

Syllabus

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

Syllabus

SOCIAL JUSTICE REFERENDUM, HEATHER ROSEN, & TRENT KAJIKAWA v. USAC ELECTION BOARD

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

[No. 16-1] Argued May 4, 2016—Decided May 5, 2016

On May 3, 2016 the Social Justice Referendum et al. filed a Petition for Consideration alleging that the USAC Election Board had violated the Election Code on the following five occasions. First, the Election Board equated referenda to non-executive candidates in their campaign expenditure limits. Second, the Election Board stated that the Social Justice Referendum could spend an additional \$400 on its campaign. Third, the Election Board requested that the Social Justice Referendum resubmit expense reports to reflect its campaign spending limit. Fourth, the Election Board requested that the Social Justice Referendum either deliver all goods purchased outside of the campaign-spending limit to the Election Board, or return these goods to the retailers from which they were purchased. Lastly, the Election Board allegedly recommended arbitrary campaign spending limits for referenda to the Undergraduate Student Associate Council. The remedies that the Petitioners sought included: an immediate reversal of all sanctions, dismissal of the interpretation of \$750 campaign spending caps for ballot propositions, and to be allowed an additional six hours of on-campus leafleting activity to counteract sanction C04-S2016 and an additional nine hours to counteract sanction C08-S2016.

Held:

1. This Board has jurisdiction to consider the merits of this case based on the claim of jurisdiction listed in the Petition for Consideration, which is satisfied.

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- (a) The claim of jurisdiction made by the Petitioners is that of USA Election Code, 11.4.1, which states, “Election Board decisions may be appealed in writing to the Undergraduate Students Association Judicial Board.”
2. The Election Board did not violate Election Code 9.3.5 by equating referenda as non-executive candidates in their campaign expenditure limits.
 - (a) The all-or-nothing manner upon which each referendum is voted renders referenda more comparable to candidates than to slates.
 3. The Election Board violated Election Code 9.3.4 by stating that the Social Justice Referendum could spend an additional \$400 on its campaign despite its lack of slate opposition.
 4. The Election Board was permitted under the Election Code to request that the Social Justice Referendum resubmit expense reports to reflect its campaign-spending limit.
 5. The Election Board was permitted under the Election Code to request that the Social Justice Referendum return campaign items purchased in excess of its spending cap to the retailers from which they were purchased or to the Election Board.
 6. The Election Board did not arbitrarily set the campaign spending limits for referenda that it recommended to the Undergraduate Student Association Council, because it based its recommendation on the spending limit range provided by the Election Code.

BEYDA, R., delivered the unanimous opinion of the Board.

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No. 16-1

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ROSEN, & TRENT KAJIKAWA v.
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ON A PETITION FOR CONSIDERATION TO
THE JUDICIAL BOARD OF THE UNDERGRADUATE STUDENTS
ASSOCIATION AT UCLA

[May 19, 2016]

CHIEF JUSTICE BEYDA delivered the opinion of the Board.

This case requires the Judicial Board to determine if USAC Election Board's actions in ordering sanctions C04-S2016 and C08-S2016, as well as the Election Board's original recommendation of 2016 campaign spending limits to USAC, were justified under the USAC Election Code. Sanction C04-S2016 was issued on the basis that Election Board equated the Social Justice Referendum to a non-executive candidate with respect to its campaign expenditure limits. Election Code 9.3.5.a states, "Ballot propositions shall adhere to the same spending limits and consequent sanctions as candidates and slates." The Petitioners argue that due to the bundled nature of the Social Justice Referendum, the Social Justice Referendum should have been equated to a slate instead of a candidate. In order to determine if the Election Board's decision was in violation of the Election Code, this Board must establish a distinction between the circumstances in which a ballot proposition should be considered a candidate and those in which it should be considered a slate, and to apply that distinction accordingly to the decisions of the Election Board. The Judicial Board must also evaluate whether or not the Election Board violated Election Code 9.3.4.a.v. by indicating that the Social Justice Referendum could spend an additional \$400 on its campaign. Furthermore, this Board must rule on whether or not the Election Board had the authority to

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issue sanctions requiring the Social Justice Referendum to modify and resubmit its expense reports, and return the items purchased in excess of its spending cap to the retailers from which they were purchased or to the Election Board. In order to evaluate these claims, the Judicial Board must clarify the framework in which the Election Board may issue sanctions, and then accordingly assess if the sanctions in question were proper. Finally, the Judicial Board must determine if the Election Board arbitrarily set the campaign spending limits that it recommended to the Undergraduate Student Association Council (“USAC”) for referenda, and if so, whether it was permitted to do so.

