

Syllabus

JUDICIAL BOARD OF THE U.S.A., UCLA

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BRUINS UNITED v. USAC ELECTION BOARD

ON A PETITION FOR CONSIDERATION TO
THE JUDICIAL BOARD OF THE UNDERGRADUATE STUDENTS
ASSOCIATION AT UCLA

[No. 15-1] Argued April 23, 2015—Decided April 27, 2015

On April 23, 2015, Zoe Sheppard, the recognized signatory acting on the behalf of the UCLA slate Bruins United, filed a petition for consideration against the USAC Election Board. It was claimed that the actions of the USAC Election Board to sanction the slate Bruins United were not justified and therefore the sanction should be repealed. Candidates of the slate Bruins United were sanctioned due to pictures that were posted on Facebook that stated “Be You” before the allowed online campaigning time period. Bruins United states that this was an act of visibility and not campaigning. USAC Election Board contends that these pictures were in fact considered to be a part of campaigning before the allowed time period as defined in Election Code Section 8.2, Article 1,x and 8.2.1.x.

Held:

1. This Board has jurisdiction to consider the merits of this case based on the claim of jurisdiction listed in the Petitioner for Consideration, which is satisfied.
 - (a) USAC Election Code 11.4 states, “Election Board decisions may be appealed in writing to the Undergraduate Students Association Judicial Board.”

SWANSON, A., delivered the opinion of the Board, in which CORONA, O. and TRABANINO, S., joined. SATYADI, M., filed a concurring opinion. BEYDA, R., filed a dissenting opinion.

Opinion of the Board

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ASSOCIATE CHIEF JUSTICE SWANSON delivered the opinion of the Board.

This case asks the Judicial Board to determine if the actions of the USAC Election Board to sanction the slate Bruins United is justified as determined in the USAC Election Code. The choice to sanction was made due to early campaigning. In the USAC Election Code, Section 8.2, Article 1,i the act of campaigning is defined as follows: “For the purpose of this Election Code, the term "Campaigning" shall be defined as any effort by any individual or group to influence the decision of any student in support of or against any USAC candidate, slate, initiative, referendum, recall, or constitutional amendment appearing on the ballot in the next election through the use of verbal or nonverbal interaction, electronic correspondence of any kind, or the use of physical materials.” The Judicial Board decision serves as both a refinement of the statute in question, therefore clarifying the meaning of “campaigning.” This would also clarify if the actions taken by candidates to post the pictures on social media constituted as campaigning..

I

On April 12, 2015, before the campaigning period began, and after candidate orientation, candidates running under the slate Bruins United posted pictures to Facebook, which were later sanctioned by the USAC Election Board. These pictures were used as cover photos, and stated a fact about the candidate. These

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photos had a design similar to that of campaign material registered that had not been made public yet, not even to the candidates. Also in the picture were the words “Be You.” The USAC Election Board believed these words to be a reference to the slate, and the slate and therefore all of the candidates were therefore sanctioned for campaigning before the allowed time period.

II

What is the purpose of campaigning? It is any effort to influence a decision relating to elections. Campaigning may urge students to take some sort of action toward a candidate or slate. This can be signified by words such as but not limited to, “chose, support, pick, vote.” In addition, any mention or resemblance to a slate or lack thereof is also defined as campaigning. By making it apparent that someone belongs to a slate or that someone is running as an Independent on any sort of material (electronic or physical), automatically makes that item used for the purpose of campaigning. The reason that it is made evident whether or not someone is running with a slate or as an Independent is in the context of elections and in order to try to gain (or lose) votes. However, campaigning is distinct from visibility. Candidates should be allowed to gain visibility for themselves as long as they do not call for some sort of action relating to elections, and slates or lack thereof is not mentioned. Any mention of a slate, whether the name, a known design, or anything else that can be reasonably connected to a slate is considered to be campaigning.

III

It is the belief of the Judicial Board that the words “Be You” on the photos online posted by candidates running under the Bruins United slate can reasonably be assumed to be a reference to the slate. In the USAC Election Code, Section 8.2, Article 1,i "campaigning" shall be defined as any effort by any individual or group to influence the decision of any student in support of or against any USAC candidate, slate, initiative, referendum, recall, or constitutional amendment appearing on the ballot in the next

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election through the use of verbal or nonverbal interaction, electronic correspondence of any kind, or the use of physical materials.” The Judicial Board would like to clarify that a reference to a slate or status as an independent candidate also constitutes campaigning.

