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STUDENT GOVERNMENT COURT OF APPEALS

MICHAEL MCHUGH, BRANDON BALWANT, LAXMI RAMANA, Petitioners v. ELECTION COMMISSION

No. 2012-002

STUDENT GOVERNMENT COURT OF APPEALS

March 26, 2012, Argued

March 27, 2012, Decided

March 29, 2012, Opinion Issued

PRIOR HISTORY: Appeal from Election Commission, March 23, 2012.

DISPOSITION: Reversed and decided on other grounds.

DECISION:

The Election Commission violated multiple policies and procedures mandated by the Election Code. As such, the Election Commission's disqualification of McHugh, Balwant, and Ramana violated the Election Code.

McHugh, Balwant, and Ramana were all involved in perpetuating election fraud, and should be disqualified despite the earlier improper disqualification.

COUNSEL: Cameron McHugh argued the cause for petitioners. Respondents chose to represent themselves.

JUDGES: Kilroy, C. J., delivered the opinion of the Court, in which Berry, J., joined. Tabrizi, J., filed an opinion, concurring in part and dissenting in part, p. 3. Syed, J., filed an opinion, concurring in part and dissenting in part, p. 4. Lopez, J., filed an opinion, concurring in part and dissenting in part, p. 4.

OPINION:

Chief Justice Kilroy delivered the opinion of the Court.

Beginning in late February, the Election Commission began hearing rumors that a fake petition was circulating around campus. The petition seemed to exist to solicit support to replace the faucets in the M.D. Anderson Library, but potential voters soon discovered that the information gathered from this petition was used to cast

illegal votes. One such voter addressed her concerns to one of her professors, who advised that she speak to the Election Commission. After a story in the Daily Cougar was published on March 1 detailing her allegations, more students came forward with similar descriptions of the petition as well as those administering it. The Election Commission either sat down with or e-mailed a series of pictures of various candidates to the potential witnesses. Although it was with varying degrees of certainty, the witnesses consistently identified Brandon Balwant and Laxmi Ramana.

Due to the immense scale of the offenses, the Election Commission took more time than the Election Code's provisions for investigation permitted them. No action was taken until March 20, a full 21 days after the initial witness made contact with the Commission. On that day, the Commission disqualified McHugh, Balwant, and Ramana.

An appeal was made on March 23.

I. The Election Commission violated multiple policies and procedures mandated by the Election Code.

Petitioners argued 26 separate violations of the Election Code in their briefs and during argument. The Court had extreme difficulty in verifying this count, as the briefs of the petitioners were rife with misspellings, font changes, duplication of arguments, and a general lack of organization. For the sake of efficiency, the Court will address what arguments it could decipher, focusing only on the most relevant. It seems that petitioners felt that the ancient mantra of safety in numbers applied to argument, often citing each individual clause as a separate argument. In the future, the Court will not accept badly written and disorganized briefs, instead encouraging parties to submit examples of clarity and cohesiveness.

The Election Code specifies multiple ways for a candidate to be disqualified. First, the Commission may

disqualify the candidate under the complaint system detailed under Art. IX of the Election Code. An unrelated and parallel process is detailed within Art. V, § 10 of the Election Code, giving the Court of Appeals the authority to independently investigate cases of election fraud. The major issue in this case arises from which section of the Code the Election Commission derived the ability to disqualify McHugh, Balwant, and Ramana.

Turning to the Complaint form filed by the Commission, the Election Commission disqualified the petitioners based on the Election Fraud provisions of the Code, in direct contravention of Art. V, § 10, cl. 4, which states in part “Only the Student Government Court of Appeals may find an individual or party responsible for Election Fraud.” Under this clause, the Commission should have forwarded the case to this Court instead of taking action by disqualifying petitioners.

The alternative method for disqualifying candidates proved to be equally difficult for the Commissioners to successfully apply to their evidence, as they never solicited a full complaint from the witnesses, instead relying on a self-submitted complaint. Moreover, as petitioners correctly point out, the timeframes for the decision (stemming from Art. IX, § 1, cl. 3 and Art. IV, § 12, cl. 1) as well as the posting requirements (Art. IX, §9, cl. 4-7, 9) were also not complied with.

While election fraud is an extraordinary circumstance, the Commission improperly disqualified the candidates under these provisions. As this Court wrote in *Premjee v. Taylor* (2011-001), the Court would normally “defer greatly” to the decisions of the Election Commission, yet in this instance, the Court cannot defer to a judgment that clearly violates provisions of the Election Code.

