

Syllabus

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

Syllabus

**ALICIA FRISON, ET AL. v. USAC ELECTION BOARD**

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

[No. 17-2] Argued May 4, 2017—Decided May 5, 2017

On May 4, 2017, Alicia Frison, Brad Fingard, and Sanjana Nidugondi (“Petitioners”) filed a Petition for Consideration alleging that the USAC Election Board (“Respondent”) had violated the Election Code on three occasions. First, when the Election Board issued Sanction #C52-S2017. Second, when the Election Board issued Sanction #C63-S2017. Finally, when the Election Board issued Sanction #C64-S2017. The remedy that the Petitioners sought was the disqualification of all Bruins United candidates from the 2017 USAC Election.

*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) The claim of jurisdiction made by the Petitioners is that of USA Election Code, 11.4, 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 Articles 11.1, 11.2, and/or 11.3 by imposing Sanction #C52-S2017.
3. The Election Board did not violate Election Code Articles 11.1, 11.2, and/or 11.3 by imposing Sanction #C63-S2017.
4. The Election Board did not violate Election Code Articles 11.1, 11.2, and/or 11.3 by imposing Sanction #C64-S2017.

BEYDA, R., delivered the opinion of the Board, in which CHAPMAN, A., PHAM, L., YEUNG, M., and YU, N., joined. ARREAGA, F., filed a concurring opinion.

Opinion of the Board

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

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No. 17-2

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ON A PETITION FOR CONSIDERATION TO  
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ASSOCIATION AT UCLA

[May 19, 2017]

CHIEF JUSTICE BEYDA delivered the opinion of the Board.

This case requires The Judicial Board to determine if the USAC Election Board violated the USAC Election Code by imposing sanctions #C52-S2017, #C63-S2017, and #C64-S2017. Specifically, the Petitioners argue that these sanctions were unduly lenient, and that the Election Board thus did not fulfill its duty to ensure a fair election. The Petitioners cite Election Code Articles 11.1, 11.2, and 11.3, which establish the Election Board's role to "impose the appropriate penalties" when candidates or their agents violate election rules. Election Code Article 11.3.5 is especially central to this case, as it provides a framework by which such penalties are to be determined. It lists the following considerations in order of decreasing importance:

- a. The validity of the charge
- b. The severity and effect of the offense on the election
- c. The intent of the offender and/or his/her campaign staff and the number of times this same violation has been found to be valid
- d. The cooperativeness of the offender and/or his/her campaign staff."

The Petitioners and Respondent contend that sanctions should be harsh enough to both remedy the damage done by the violation in question, and to serve as a deterrent from future violations. The Petitioners argue that Sanctions #C52-S2017, #C63-S2017, and #C64-S2017 were not harsh enough to deter future violations, and that disqualification would have been the

## Opinion of the Board

only means by which to do so. In turn, the Respondent argues that the violations at hand were not sufficiently severe to warrant disqualification, and that such a penalty would be a disproportionate remedy.

The Judicial Board has consistently held that, barring any direct violations of the Election Code, the Election Board has broad discretion over its decisions so long as the decisions are reasonable (see *Ian Cocroft v. USAC Election Board*; see also *Social Justice Referendum, et al., vs. USAC Election Board*). In order to evaluate the Petitioners' claims, the Judicial Board must use the guidelines provided by Election Code 11.3.5 to determine if Sanctions #C52-S2017, #C63-S2017, and #C64-S2017 were reasonable and in compliance with the Election Code. The burden of proof falls on the Petitioners to demonstrate otherwise.

## I. Background

On May 2, 2017, the Election Board responded to a complaint alleging that the Bruins United slate had submitted inaccurate expense reports and violated Election Code Article 8.2.3.g.iii. The Election Board determined that the slate had not violated Election Code Article 8.2.3.g.iii, but did violate Election Code Articles 9.1.3.l.i and 9.1.3.j. by failing to disclose funding and services provided by the company Barpay. The Election Board responded by issuing Sanction #C52-S2017, which prohibited the Bruins United slate from campaigning for 24 hours and required it to submit updated financial documents regarding its expense accounts and sources of funding.

On May 3, 2017, the Election Board received a complaint alleging that the Bruins United slate had violated Sanction #C52-S2017 by continuing to campaign through the Barpay application despite the 24-hour prohibition on campaigning. The Election Board concluded that the Bruins United slate did commit this offense and consequently issued Sanction #C63-S2017, prohibiting the slate from campaigning for an additional five hours.

