

THE UNIVERSITY OF KANSAS STUDENT COURT OF APPEALS

Mady Womack)	April 5, 2017
OneKU Presidential Candidate)	
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Chance Maginness)	
Onward Presidential Candidate)	Case Number: xxxx
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Petitioners)	
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VERSUS)	
)	
Harrison Baker)	
Elections Commission Compliance Chair)	

RESPONDENT’S BRIEF OF ARGUMENTS

To begin I would agree that this issue is indeed time-sensitive to the Elections process. The fact that it is time-sensitive is an issue that will re-visited further along in this brief. I would like to address the Petitioners’ concerns about “significant harm to both of the students, voters within their potential constituencies, and the Petitioners”.

1. Harm to the students: Rendering a potential candidate ineligible does not mean that they are barred from working with the coalition. They can still perform outreach, they can still go to organization visits and advocate for the campaigns that they are a part of. There is also nothing within the ruling that deems these students ineligible for office in the future. These two students will still have the ability to become involved with Student Senate through replacement senate seats, appointed seats, or the associate senator seats.
2. Harm to voters within their potential constituencies: There is insufficient evidence to support this claim. If students cannot be roused to vote because of two candidates that have been found to be ineligible then perhaps there is a deeper issue that does not revolve around the eligibility of candidates. Every constituency has at least one person running

between the coalitions with the exception of International Graduate students. To suggest that the petitioners could not represent their constituencies because their candidates are not eligible to be elected is unsubstantiated.

3. Harm to the Petitioners: The Petitioners state that they will likely receive less votes without the support of these candidates on the ballot. I again have to wonder why it is that is the case. Candidates still receive votes even if they have less people slated than other coalitions. While last year is not the best example as it was unique in the sense that one coalition fielded no senatorial candidates; during the Imagine v. Advance KU election there was a disparity between Advance KU's slate and Imagine's slate, Advance KU did have more members slated, however, the results showed that out of the 75 seats that were allocated at the time for elected positions Imagine was able to gain 14 of them. I believe this shows that just because an individual does not have the same number of slated seats, or because they lose a slated seat that they will lose votes. Also during that same election a member of Advance KU was actually removed from the slate after it was determined that they intimidated another student. This obviously did not negatively affect Advance as they still went on to win the top seats as well as a large majority of student senate seats. To suggest that they cannot represent their constituencies is fallacious and misleading. I would be willing to stake many things on that even if a coalition was to have a slate with every single spot filled, and get them all elected there would still be at least 5-10 seats that would need to be filled at the beginning of the next semester.

Presidential and Vice-Presidential tickets are supposed to dissolve the coalition at the end of the election and work with all the elected members of Senate. Obviously this does not always occur, but as a sign of good faith and nonpartisanship it should happen. The

argument that because **their** candidates are not eligible thus they are harmed seems to suggest that the petitioners do not wish to do that, or that they are not willing to do so.

I would like to state, for the record, that the Student Senate Rules and Regulations are not as finely wrought as the Petitioners would like to argue, there are many flaws within the system that show up year after year and eventually become cruxes of debates such as this. Moving to the four statements that the Petitioners request the Commission to prove.

1. The purpose of both the quiz and the information session to make sure that individuals are aware of the regulations surrounding the Election. This includes, but is not limited to, campaign regulations, filing deadlines, what it means to be a senator, and how the coalition system works. The informational sessions are designed to be more holistic, but they still cannot cover everything. The purpose of the quiz is so that individuals that could not attend the meeting would still be able to learn the material that was presented. This is the basis of why one or the other are required to be considered a candidate. If the restriction did not exist any candidate would be able to take the quiz and be considered eligible. If there are not restrictions then individuals that completed the quiz but got every single question wrong would still be considered a valid candidate. This could damage the integrity of the election as these are individuals that have no knowledge of the rules but yet are involved in an election. Furthermore if an individual was able to take the quiz multiple times they would simply be able to keep taking it until they received a score that would be deemed acceptable, in the world of the Petitioners this score does not exist, but if there was a cut-off point they would learn nothing, simply which answers were wrong. The intent behind assigning a value that must be reached or surpassed was to have a candidate pool that was knowledgeable and aware of the rules to prevent distortion in the

Election and to prevent an influx of violations that were based in the ground that someone just “didn’t know any better”. In a world in which this quiz has unlimited re-takes and a value assigned to it the demand would outweigh the benefits of the exam. In a world where there are no restrictions then we have candidates that have no comprehension of the rules attempting to run campaigns and quite possibly distorting the election as a whole. To be able to improve Student Rights and student life it is expected that candidates understand the responsibilities of the position and structure of the Senate. This test is an objective way of measuring this knowledge.

2. This is an omission. The definition of a quiz is, “A test of knowledge, especially a brief, informal test given to students,” (Oxford English Dictionary) and a test is, “A procedure intended to establish the quality, performance, or reliability of something, especially before it is taken into widespread use”. However, SSRR does not state anything about how to determine the “quality, performance, or reliability” of those individuals that choose to take the quiz instead of going to the informational sessions. As a quiz is something that is inherently graded in some fashion the Commission felt that it was within the bounds of SSRR 7.3.5.9 to make this determination and requirement.
 - a. The original intention behind the quiz was to allow students that could not make the informational sessions the ability to still participate in the Elections. It was also intended to be primarily used by graduate, law, and non-traditional candidates as their schedules are busier than the average undergraduate, as are many of the loopholes within the Elections Code such as the \$10 fee those individuals can pay instead of gathering signatures. However, I would argue that it was not the intention of the Senate at the time of the original passage of this

section to make it so that any individual could take the quiz and become a candidate. They trusted the power that the Elections Commission holds to make sure that it was regulated and controlled to prevent the previously mentioned scenarios.