II. McHugh, Balwant, and Ramana were all involved in perpetuating election fraud.

As the Court sifted through all the evidence, a clear picture of involvement in a massive campaign to defraud both potential voters and the election process as a whole quickly develops. Ramana and Balwant were consistently identified as the individuals who were soliciting information for the false petition. Four separate witnesses, who all seem to have independently come forward, all testified to the fact. To the best knowledge of the Court, no witness identified anyone other than Balwant and Ramana; certainly no evidence was presented to this Court which would suggest the contrary. Occam’s Razor instructs us to look to the most likely possibility, and this Court put more stock in four separate witness testimonies than inconsistent and constantly-changing testimony made by the candidates.

The evidence shows that Balwant was clearly one of the lieutenants in this effort. Not only did these four witnesses’ testimonies place the petition in either his hands or those of Ramana, but live testimony on the stand by James Lee tended to show that he was deeply involved in distributing numbers to various other parties to mask the number of illicit votes cast. Moreover, the same testimony tended to show that McHugh was the ringleader. Lee testified that on Wednesday, March 7 at 11:26 p.m., he received a call from McHugh, in which McHugh states “We’re entering in PeopleSofts; are you in?” Lee assented, and was told by McHugh that Balwant would send the numbers via Facebook. At 11:41 p.m., he received a text message from McHugh asking, “You do it yet?” Lee replied, “I haven’t received anything.” After a few minutes passed by, McHugh sent another message, stating “You get them?” Regrettably, Lee stated that he had deleted the actual Facebook messages due to the overwhelming feelings of guilt he developed after he entered in two of the seven provided numbers as votes.

While the Court would not normally rely on the testimony of a single witness, especially in a case with as much on the line as this one, multiple factors allowed this testimony to resonate with the Court. First, Lee’s testimony implicated himself, by admitting to personally having cast two fraudulent votes. He gave this testimony knowing that any immunity from punishment from the Court or discipline from the University would not be guaranteed. Statements against interest are powerful indicators of reliability, even within federal evidentiary rules. It is difficult for this Court to believe that a student, knowing that his testimony could possibly lead to sanctions, invented false testimony merely to get back at a “love interest,” as offered by McHugh in an attempt to negate Lee’s testimony. Lee also provided text messages, which although vague, seemed very plausibly connected with sending fraudulently obtained information for the purpose of gaining illicit votes. Petitioners were unable to provide a reasonable explanation for these messages. Moreover, critical parts of his story were verified by a separate email from Learning and Assessment Services, which administrated the election. Lee testified that Balwant, under the direction of McHugh, had sent him seven votes’ worth of information. When LAS looked into two of the witnesses’ stories, they found that each of those votes was cast on different IP addresses, but was cast along with five other votes from that same IP address. This evidence tends to show that the fraudulent votes were cast in blocks of six, which strongly correlates to the live witness testimony. Overall, it is difficult to show how this testimony should not have been relied upon, given how it was completely against his self-interest and the critical assertions were supported by

unconnected evidence provided by an unaffiliated University administrator.

All things considered, this evidence seems to prove that Ramana and Balwant were the primary conspirators in fraudulently collecting voters' information, while Balwant and McHugh were deeply involved in distributing this information to co-conspirators willing to help them perpetuate election fraud. The Election Code defines election fraud as "the unauthorized, tampering, altering, or abuse of the voting process" (Art.V, §10, cl.1), and this sort of behavior seems to fit well within this definition. As the Court wrote in *Premjee*:

We are very hesitant to take the power of students to choose their own leaders away. The Court should not decide the result of the election unless it was already decided as the result of fraud.

The Court's decision today clearly lines up with established precedent. This case involved blatant and organized election fraud, and so this Court finds that the disqualification of all three candidates is absolutely necessary and proper. That said, no evidence was ever submitted or argued against Mohammad Aijaz, McHugh's running mate, but the Court must regrettably disqualify him with his running mate due to the joint ticket, despite no evidence that he ever acquiesced to these plans to defraud students and the entire election process.

The Court recommends that the Dean of Students investigate this case to determine if other disciplinary sanctions are warranted.

The Court again begs the Senate to provide major revisions to the Election Code. Conflicts and ambiguities will lead to more cases such as this one and *Premjee*. This Court waits for the day when its interpretative powers become irrelevant because of a clear and complete Election Code. Hopefully, the Senate will heed this desperate call.

Tabrizi, J., concurring in part and dissenting in part.

In the case of Senator-elects Brandon Balwant and Laxmi Ramana, I agree with the majority that the evidence brought before the court was sufficient enough for a conviction of election fraud that led to their disqualification. Where I respectfully disagree with the majority is to the conviction of Michael McHugh, and by default his Vice President Mohammad Aijaz.