## Opinion of the Board

Finally, on May 3, 2017, the Election Board received a complaint alleging that Kayla He, a Bruins United candidate, had violated Sanction #C52-S2017 by campaigning online. The Election Board determined that Ms. He was guilty of this violation and subsequently issued Sanction #C64-S2017, which prohibited Ms. He from engaging in social media campaigning for an additional four hours.

On May 4, 2017, the Judicial Board received a petition from Alicia Frison, Brad Fingard, and Sanjana Nidugondi challenging the decisions of the USAC Election Board pertaining to Sanctions #C52-S2017, #C63-S2017, and #C64-S2017. The Petitioners allege that the Respondent failed to uphold the fairness and integrity of the 2017 USAC Election process by violating Election Code Articles 11.1, 11.2, and 11.3. The Petitioners argue that the three sanctions in question are not harsh enough to deter future violations by Bruins United, and that disqualification would be the only means by which to do so. Moreover, they state that Sanction #C52-S2017 is not sufficiently severe given issues with the accuracy of campaign expense reports by the Bruins United slate in prior elections.

The Respondent, on the other hand, argues that the sanctions in question are appropriate given the severity of the actions of the Bruins United slate. Furthermore, the Respondent contends that these sanctions fulfill their purpose of remedying the damage done by the violations at hand and discouraging the slate from engaging in this type of violation again.

The remedy sought by the Petitioners is the disqualification of all Bruins United candidates from the 2017 USAC Election. For the numerous reasons cited below, the Judicial Board unanimously rules in favor of the Respondent.

## II. Discussion

### A. Severity and Effect on the Election

The Petitioners and Respondent agree on the validity of the charges in each complaint — that is, that Bruins United failed to correctly disclose the services provided to them by Barpay, and

## Opinion of the Board

subsequently failed to adhere to the sanction given for that violation. After “the validity of the charge[s],” Election Code Article 11.3.5 lists “the severity and effect of the offense on the election” as the next most important guideline to be used when determining sanctions.

The Judicial Board must determine whether the sanctions in question were reasonable and within the Election Board’s authority in light of the severity of the violations addressed by these sanctions. According to the Respondent, only 21 purchases were made using the Bruins United Barpay discount. These discounts amounted to \$134.60. The total amount of Barpay funding that Bruins United failed to disclose was \$654.50, which amounted to only 7.15% of its \$9150 spending limit. Moreover, the Bruins United Slate was still \$2822.91 below its spending limit when this funding was accounted for.

Because the services rendered by Barpay did not cause Bruins United to exceed its spending limit, the disclosed use of the promotions themselves would not have been in violation of the election rules. The offense was simply due to Bruins United’s initial failure to denote the Barpay funding on its financial documents. This had a little tangible effect on the election, since the promotions themselves would have been sound if they had been disclosed. Furthermore, the Barpay discount that Bruins United offered at Rocco’s was only used by 21 or fewer students. In terms of “severity and effect of the offense on the election,” this Judicial Board believes that the violations addressed by Sanction #C52-S2017 are far from egregious. The corresponding penalty issued by Sanction #C52-S2017 prohibited Bruins United from campaigning for 24 hours, plus any additional time until the slate submitted correctly updated financial documents. Recall that a sanction is meant to a) remedy the harm caused by the violation in question, and b) deter future violations. A 24-hour prohibition of campaigning is quite severe, and was in fact the harshest sanction issued by the Election Board in the 2017 USAC Election. Thousands of students could be campaigned to in the span of 24 hours. In comparison with the severity of the violations at hand, this Judicial Board finds that Sanction #C52-S2017 not only

## Opinion of the Board

remedied the “effect of the offense on the election,” but was additionally harsh in order to deter Bruins United from committing subsequent violations. As such, in terms of severity, Sanction #C52-S2017 was reasonable and in compliance with the Election Code.