The Judicial Board finds that the USAC Election Board did have the jurisdiction to sanction the candidates, and they did so justly. Though admittedly the difference between visibility and campaigning were not communicated clearly and should be in the future.

It is so ordered.

SATYADI, M. concurring

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CHIEF JUSTICE SATYADI, concurring.

At the beginning of the 2014 Spring General Elections, The Daily Bruin extended to the three running presidential candidates an invitation to a radio show, “Long Story Short,” where each candidate would In joining the Judicial Board’s opinion and judgment, it seems to be appropriate to make several remarks. The USAC Election Board is a body that exists to oversee and maintain a fair and accessible election process for the Undergraduate Students Association. It is their right and responsibility to interpret the Election Code as they see fit. This responsibility, though one can only truly speculate, is to allow for flexibility in the execution of the Election Code due to the dynamic and changing nature of USAC Elections. However, this should not mean that each new USAC Election Board may re-interpret the Election Code with disregard to previous interpretations. Thus, having a consistent and stable--though not unchanging--understanding and interpretation of the Election Code is key to a fair and accessible process.

With that said, I join the majority in that in its interpretation of the Election Code, this year’s USAC Election Board was justified in placing its sanctions on Bruins United. The Election Board was placed in a difficult position to oversee elections in the face of amendments to the Election Code, and as stated in this Board’s opinion, the actions of the Bruins United slate were in fact in violation of the campaigning rules set forth by the USAC Election Board. However, while I respect and commend the USAC

SATYADI, M. concurring

Election Board for taking on such a difficult task of maintaining an election in which another sanctionable entity entered the political arena, I respectfully disagree with the over-reaching breadth of this interpretation of campaigning (and visibility) and the overlooked distinction between slates and candidates. This interpretation blurs the lines between ‘visibility’ and ‘campaigning,’ and while both are means to an end related to elections, they should not be confused for the same thing. It seems that the definitions of ‘visibility’ and ‘campaigning’ differ for candidates and slates, and such differences may impact the fairness of elections.

The distinction between ‘visibility’ and ‘campaigning’ seems to be understood best at the candidate level. As the Election Board and this Judicial Board’s majority agree, a candidate may attempt to gain visibility as long as there is no “call to action,” a characteristic that differentiates visibility from campaigning. Any call to action, or attempt to influence, can be considered campaigning.

However, at the slate level simply the statement of or identification with a slate (or even as an Independent candidate) is considered campaigning. This suggests the status of slates and independents exists only in the timeframe of selection and ignores the fact that, unlike independent candidates, slates exist outside of elections in a way similar as student groups. One may argue that slates differ because of its political nature. Regardless, whether or not slates are officially student groups is ultimately up to the interpretation by USAC and the Election Board, but if slates are deemed to be some form of student group—even one with a political nature—then a candidate’s identification with any other student group, political or apolitical, could potentially be categorized as campaigning under that definition.

The addition of ‘slates’ to the USAC Election Code seems to have placed slates under the same category as candidates. Individual candidates, slated or independent, may be sanctioned as they always have been. But with the addition of slates, slates and candidates associated with slates (hereafter, “slated candidates”) may be sanctioned as well. The sanctioning of slates

SATYADI, M. concurring

seems to impact all individuals associated with such slate, even those who may not be guilty of USAC Election Code violations, which raises the question of whether individual slated candidates face an undue burden relative to independent candidates, due to the fact that they are not only accountable and liable to their own actions, but to the actions of other candidates as well.

To be clear, this opinion is in no way meant to provide justification for any interpretation of the USAC Election Code, but rather to raise problems and concerns in interpretation and “gaps” in the USAC Election Code. I would urge future Election Boards and USA Councils to consider the distinctions and similarities of slates and candidates, how they are treated as such, and if they are deemed “fair.” For example: Do the same definitions of campaigning or campaigning material apply to both candidates and slates? Are sanctions placed on slates and candidates different and, as a result, do independent candidates and slated-candidates face the same degree of potential sanctions?

The Election Board, as stated previously, has a responsibility to maintain a fair election process and to interpret the Election Code in such way that enables it to do that. However, the Election Board has an equally important responsibility to ensure candidates understand the election process and the Election Board’s interpretation of the Election Code. Such interpretations should be consistent year to year, and should any clarifications or changes be deemed necessary to institutionalize, amendments in the Election Code should reflect them.

For these reasons, I join the Judicial Board’s opinion and judgment.

BEYDA, R., dissenting

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JUSTICE BEYDA, dissenting.