After deciding the Election Commission acted irresponsibly by violating several sections of the election code, the Court of Appeals gained jurisdiction over the investigation of election fraud against Balwant, Ramana, and McHugh according to the Election Code (Art. 5, §

10, Cl. 4-c) that states only the "Court of Appeals may find an individual or party responsible for election fraud." However, I must ask my fellow Justices: is it fair or just to investigate those whom would have never been involved with the complaint had the Election Commission followed the bylaws correctly? The Election Commission, at the time of the investigation, had evidence and testimony against Balwant and Ramana, but lacked sufficient evidence or a solid case during trial, against McHugh and why he was included in the disqualification in the first place. Witness Brianne Gallen, last year's election commissioner, testified on these same grounds. During trial, witness James Lee gave the only testimony as to McHugh's involvement in obtaining PeopleSoft numbers, as well as entering evidence to the court. Lee was brought forth as the court's witness, not by the Election Commission. The Election Commission lacked any real reason as to why McHugh was involved, aside from the commission's belief that he "benefitted" from the election fraud—again with no real evidence to prove this aside from "irregularities in the voting numbers." There is nothing 'irregular' about the voting numbers. When someone campaigns hard, the numbers reflect this. Evidence came forth in a court-called witness that helped the majority conclude that McHugh was in fact involved and benefitted from the election fraud—I find it unacceptable that one can find evidence of a conviction after the disqualification has been declared.

However, taking the evidence that was brought forth against McHugh into consideration; I feel the court failed to look at the facts with absolute scrutiny. The only convicting evidence brought forth against McHugh was Lee's testimony. Lee states, under oath, that on March 7th, 2012 around 11p.m. McHugh called him, asking him if he wanted to take part in entering Peoplesoft numbers in order to cast votes, and that Balwant would send the numbers over via Facebook. Lee admitted to voting with two of the Peoplesoft numbers, however, stated he had deleted the message from Balwant. Balwant later logged into his Facebook, in front of the Justices', showing no such messages existing in his sent box. Lee also entered into evidence a series of text messages exchanged between Lee and McHugh. McHugh, declining these allegations, saying Lee was acting maliciously due to personal matters against McHugh. As I stated in my dissent in *Premjee v. Taylor*, "considering the severity of the consequences, the evidence brought forth simply was not adequate or reliable enough to hold a candidate guilty." If this is to apply to the severity of a polling location, it shall apply to election fraud more so.

After two years in a row where the decision of UH SGA President fell on the laps of five students (myself being a part of both decisions), I can say with confidence there are a number of ambiguous flaws within the Elec-

tion Code. For this very reason I think it is fair to take into consideration a sense of what is just in the case against McHugh.

The potential ramifications that can come from convicting an individual for taking part in voter fraud can be damaging to one's reputation and future. For this reason I firmly believe this should be judged with the utmost scrutiny. Election fraud is a problematic thing to accuse, a challenging thing to take to trial, and a difficult thing to judge. I can assure, on behalf of all court members, it was not an easy decision to make. Although the Court of Appeals, in all judgments, followed the SGA Constitution, bylaws and Rules of Court, I feel fair is not always just. A grave injustice was done here.

Syed, J., concurring in part and dissenting in part.

The significance of the burden of proof that is placed on the accusing party is a concept that must be given substantial importance in any trial. By deciding that a single, circumstantial piece of evidence is grounds for disqualification, the Majority lowers the standards of proof this Court is obliged to uphold and contradicts the precedence established by previous cases. As such, I respectfully disagree with the Majority's conviction of Michael McHugh for election fraud.

The only incriminating evidence presented against McHugh was the testimony of James Lee and an image of text messages that had been exchanged between the two. Lee explained that McHugh had texted him asking if he was willing to partake in a scheme to use illegally obtained personal information of other students to cast votes in the run-off presidential election. Lee admitted that he had agreed to assist in this matter by casting votes for McHugh using the PeopleSoft ID numbers that would be given to him in Facebook messages sent by Brandon Balwant. He also said that after agreeing via text to engage in this act sometime after 10 PM, he spoke with McHugh over the phone regarding the details of the plan. According to the text message conversation that was presented to the Court, Lee received a text message from McHugh at 11:41 PM, after the presumed phone conversation took place, asking, "You do it yet?" and one immediately afterwards which said, "You get them?" Although McHugh failed to provide the Court with an alternative explanation as to what this conversation with Lee was pertaining to, it would be improper for the Court to convict McHugh by assuming that the conversation he had with Lee indicated that he had committed election fraud.

Lee also provided the Court with texts that McHugh had sent him the day of the trial, which read, "Good news- everyone is expecting us to be not guilty. The only evidence is anonymous online comments. Please call me

so we can discuss what you want to do. Last thing we want is anything irrelevant to be submitted to the case. We are all guaranteed to get not guilty today. Please don't change that. There is nothing anybody at UH can force you to do." Lee suggested that this indicated that McHugh wanted to make sure that Lee would not provide incriminating evidence in court against him, but it would be too much of a stretch for the Court to take that as fact.