The severity of the violations addressed in Sanctions #C63-S2017 and #C64-S2017 are not as easy to quantify. Sanction #63-S2017 was issued in response to Bruins United’s continued campaigning through the Barpay application, despite the campaign prohibition imposed by #C52-S2017. The corresponding penalty prohibited Bruins United from campaigning for an additional five hours. Sanction #C64-S2017 applied specifically to Bruins United Candidate Kayla He, who violated sanction #C52-S2017 through social media campaigning. The Election Board responded by prohibiting her from campaigning for an additional four hours. When comparing the severity of these offenses with their corresponding penalties, it is not blatantly clear if the sanctions were exactly proportionate remedies. However, it is clear that the offenses were not extraordinarily more or less severe than the resulting penalties. Judicial Board precedent gives the Election Board broad discretion in determining sanctions, so long as the sanctions are reasonable (*Social Justice Referendum, et al. v. USAC Election Board*). In terms of severity, this Judicial Board finds that the penalties imposed by Sanctions #C63-S2017 and #C64-S2017 were reasonable. Disqualification is the most severe penalty that the Election Board can impose, and thus should be reserved for the most egregious violations. With regards to severity, there is no indication that Sanction #C63-S2017 or Sanction #C64-S2017 had a particularly egregious effect on the election. Therefore, disqualification of the entire Bruins United slate would be disproportionately severe in comparison with the violations at hand, and would thus be unreasonable when evaluated on the basis of severity.

#### B. Insufficient Evidence to Prove Malicious Intent

After severity of the violation, the next most important consideration in determining a sanction is “the intent of the

## Opinion of the Board

offender and/or his/her campaign staff and the number of times this same violation has been found to be valid” (Election Code 11.3.5.c). The Petitioners propose a narrative in which Bruins United has exhibited a pattern of purposefully ignoring election rules. In order to demonstrate this intent, the Petitioners submitted into evidence GroupMe conversations, sanctions, and witness testimony regarding Bruin United’s alleged misconduct in *previous* election years. This evidence, however, was not submitted to the Election Board when it was asked to evaluate the violations addressed in Sanctions #C52-S2017, #C63-S2017, and #C64-S2017. This Judicial Board finds that the 2017 Election Board cannot be held responsible for taking this evidence from previous years into account, as this evidence was never presented to it.

With the understanding that the Respondent was not provided with evidence from past years when evaluating the intent of the violations in question, this Judicial Board must look solely at the evidence of intent that was available to the Respondent when it determined the sanctions at hand. As previously mentioned, accounting for the funding from Barpay still left the Bruins United slate over two thousand dollars under its spending limit. Thus, Bruins United had little to gain by not disclosing the Barpay promotions. In fact, after being sanctioned, Bruins United ultimately did turn in corrected financial documents including the Barpay funding. This Judicial Board finds that there is not sufficient evidence of intentional wrongdoing with regards to Bruins United failing to disclose its funding from Barpay. To the contrary, the fact that Bruins United was far below its spending limit suggests that the violation addressed in Sanction #C52-S2017 was not purposeful.

In evaluating intent, Election Code 11.3.5.c notes the importance of “the number of times this same violation has been found to be valid.” Such repetition may demonstrate intent to disregard election rules if the same party knowingly commits the same offense multiple times. The violations in question in Sanctions #C63-S2017 and #C64-S2017 were clearly not the “same violation” addressed in Sanction #C52-S2017. Sanction

## Opinion of the Board

#C52-S2017 penalized inaccurate financial documents, whereas Sanctions #C63-S2017 and #C64-S2017 addressed a failure to uphold the penalty imposed by Sanction #C52-S2017. Sanctions #C63-S2017 and #C64-S2017, on the other hand, were similar in nature. The Petitioners argue that by violating Sanction #C52-S2017, Bruins United demonstrated a premeditated effort to disregard Election rules. However, there is not sufficient evidence that this is the case. To the contrary, the majority of Bruins United's usual campaign efforts did halt during the 24-hour campaigning prohibition. It is unclear whether the violations addressed in Sanctions #C63-S2017 and #C64-S2017 resulted from lack of knowledge, forgetfulness, or actual malicious intent. The Petitioners fail to meet their burden of proving that, more likely than not, the violations at hand were intentional breaches of election rules. Without sufficient evidence of egregious intent, it would be unreasonable to disqualify Bruins United on this basis.