3. Student Senate was unable to rectify this issue through its normal proceedings. The quiz was posted on the Elections Commissions Facebook page on March 7th, a day before a regularly scheduled Full Senate and between then and now there were two full cycles of the Senate process in which no legislation was drafted to attempt to change the rules. If the Petitioners truly had issue with the quiz and its requirements as I feel that Chance did as evidenced by the emails that he exchanged with the Commission then he was well within his power to draft legislation to change the sections that dealt with the quiz.

Mady's concerns with the rule could have also been addressed as she called me on March 30th, with one remaining Senate cycle, and as seen, the Student Executive Committee has no issue with drafting legislation that addresses the Elections Code the week prior to the Election itself. Because the Student Senate never felt it necessary to step in and attempt to rectify any potential issues within the rules the Commission feels that we are still correct in our decision to create this standard. It must also be noted that the Petitioners made no statement to the Commission or in a public forum that they felt the rule was exclusionary until their candidate was deemed ineligible.

4. In regards to the fourth point it is self-evident that the Commission acted only as we should and did what was needed to correct the omission. While there is no communication with "Student Senate", which first I would argue is impossible as we cannot possibly communicate with an entire body, but there was communication with

individuals. No action was made to acknowledge the alleged problem therefore the Body could neither refuse nor agree to any proposed correction. Inaction is an action by itself.

The Elections Commission is not required to ask for guidance in how to go about administering the quiz or any part of administering the Elections. In SSRR 7.3.5.11 nowhere does it state with “the advice and consent of the Senate” nor does it mention the Commission having to ask help in determining the structure of the quiz, nor is it mentioned in 7.5.7.1.8.1. The Commission exists, as defined in 7.3.1, to “ensure a fair elections process”. We have the full authority of “the operation of Student Senate Elections and related activities.” Never before has a Commission been asked to bow to demands of a Student Senate in such a manner. The Body places its trust in the Commission when they vote to place the members of the Commission into it.

The Petitioners mention the past few years in which Student Senate has restricted the power of the Commission, the context surrounding this is exactly what the Petitioners state. Past Senates, as the Petitioners stated, wished to “reign in this executory power”; however, this has not been done because of any reasonable fear of overreach but instead a fear of oversight; the fear that candidates will be held accountable to the rules that their predecessors created. The clause about adding regulations was removed because the Senate feared an independent Elections Commission that was no longer beholden to the machinations of a Student Senate that wished to consolidate power within the legislative branch.

Again, the Commission wishes to agree with the Petitioners. The time of the Election is rapidly approaching and a decision must be made in order to prevent material distortion from occurring, if it has not already happened. In response to the remedies outlined by the Petitioners the Commission would like to offer counter-points and its own remedy.

1. This would allow any student who failed the quiz, nine students, to be placed on the ballot without any concern to the other requirements that exist within the Elections Code such as a declaration of candidacy and 25 valid signatures.
2. Of all of the remedies offered by the Petitioners the Commission finds this one to be the most acceptable. If the Courts were to rule in favor of the Petitioners we would suggest that this be the remedy taken as it only would affect those students named in the original Writ of Certiorari and keep distortion to a minimum.
3. This remedy would cause material distortion in the Election as it does not set a timeframe in which to complete the quiz, which I would assume means the Commission would be directed to set this date and time, something that would be almost impossible to decide considering the Election starts on Wednesday and any new candidates could be grounds for material distortion from other campaigns.

However, the Commission would like to offer its own remedy to the situation at hand. The Commission exists to serve the student body, not the Student Senate. We exist to make sure that the rules are followed, even if they are unfair. We are empowered by the SSRR and other governing bodies, but we are not beholden to them. With that in mind the Commission suggests that:

1. The Court dismisses the appeal in its entirety and upholds the decision of the Elections Commission and furthermore suggests that the upcoming Student Senate fully redevelops the Elections Code so that issues such as these do not occur again.

We agree, this is a topic of great importance. We do not believe that a failure of the Court to strike down a requirement of the quiz would propagate to the Commission broadly interpreting rules to meet their own agendas. It is important to note that is the job of the EC to apply the rules

fairly and consistently. Even if the rule may seem unfair or exclusive, it is not within our power to simply make major substantive changes to the Rules and Regulations, as the Petitioners mention, we no longer have the ability to draft regulations on the fly. We may present legislation that changes the rules, but Student Senate must review and pass the changes. If a rule was unfair or exclusionary it is the responsibility of members of Senate, of which both Petitioners are, to make those changes and then communicate them to us. As they have not done this they did not consider the rule to be exclusionary or unfair until it was applied to members of their coalition. I wonder why this has just now been brought to the Court of Appeals when one student failed the quiz on the 13th of March and the other on the 27th. It begs the question as to why it took this long for the Petitioners to file this Writ, even though the Petitioners should rightfully know that all decisions of the Commission can be appealed.

In closing, I would like to say that holistically speaking the Commission did not overstep its bounds, it was well within its rights to create a standard to which students must be held. It was discussed with our adviser and with her support we went forward with it. The context surrounding this appeal must also be examined. Why is it just now, days before the election that these individuals have come forward with their complaints? This an important contextual question to ask yourselves while deliberating. Thank you for your time and energy in regards to this situation.

Respectfully Submitted,

/s/

Harrison Baker

Compliance Chair, Main Respondent