Apart from the text message conversation, Lee was unable to provide the Court with any other concrete evidence regarding the scheme, explaining that he had deleted the Facebook messages sent by Balwant that contained the PeopleSoft ID numbers out of guilt over what he had done. Because of this, the Court has no other way to validate Lee's testimony, and therefore, no actual evidence unquestionably linking McHugh to the fraud.

There was simply a lack of incontrovertible evidence that could prove Lee's claim that McHugh committed election fraud, and therefore, McHugh did not deserve the punishment of disqualification from the presidential election.

Lopez, J., concurring in part and dissenting in part.

In accordance with Article V, § 10, cl. 1 of the Election Code, election fraud is defined as "the unauthorized tampering, altering, or abuse of the voting process." It imposes a burden upon the candidates, but it does so in order to prevent fraud, to build confidence in the voting system, and thereby to maintain the integrity of the voting process. In determining whether Laxmi Ramana violated the Election Code, I would balance the voting-related interests of her actions, asking "whether her actions burden any one such interest in a manner that contributed to the direct and final outcome of voting process."

Like my colleagues, I give weight to the fact that four witnesses identified both Balwant and Ramana as the primary individuals that – on the pretense of signing a petition that would ensure the water faucets in the M.D. Anderson Library were replaced – were soliciting personal voter information. Because the testimony does not discredit Ramana's involvement or suggest that she did not benefit from election fraud, I see nothing to prevent Laxmi Ramana from facing responsibility for her actions.

I cannot agree, however, with the severe manner in which they portray Laxmi Ramana's actions by handing down an equal sentence as that of Balwant. Thus, I share the general view of the lead opinion insofar as it holds that her actions did not pertain to the direct entering of voter information used to vote in their place and that her

actions merited a clearly inferior, less stringent alternative.

Michael McHugh and Brandon Balwant were directly involved in the distribution of voting information to cast fraudulent votes. This behavior implies both knowledge and intent to defraud. Ramana was involved in collecting that information, but no evidence came forward that she personally participated in the fraudulent voting process. Moreover, the testimony brought forward by the Election Commission's witnesses tends to indicate a lower level of culpability. In an affidavit submitted by Alexandro Jimenez, he writes that a male student (later identified as Balwant) approached him with several sheets of paper. A female student (later identified as Ramana), "seemed nervous" to approach him. He further writes, "The male student talked to me primarily, while the female student just stood next to him." Furthermore, Balwant had to tell Ramana to "come closer and that she needs to help out with this."

This testimony seems to provide a critical difference in the involvement of Ramana when contrasted to that of Balwant and McHugh. McHugh and Balwant were confident in their intent to defraud, freely approaching students for their information (in Balwant's case) or asking others to help vote for them to mask the level of fraud (in McHugh's case). Ramana, on the other hand, seemed hesitant and unwilling to participate. Other witnesses confirm that Brandon did most of the selling for the petition, while Ramana seemed to be backup; rarely speaking to the voters they intended to defraud. Even during the process of identifying the students involved with the petition, witnesses seemed much more confident in picking out Balwant than Ramana, partly because Balwant ran the show.

While Ramana seems to be guilty of election fraud, I have trouble holding her as equally accountable as McHugh and Balwant. McHugh and Balwant committed voter fraud intentionally and deliberately, while Ramana seemed hesitant and unwilling. Furthermore, the degree of fraud from Ramana's efforts is smaller. While collecting this information is extremely unethical, her actions did not become fraudulent until McHugh and Balwant actually cast the votes. Despite the Election Commission's best efforts to argue otherwise, there is no indication that she was directly involved in actually casting any votes. If this conspiracy had been only her, I believe that she would be too timid to actually carry out the plan – she needed someone confident and brazen like McHugh or Balwant to actually perpetuate the fraud.

I do believe that Ramana should be held accountable for her actions, but it would be overly harsh to sentence a person with the blueprints to the bank and a bank robber for the same terms in prison.

I regret that there is no lesser sentence than disqualification, especially when it seems that the candidate was a bit player in the larger fraud, especially when this Court is still suspicious that other bit players were not brought before the Court on similar accusations. The witnesses testimony, along with the outcome of the election results, lead me to the conclusion that while Laxmi Ramana was lured into a scheme that resulted in election fraud, her sentence imposes a disproportionate burden upon her actions and that of Balwant and McHugh. For these reasons, I dissent and cannot be the fifth vote on Ramana's disqualification.