The majority opinion holds that Respondent USAC Election Board rightfully sanctioned Petitioner Bruins United for its Facebook cover photos, stating that the “be you” design clearly shows campaigning efforts by the Bruins United candidates before the designated campaigning period commenced. While I agree that the “be you” design associates the candidates with Bruins United, such an association itself does not constitute campaigning as it is defined in the USAC Election Code. Thus, I respectfully dissent.

I. Definition of Campaigning

USAC Election Code 8.2.1.i defines campaigning as, “any effort by any individual or group to influence the decision of any student in support of or against any USAC candidate [or] slate.” Accordingly, in order for an action to be considered campaigning, there must be substantial evidence of an intention to “influence [a] decision.” On the contrary, the “be you” slogan on the candidates’ cover photos solely identifies them with Bruins United; it does not provide any call to action in support of or against the slate. It is plausible that such identification was used for reasons other than campaigning, such as to show a sense of pride to be part of the Bruins United community. Hence, substantial evidence that Bruins United intended to “influence the decision of any student” has not been shown. In the absence of sufficient proof, the claim that Bruins United had such an

BEYDA, R., dissenting

objective is purely speculation. The mere identification with Bruins United, without any call to action in support of or against the slate, is not enough to qualify as campaigning.

Additionally, the aforementioned definition of campaigning in the Election Code does not differentiate between campaigning by candidates and campaigning by slates. As such, they should be held to the same campaigning standards. Consider a situation in which a candidate put her own name on her cover photo before the designated campaigning period began. It would be unreasonable to sanction such an act. Her name only serves to identify who she is, and there would not be enough evidence that such identification was campaigning under the definition outlined in the Election Code. By using a slogan associated with Bruins United on their cover photos, the Bruins United slate similarly identified itself. If candidates and slates are held to the same campaigning standards, as is implied by the wording of the Election Code, then this identification should not be sanctioned either. Neither case meets the burden of proving with substantial evidence that there was an intention to “influence the decision of any student.”

The majority argues in response that despite the wording of the Election Code, the identification of a slate is inherently different from the identification of a person, because a slate has a purpose specific to elections. This argument fails to consider that Bruins United is not solely a slate; it is a student group that exists outside of election season and has members that never run for office. Again, the mere identification with such a student group does not provide any call to action in support of or against the corresponding slate, and therefore does not constitute campaigning as it is defined in the Election Code.

II. Previous Election Board Standards and Procedures

Additionally, such an action has never been subject to sanction before. The Respondent argues that because the USAC Election Code has been recently modified to include slates, precedents set by the Election Board in previous campaign seasons are irrelevant.

BEYDA, R., dissenting

Contrary to the Respondent's reasoning, the addition of "slates" to the Election Code does not erase the preexisting standards and procedures that have long governed campaigning by candidates. Further, because the current wording of the Election Code treats "Social Media Campaigning" by candidates and slates as one in the same, these preexisting standards should apply to slates as well. USAC Election Code 8.2.1.x states, "the term 'Social Media Campaigning' shall be defined as any post, picture, message, status, tweet, etc [*sic*] associated with any candidate/slate that is visible to voters online that is considered campaigning as defined in 8.2.1." Because the Election Code makes no differentiation between candidates and slates in terms of what is considered campaigning, the standards to which candidates have previously been held are not only relevant, but actually establish the standards for campaigning by slates.

Candidates have never been sanctioned for attempting to increase their own visibility and spread their name, so long as they did not provide any call to action in support of or against anyone. Therefore, even if the Bruins United candidates were trying to increase visibility of their slate, Election Board standards that allow candidates to increase their own visibility should apply to slates as well, and should govern the outcome of this case accordingly. Furthermore, as explained in Section I, this Court has not seen sufficient evidence that the Bruins United candidates were even trying to increase the slate's visibility; they may have had alternative reasons for identifying themselves with Bruins United, such as showing pride in the Bruins United community.

The majority's decision to uphold the sanction against Bruins United sets a precedent in which each new Election Board is able to reinterpret the Election Code however it so chooses and when it suits its present purposes. If this year's Election Board is not bound by the standards set by previous Election Boards, then future Election Boards will not be so bound either. This inconsistency puts an unreasonable burden on future candidates and slates, as it makes unclear what is expected of them.

BEYDA, R., dissenting

III. Conclusion

By upholding the sanction on Bruins United, this Judicial Board not only ignores precedent, but also misinterprets the language of the current USAC Election Code. There is not enough evidence that the candidates' mere identification with Bruins United was intended to "influence the decision of any student."

For this and all other aforementioned reasons, I dissent.