

Opinion of the Court

**THE JUDICIAL BRANCH OF THE STUDENT  
GOVERNMENT ASSOCIATION OF THE  
UNIVERSITY OF TENNESSEE-KNOXVILLE**

Case No. 2017-2

SEAN FISHKIND, PLAINTIFF v. ELECTION COMMISSION, DEFENDANT

Decided on Summary Judgement on 06 March 2017

**I**

This case arises out of the grievance submitted by the plaintiff, Senator Sean Fishkind, regarding changes that were made to the election packet, inconsistencies with the sga.utk.edu website, and irregularities in some sections of the packet against the defendants, the Election Commission. The main issue in this case arises out of the cancelling of the mandatory meeting on March 1st at 5:30pm and the creation of a GoogleForm to substitute attending this meeting due to the undeniable threat of dangerous weather. The Election Packet states in Section A, Subsection II, Paragraph B:

A Mandatory Candidates Meeting for all potential candidates and executive committee members will be conducted at 5:30 PM on Wednesday, March 1, 2017 in the Haslam Business Building 402. To qualify as a candidate in the 2017 SGA elections, all potential candidates and executive committee members must attend this meeting unless a valid excuse is sent to the Election Commission.

1. Individuals not able to attend the mandatory meeting must submit notification of a valid excuse by 5:00 PM Wednesday, March 1, 2017 to votesga@utk.edu and will then be contacted on an individual basis.

The justices are in agreement that the Election Commission was not acting maliciously or with the intent to negatively impact the elections in cancelling the meeting and creating the GoogleForm and optional make-up meeting on Sunday March 5th, however, the fact of the matter is, any changes to the election packet must be approved by the Student Senate by a “majority of the number present at a Student Senate meeting” as stated in the SGA Constitution under Article IV, Section 5. Subsection G. As it currently stands, the Election Commission does not possess the authority to change the packet and act on these changes without it first being approved by the Student Senate. The defense cited Section F, subsection I, paragraph A, regarding the Election Commission having all executive and regulatory authority pertaining to

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student elections. However, they are given this power with the limitation described in Section F. Subsection I. Paragraph D, “The Election Commission shall be charged with: 1. Subject to approval by the Student Senate, codifying the Rules and Procedures governing student elections.” Therefore, the cancellation of the Mandatory Candidates Meeting, creation of the make-up meeting, and creation of the GoogleForm to substitute attending the meeting, was in fact done illegally.

## II

The next concern addressed by Senator Fishkind pertained to the authority that the Judicial Branch has over any issues that may arise during the election period. The complaint form was set up to go through the Election Commission as it had in previous years prior to the creation of the Judicial Branch. However, now that there is a Judicial Branch, it is given the authority to rule over all controversies pertaining to the election. The Court recommends the form be redirected from going directly to the Election Commission to going to the Judicial Branch Hearing Request that is located on Judicial Branch page of the SGA website. Additionally, the Judicial Branch has reappeared on the SGA website, after a technical glitch.

Further, the Chief Justice is already in communication with the SGA President, Carson Hollingsworth, about the redirection of the Election Commission Complaint Form to the Judicial Hearing Request on the SGA website to alleviate any confusion of where the form is or how to submit a complaint to the Judicial Branch.

## III

The third concern detailed by Senator Fishkind regards the time in which someone can submit a charge. The Judicial Branch has the authority to adjudicate controversies arising during the election period.

### F. General Rules and Procedures

#### II. Judicial Branch- Ethics Committee

B. The Judicial Branch shall have the authority to adjudicate all controversies arising from or pertaining to campaign activities and any injury thus resulting. The Judicial Branch’s authority only pertains to issues and disputes arising during the campaign period as prescribed by the Election Rules and Procedures.

This is referring to the initial action that results in the complaint. Anything that happens at anytime during the election period can be reviewed by Judicial given that the proper procedures are followed in submitting the request. The next section has to do with the proper procedures that someone should take to file a charge.

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## F. General Rules and Procedures

## II. Judicial Branch- Ethics Committee

F. While charges may be filed with the Judicial Branch during the course of the campaign, all charges must be registered with the Judicial Branch no later than 12:00PM, Thursday, April 13, 2017. All charges must be filed online at [votesga.utk.edu](http://votesga.utk.edu). Charges may be registered by anyone observing an irregularity. Regarding complaints filed prior to the election, the Judicial Branch will meet within twenty-four(24) hours of the time that the complaint was registered and promptly render judgement.