I. Background

Election Code 2.1.1 states, “Control of all USAC elections and related activities shall rest with the Elections Board.” This case discusses the Election Board’s particular role in setting and enforcing campaign spending limits for referenda. The Respondent recommended said spending limits for the 2016 Election to the USAC on March 8th 2016. In this meeting, Election Board Chair Lindsay Allen established that the spending cap for non-executive candidates would be \$750, and that referenda would be treated as non-executive candidates in their spending limits.

On April 1, 2016, Petitioner Jazz Kiang signed a “Spending Limit Contract” on behalf of the Social Justice Referendum of 2016. The contract stated that the said ballot proposition was to have a spending cap of \$750.00. On April 28, 2016, the Social Justice Referendum submitted expense reports to the Election Board declaring that it had spent \$7,406.53 on its campaign. On April 29, 2016, the Election Board sent an email to Social Justice Bruins stating that their spending limit was, “\$750 + \$400 (since you’re not slate affiliated) = \$1150 total.” The Election Board then issued sanction C04-S2016 on May 1, 2016, this time referencing the \$750 limit and stating that the Social Justice Referendum had, “exceeded its spending cap by \$6,656.53” and “failed to report the source of \$3,406.53.” The sanction called for the Social Justice Referendum to modify and resubmit its expense reports,

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and prohibited the Social Justice referendum from campaigning on campus from 8:00 AM to 2:00 PM the following day. The Social Justice Referendum failed to resubmit its expense reports, and the Election Board issued sanction C08-S2016 on May 2, 2016 in response. Sanction C08-S2016 required the Social Justice Referendum to either provide receipts showing that its campaign materials purchased in excess of the spending limit had been returned to the retailers from which they were purchased or to hand over said items to the Election Board.

On May 3rd, 2016, the Judicial Board received a petition from the Social Justice Referendum, Heather Rosen, and Trent Kajikawa challenging the actions of the Election Board in issuing sanction C04-S2016 and sanction C08-S2016.

The Petitioners contend that the Respondent arbitrarily set the spending limits for referenda, and that the Respondent violated Election Code 9.3.5.a in equating the Social Justice Referendum to a candidate for campaign spending purposes. The Petitioners argue that the bundled nature of the referendum renders it more analogous to a slate than a candidate. In contrast, the Respondent reasons that because the line items in the Social Justice Referendum are voted on collectively and as a whole, not separately, it was rightfully equated to a candidate instead of a slate. The Respondent also argues that the spending limit was not set arbitrarily, as it was within the range provided by the Election Code.

In addition, the Petitioners claim that the Respondent violated Election Code 9.3.4.a.v by stating that the Social Justice Referendum could spend an additional \$400 on its campaign. The Petitioners argue that the said provision of the Election Code only applies to candidates running against slate affiliated opponents, which the Social Justice Referendum was not. The Respondent acknowledges and admits to this misstep.

Finally, the Petitioners contend that the Respondent's requests for the Social Justice Referendum to resubmit its expense reports and to return its goods purchased outside of the campaign spending limit were not within the Election Board's authority. The Respondent disagrees, stressing the discretion

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that the Election Code provides the Election Board in determining sanctions. For the reasons set forth below, the Judicial Board finds in part in favor of the Petitioners, and in part in favor of the Respondent.

II. Discussion

A. Determining Spending Limits for Referenda

At the core of this case is Respondent Election Board's decision to treat Petitioner Social Justice Referendum as a non-executive candidate in determining its campaign spending cap. Election Code 9.3.5.a states, "Ballot propositions shall adhere to the same spending limits and consequent sanctions as candidates and slates." The Petitioners argue that because the Social Justice Referendum is a bundled referendum that contains multiple line items, each line item is analogous to a candidate and the referendum as a whole should have been treated as a slate. For the reasons set forth below, the Judicial Board disagrees with this claim.

