

Writ of Mandamus of the Judicial Council

Judicial Council of the Southern Utah University Student
Association

_____ and _____ v. _____
March 3rd 2009

Associate Justices Michael Clegg and Nikolas Vaselopoulos delivered the opinion of the Council:

The Southern Utah University Student Association Election By-Laws states in Article VIII, Section 1, sub-section D, that “There can be no advertising by a campaigning by a candidate by the use of online means prior to the Monday before Primary Elections.” Article VIII, Section 2, sub-section B, item 5 states that “Signs shall not display the likeness or name of an individual who is not listed on a pending ballot.”

Facts: _____ Senator Candidate _____ had a Facebook group and corresponding advertisement for said group that was observed as early as Friday, February 27th. _____ additionally used signage that displayed the image of Gandhi, Chuck Norris, and the Teletubbies, all with additional wording that suggested that these figures supported his candidacy. Upon receipt of the grievance(s) on Monday, Chief Justice Eric Nay sent respondent an e-mail at approximately 6 p.m., explaining the violations and instructing the immediate removal of the Facebook advertisements and the offending on-campus signage to avoid penalty. As of Tuesday at 1 p.m., the instructions had not been heeded.

It is the opinion of the Judicial Council that _____ is in violation of elections by-laws, and he is required to remove all offending signs and the Facebook group and advertisement. Additionally, he is hereby required to remove all other signs and suspend all campaigning until Monday, March 9th at 6 a.m., and is prohibited from posting any new electronic advertisements until such time.

The facts in this case were not at issue. _____ did not deny that these violations had occurred, and that they were the result of an honest mistake of overlooking the rules. He also does not deny that he failed to comply with the initial e-mail. He stated, however, that his failure to do so was not a result of defiance or malice, but instead a simple failure to check his e-mail.

Thus, the real issue to decide in this case was punishment. Potential punitive actions range from the minor fine to the extreme- the disqualification of candidacy. The first factor in the decision was the harm brought about by _____'s infraction. The nature of the harm was not that it was offensive or directly hurt another candidate's campaign; instead, the harm comes from the subtle advantage he gained by having several days' head start online, and the advantage from the recognition he may get in the polls by associating famous people/characters with his name, whereas other candidates did neither of these things.

The second consideration was the motivation behind the infraction. It is the opinion of the Council that the errors were in fact the results of ignorance of the rules, and as such, the punishment did not necessitate a retributive element. The fact that the elections by-laws were provided and explained at meetings and through e-mails, however, demonstrates a passive defiance of the rules that garnered some advantage that the other candidates did not possess. Therefore, the nature of the punishment was determined to be most appropriate as rehabilitative; that is, an attempt to equalize the advantage gained by the infraction with the legitimate efforts of other candidates.

The value of the advantage starts on Friday the 27th and continues to the day of the grievance hearing, Tuesday, March 3th, approximately five days. Therefore, a fitting punishment is the suspension of _____'s campaign from Wednesday, March 4th, until Monday, March 9th, at 6 a.m. This gives the other candidates an opportunity to catch up to the head start _____ gained in the primary election.

Compliance with the suspension of campaign includes the following:

- Removal of all campus signage

- Prohibition of all electronic advertisements and e-mails suggesting that voters select him
- Complete restriction of the distribution of all fliers and handbills
- Participation in any on-campus event designed to gain votes not sponsored by the Elections Committee, such as a booth in the Student Center Mall

_____ is not prohibited from the following actions:

- Talking about the elections, his policy, or identifying himself as a candidate
- Sending electronic messages regarding the campaign and elections
- Participating in elections-related activities sponsored by the Elections Committee, such as debates

_____ may resume all the prohibited activities on Monday, March 9th, at 6 a.m. Failure to comply with a Judicial Council ruling will result in the disqualification from candidacy.

It is so ordered.