All charges must be submitted in a timely manner and thus be submitted before 12:00PM on April 13, 2017. This allows for time for a judgement to be made and solution be decided before the end of the election period. This, however, does not mean that anything that happens after 12:00PM cannot be rectified. The process used for anything that would happen between 12:00PM and results are announced (the remaining piece of the election period) would be to file a complaint to challenge the results of the election.

## F. General Rules and Procedures

## II. Judicial Branch- Ethics Committee

E. Complaints that challenge the results of the Student Government Association elections shall be filed online at <http://votesga.utk.edu> with the Judicial Branch. The complainant or respondent may then appeal the Judicial Branch decisions to the Student Tribunal. Judicial Branch decisions regarding matters and/or circumstances not specifically addressed in these Election Rules and Procedures shall be binding.

This is a different procedure for a reason. This allows the Judicial Branch to evaluate the claim solely to see if it should invalidate the election results. By the end of the election there is not enough time to rectify the advantage that one party or individual may have received in an effective manner other than invalidating the election results.

The court disagrees with Senator Fishkind's third argument in his complaint. The Judicial Branch does have authority to adjudicate issues that arise during the campaign period. The only difference is the type of complaint that must be filled. After 12:00PM on April 13, 2017 the court will only review challenges to the election.

**IV**

The next set of grievances are in regards to Section F. III. E. 1. which was deemed as the "Knick Knacks Clause." The justices are in agreement that there is ambiguity in the the definition of

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knick knacks and paddy whacks due to the use of “buttons” defined as campaign material in Section F.III.E and as “knick knacks and paddy whacks” in Section F.III.E.1. However, the justices disagree that there is a need to further define the limitation of knick knacks and paddy whacks due to the use of the abbreviation “etc.”

While the justices agree that the definition of “knick knacks and paddywacks” is purposefully vague in order to not stifle the creative visions of the campaigns, the Court agrees with Senator Fishkind’s second concern and interpretation of the portion of the clause that states “campaign material must contain the candidate’s name, voting date, position sought, and the voting website (votesga.utk.edu). The logo/design must be consistent on all campaign material and specific to the candidate” to mean specific to an individual candidate. Due to this interpretation of the clause, we believe that in order for a specific candidate seeking an elected position to legally distribute informational campaign material, such as a push card, the piece of campaign material must include 1. The Name, Voting Date, Position Sought, and votesga.utk.edu and 2. An individualized logo for the specific candidate seeking the elected position. This would therefore prevent candidates for senate positions, from distributing general campaign push cards that did not have their name on them, or for general campaign members not running for an elected position from distributing any campaign material.

The justices are in agreement with Senator Fishkind’s argument on the third issue. There is an inconsistency in what is required for “all campaign material.” Additionally, it states that there is a requirement that all material be specific to each candidate, which is not a normal occurrence in SGA elections of the past. This, we believe, was a mistaken omission on behalf of the writers of the Election Packet instead of saying “specific to the political party/candidate. For that reason, the inconsistencies and errors in syntax mentioned in this section need to be addressed.

\* \* \*

THEREFORE, the Court hereby rules that the cancellation of the Mandatory Candidates Meeting on March 1st, creation of an optional make-up meeting on March 5th, and creation of the GoogleForm by the Election Commission was done illegally. As a result, the GoogleForm responses collected are considered null and void. The Court recommends complaints be redirected from going directly to the Election Commission to the Judicial Branch Hearing Request instead. The Court does hold that the jurisdiction of the Judicial Branch during election time is consistent in the Election Packet therefore disagreeing with Senator Fishkind. Lastly, there are irregularities on whether buttons are campaign material or knick knacks. As the Election Packet stands right now, individual candidate names, including senators, must be on campaign material. Additionally, the logo/design section does imply that it must be consistent on all campaign material and specific to the candidate including senators. However, there is no need

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to further define the limitation of knick knacks and paddy whacks due to the use of the abbreviation “etc.”.

*It is so ordered.*

HOWELL (C.J.), DARBY, GORE, MORGAN, THOMAS, and WRIGHT delivered the opinion of the court.