Consider the way in which students vote for candidates running for the USAC positions. Regardless of the candidates' slate affiliations, voters must select each candidate individually in order to vote for them. Voters may choose to vote for one candidate in a slate, and not to vote for other candidates in the same slate. They are not given the option of voting the slate in its entirety. In stark contrast, voters do not have the option to vote for individual line items in the Social Justice Referendum; voters are only given the option to vote for the referendum as a whole. Therefore, despite the bundled nature of the Social Justice Referendum, the all-or-nothing manner on which it is voted renders it more comparable to a candidate than to a slate. Petitioner Kiang acknowledged that leaders of the Social Justice Referendum considered breaking the line items up into separate referenda, but decided not to do so. The Judicial Board finds that, because the Social Justice Referendum registered as one ballot proposition to be voted on in its entirety, the Respondent was

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correct in equating it to a candidate for the purposes of setting a campaign spending limit.

Further, Petitioner Kiang's signature on the April 1st "Spending Limit Contract" demonstrated his awareness of the comprehensive \$750 spending limit. Although the Petitioners contend that they interpreted the \$750 cap as a limit for each individual line item of the referendum and not for the referendum as a whole, this contention is not supported by the record. To the contrary, the Spending Limit Contract executed by Petitioner Kiang clearly indicates that the spending limit for the ballot proposition, which he identified as "Social Justice Referendum of 2016", would be \$750. Nowhere did Mr. Kiang indicate an understanding or request that the \$750 apply to each line item of the referendum.

Therefore, because the Election Board was correct in treating the Social Justice Referendum as a candidate in its spending limits, and because Petitioner Kiang demonstrated awareness of the corresponding \$750 total cap in a signed contract, the Election Board was justified in sanctioning the Social Justice Referendum for declaring expenses of \$7,406.53.

The Petitioners further argue that they were misinformed with respect to the Social Justice Referendum's spending cap because the Respondent wrongfully stated in an email on April 29th, 2016, that its limit was, "\$750 + \$400 (since you're not slate affiliated) = \$1150 total." This Board finds that this statement was in violation of Election Code 9.3.4.a.v, which says, "Candidates running independently against slate affiliated opponents are allowed to spend an additional \$400 on their USAC campaign." Because the Social Justice Referendum was not running against "slate affiliated opponents," it should not have been awarded an extra \$400 of spending. This misstep is unjustifiable, as it is imperative that the Election Board is familiar with its own code and does not add confusion to an already confusing process. Moreover, the Respondent did not correct its error until May 1st, 2016, when it issued sanction C04-S2016. However, it is important to note the context in which the Respondent's error occurred. The email with the improperly

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stated spending limit was sent after Petitioner Social Justice Referendum had already submitted its expense reports, and had already egregiously overspent. The previously submitted expense reports would have demonstrated overspending by more than \$6,000 regardless of whether the cap was later declared to be \$750 or \$1150. Thus, while this Board reprimands the Respondent for its misstep and any corresponding confusion caused to the Petitioners, we must emphasize that the error did not contribute in any way to the Social Justice Referendum's original overspending. As such, the Respondent's decision to sanction Petitioner Social Justice Referendum for exceeding its campaign spending limits was sound.

B. Discretion of the Election Board in Issuing Sanctions

The Petitioners also argue that the Respondent acted outside of its authority in making certain requests in sanction C04-S2016 and sanction C08-S2016. In order to evaluate these claims, this Board must first clarify what powers the Election Code grants to the Election Board in issuing sanctions against ballot propositions. Election Code 8.2.8.e states, "If any proponent/opponent of a ballot measures is found to have violated the Code, the proposition shall be assessed the corresponding sanction, up to and including the disqualification of the proposition." This provision establishes that the Election Board may sanction ballot measures for any violation of the Election Code, and provides a wide range for the allowed severity of such sanctions. Election Code 8.2.7 further states that, "Any person, slate, candidate, proponent or opponent of a proposition found to have committed [violations of the Election Code] shall be subject to sanctions at the discretion of the Election Board Executive Committee." As such, the Election Board is given broad discretion in deciding what sanctions to issue, so long as they fall within the requirements of Election Code 8.2.8.e. Additionally, as was decided by this Board in *Ian Cocroft v. Election Board, et al.*, such decisions made in the discretion of the Election Board must be

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reasonable. Given this framework, we now assess the validity of the Petitioners' claims.

