and order that any student who did not meet the Commission's Quiz score requirement, but completed the remaining requirements for candidacy, be placed on the ballot under the name of their respective coalition (if applicable). This action would be consistent with SSRR, given that it states that candidates must have completed the quiz and both students in question, Macie Evans and Ethan Scharf, respectively, completed the quiz prior to the stated deadline in SSRR 7.5.7.1.8.1.
3. The Court could strike down the Commission's restriction that limits potential candidates to one Quiz attempt while still upholding the Commission's 80% standard to pass. However, should the Court prescribe this course of action, it must then extend the deadline for the Quiz, as set in SSRR 7.5.7.1.8.1, for the impacted students who did not reach the standard set forth by the Commission, but who did complete the remaining requirements for candidacy. Given the short timeframe between the

Court's ruling and the Election, it must ensure that the Commission grades and certifies the quizzes with the utmost haste. The Petitioners would find this remedy acceptable.

In closing, the question that faces the Court is one of incredible importance that could impact Student Senate in future years. Should the Court fail to strike down at least one of the Commission's standards for the Quiz, it will ensure that the Commission's so-called "elastic clause," SSRR 7.3.5.9, is broadly interpreted to the point where the Commission can legislate rules which materially distort the elections process. The current ruling by the Commission has already barred two students from active participation in an aspect of Student Senate, and without a proper remedy more harm is likely to come from it. By adopting the first proposed remedy, and the most proper of any of the proposed remedies, and applying the proposed test, the Court can solidify the proper role of the Elections Commission in the elections process. As a body, the Elections Commission is intended to supervise and enforce the Rules. Should the Respondent desire to create restrictions not currently found in SSRR, the Commission can draft legislation, as the Commission is empowered to do.

Respectfully submitted,

/s/

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