

Vaselopoulos, N., Dissenting

Judicial Council of the Southern Utah University Student Association

In Re Advisory Opinion
March 3rd 2009

Associate Justice Nikolas Vaselopulos, dissenting:

The majority opinion in this case believes that “the computer in question was used exclusively for voting and was provided by a candidate for an SUUSA position for the sole intent of students to vote in the election.” This is a definition that can certainly be agreed upon by all involved. Where definitions diverge, however, is that the majority defines the aforementioned computer as “an official voting booth,” and as such, prohibits any candidate from campaigning within fifty feet of it. This definition stretches the limits of judicial interpretation and makes a few critical assumptions towards the behavior of the candidates, the nature of campaigning, and the potential in future campaigns. A more accurate depiction of the computer would be “a campaigning tool that may be used suggestively and provides an advantage, but is not on its own inherently coercive.”

To begin, the initial intent of the Elections By-Laws’ wording of Article VIII, Section 1, sub-section J was to establish a select group of computers as “official” voting booths in the interest of not inhibiting candidates from campaigning within fifty feet of any computer, as all SUU networked computers have the capability to be used as votes. The primary focus of this rule, and the rules banning campaigning in the library and computer labs, is the preservation of the integrity of voting, and one would be hard-pressed to argue against the pursuit of such a goal.

The majority holding in this case, however, assumes that a candidate utilizing a computer of their own in the presence of campaign materials and encouraging a vote is inherently unethical and coercive. Granted, the above mentioned actions are certainly suggestive, but simply providing an optional terminal with which to vote is on its own not enough to deem the action inappropriate. One must look to the totality of the circumstances: Did the candidates encourage specific voting trends? Did the candidates ask about what the voter’s choice was, or reward specific votes? Did the laptop contain subtle messages on the wallpaper or the machine itself? Is the average student aware of when and where they can vote, or was false information conveyed to them? None of these factors were present in the original case.

Another prevalent factor for examination is the reason behind offering such available voting practices, to the point where any computer could be considered a “voting booth.” The primary purpose is to stimulate interest in an elections process where low turnout is a prevalent problem. Disallowing candidates from using a laptop to encourage votes not only defeats this goal, but simultaneously makes little progress in rectifying potential harm. A candidate still has

the ability to pass handbills with suggestive instructions and direct a student towards a lab; this is equally suggestive as providing the computer itself, but simply requires more effort on both the part of the student and the candidate. Further, any action taken by a candidate during elections season is inherently suggestive in the first place, and any voter who does not go into the elections process with a degree of understanding of this fact is not informed. The nature of advertising and marketing is attempting to persuade someone to do something, and even our own Elections committee uses this to encourage increased turnout. Indeed, the potential for harm exists when a candidate offers a means to vote, but simply assuming that this action is inherently unethical is a dangerous stretch of rule enforcement. The focus should remain on the actions of the individual in relation to the computer, and not simply the existence of one itself.

While the use of a laptop is not on its own unethical, it is on its own an advantage to those that own them. As it stands now, there is no requirement to claim the laptop as an expense, which is unwise, as a laptop can be used for a variety of purposes advantageous to a candidate, be it voting, displaying imagery or video, sound, or information. Thus, a fairer perspective to examine the computer issue with is one of simple finance. The use of the computer needs to cost the candidate some amount in order to justify the advantage it may give them, just as any sign or handbill would. It should fall to the Elections Director to determine a pricing model for this cost, whether it be deemed the simple cost of operating a device, or perhaps the cost of renting one, or even the full cost of the computer itself, in accordance with Article VIII, Section 3, sub-sections B & E. This allows all candidates the use of a computer for encouraging votes, but similarly disallows for overuse and provides incentive for responsible use due to the potentially significant costs to a campaign. Additionally, nothing prohibits other candidates from monitoring the behavior of candidates using a computer for unethical practices, so simply assuming they are occurring holds little weight.

To conclude, the ability of candidates to use the computer was not removed unjustly, as at the time of its use, it was an expense that was not being calculated in the budgetary constraints. The disagreement lies, however, in the circumstances regarding future computer use by any candidate. The majority seeks to limit use entirely based on the “voting booth” standard; however, such a ban is not necessary or beneficial and should instead be replaced by an appropriate financial burden associated with using a campaign tool.

I respectfully dissent.