Sanction C04-S2016 required Petitioner Social Justice Referendum to "submit modified expense reports to the Election Board Office." The Petitioners argue that the Election Board did not have the authority to make such a request. Election Code 9.1.3.j states, "Failure to adhere to any of the rules above including, but not limited to, misrepresentation of funding sources, failure to report direct sources of funding, failure to report expenditures, etc. will result in sanctions, with the potential of disqualification." Therefore, because the Social Justice Referendum's original expense report failed to disclose the sources of \$3,406.53 worth of funding, the Election Board had the authority to issue a consequent sanction. Under Election Code 8.2.7, the Election Board had the discretion to decide what sanction would be appropriate. The Judicial Board finds that it was within the Respondent's authority to sanction Petitioner Social Justice Referendum by requesting that it resubmit its expense reports, and that this sanction was extremely reasonable given the Petitioner's egregious failure to report sources for thousands of dollars' worth of spending.

After receiving sanction C04-S2016, Petitioner Social Justice Referendum failed to resubmit expense reports reflecting the \$750 spending limit and disclosing the sources of all of its funding. In response to this violation of sanction C04-S2016, Respondent Election Board issued sanction C08-S2016 requiring the Social Justice Referendum to either deliver all goods purchased outside of the campaign-spending limit to the Election Board, or to provide the Election Board with receipts confirming that the excess goods purchased had been returned to the stores at which they were bought. Again, under Election Code 8.2.8.e and Election Code 8.2.7, the Respondent had the authority to sanction the Social Justice Referendum for its violations and the discretion to issue any reasonable sanction that it so chose. In order to ensure that the Social Justice Referendum's overspending did not give it an unfair advantage, the Election Board sought to remedy the inequity by preventing the

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Referendum's use of the excess campaign materials that had been purchased. This was a clear effort to promote fairness and a reasonable attempt to correct the Social Justice Referendum's wrongdoing. Therefore, the Judicial Board finds that sanction C08-S2016 was reasonable and within the authority of the Respondent.

C. Validity of Spending Limits

In addition, the Petitioner contends that the \$750 spending limit for referenda which the Respondent recommended to the USAC was chosen arbitrarily. The Judicial Board disagrees, as the spending limit was based on the range provided by the Election Code. Election Code 9.2.2 states, "Non-Executive position candidates are allowed to spend a fixed monetary amount to be determined by the Election Board Chairperson, of which the value will fall between \$650 - \$800 on their USAC campaign." In the USAC meeting minutes from March 8th, 2016, Allen clearly sets the spending limit for non-executive candidates as \$750, and states that referenda will be treated as non-executive candidates for this purpose. The Election Board does not write the Election Code—it interprets and enforces the Code. Because the \$750 cap fell within the range that the Election Code provided, there is no violation.

III. Recommendations to Council

This Board believes that amending the Election Code could help avoid future confusion with respect to the expectations of referenda. By stating that, "Ballot propositions shall adhere to the same spending limits and consequent sanctions as candidates and slates" in Article 9.3.5, the Election Code does not address the unique characteristics of referenda and the specific issues that pertain to them, e.g., their potentially bundled nature. We encourage the USAC to clarify its expectations of referenda by taking these issues into consideration and amending the Election Code accordingly.

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IV. Conclusion

The Judicial Board finds that the Respondent did not violate the Election Code by equating the Social Justice Referendum to a candidate for the purposes of setting its campaign spending limit. This Board provides the following distinction to be used in determining the spending limits of future referenda, unless and until the Election Code is amended:

Each referendum that can be individually voted on shall be equated to a candidate for the purposes laid out in Election Code 9.3.5.a. A group of such referenda, each of which is to be separately and individually voted on, may be considered a slate for these purposes if such a desire has been expressed to and approved by the Election Board through its official processes.

This Board finds that the Election Board violated 9.3.4.a.v by stating that the Social Justice Referendum could spend an additional \$400 on its campaign. In our decision memorandum, we admonished the Election Board for this error and instructed it to take the improperly stated \$1150 limit into consideration when issuing further sanctions on the Social Justice Referendum. We did not order further remedies, because the Petitioner had already exceeded its spending limit and submitted its expense reports when the Respondent made this mistake.

Additionally, this Board finds that the Election Board's requests that the Social Justice Referendum resubmit its expense reports and return or hand over all goods purchased outside of the campaign spending limit were both reasonable and within the Election Board's authority under the Election Code.

Finally, this Board finds that the spending limit for referenda that the Election Board recommended to the USAC was not set arbitrarily, as it was based on the range provided by the Election Code.

It is so ordered.