## C. Evidence Which was not Provided to the Election Board

While the concurrence places significant import on whether or not the Election Board may consider evidence from past elections in general (but not in this case), the Judicial Board finds that ruling on that matter in this case is beyond our authority. The Judicial Board's role in this case is simply to determine if the Election Board was in violation of the Election Code by imposing Sanctions #C52-S2017, #C63-S2017, and #C64-S2017. The Election Board was never given the GroupMe messages and other evidence from previous years that the Petitioners presented to us in this case. Thus, when evaluating the Election Board actions, we cannot hold the Election Board accountable for considering this evidence that it did not have when it determined the sanctions in question. As such, assessing the Election Board's general ability to consider evidence from prior elections is irrelevant in reaching our ruling in this case. In fact, making such an evaluation in this case on whether or not the Election Board can use evidence from previous years in general (but not in this case) would constitute judicial overreach. Such a ruling in this



## Opinion of the Board

case would have implications far greater than whether or not the Election Board may consider evidence from previous elections. The position laid forth in the concurrence, if it were law, would create a dangerous precedent in which the Judicial Board could establish rules and even create laws that are not relevant to reaching its ruling in the case before it. The fact of the matter is that the Election Board did not have the evidence from prior elections. It was thus impossible for the Election Board to do wrong by not considering evidence that it was not given. For the Judicial Board to rule on any other set of facts would be beyond the scope of the Judicial Board's authority in this case.

## III. Conclusion

This Judicial Board finds that the USAC Election Board did not violate Election Code 11.1, 11.2, and/or 11.3 in issuing Sanctions #C52-S2017, #C63-S2017, and #C64-S2017. The penalties imposed were reasonable and sufficiently harsh to both remedy the violations at hand and deter future violations.

As per Election Code 11.3.5, the guidelines to be used when determining a sanction, in order of decreasing importance, are: validity, severity, intent, and cooperativeness. The Petitioners and Respondent agree on the validity of the relevant charges, and the issue of cooperativeness was not brought to this Board's attention. As such, our analysis of reasonableness focusses on the severity and intent of the offenses addressed by Sanctions #C52-S2017, #C63-S2017, and #C64-S2017.

In accordance with Election Code 11.3.5, the severity of a violation should be considered to a greater extent than the intent behind said violation. This Board finds that Sanctions #C52-S2017, #C63-S2017, and #C64-S2017 were reasonable and appropriate given the level of severity of the violations that they address. Moreover, this Board finds insufficient evidence of malicious intent behind these violations.

Given that the violations in question are neither egregiously severe nor clearly intentional, this Judicial Board holds that disqualification of the Bruins United slate would be a

Opinion of the Board

disproportionate and unreasonable response. By imposing Sanctions #C52-S2017, #C63-S2017, and #C64-S2017, the Election Board acted reasonably and in compliance with the Election Code.

*It is so ordered.*

ARREAGA, F. concurring

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[May 19, 2017]

ASSOCIATE CHIEF JUSTICE ARREAGA, concurring.

I join the Board’s opinion and through this concurring opinion I address an issue brought before the Board during the Court of Hearing. The petition submitted to the Judicial Board on May 3, 2017 by Alicia Frison et al., outlined why the Petitioners believed that the Election Board had not fulfilled their constitutional duty to maintain a fair electoral process. During the Court of Hearing, the Petitioners provided this Board with electronic messages from May 2016, corresponding to members of the Bruins United slate. The Petitioners were attempting to use these electronic messages to prove that members of the Bruins United slate had bad intentions when they did not adhere to the rules of the election code during the 2017 USAC election. Moreover, the Petitioners argued that evidence showing malicious intent on the part of members of a slate can be reviewed by the Election Board, even if the evidence contains materials from a previous year. The Respondent argued that the Election Code prohibits the Election Board from taking into consideration evidence from prior years. As the majority opinion describes, the Judicial Board did not take into consideration the electronic messages from 2016 provided by the Petitioners because this evidence had never been presented to the Election Board through a complaint. I agree with the Judicial Board’s decision regarding this, however, I believe that the issue about whether or not evidence from prior years can be reviewed by the Election Board needs to be addressed.

## ARREAGA, F. concurring

The Respondent argues that the Equal Protection Clause of the Election Code, Article 1.2, prevents the Election Board from considering evidence that is derived from previous years. The Equal Protection clause states that every candidate must be “afforded an opportunity for election equal to that of any other candidate for that office, and proponents and opponents of referenda and propositions are afforded an equal opportunity for their participation in the election process.”

The Equal Protection clause does prevent the Election Board from punishing a candidate running for office that is affiliated with a slate for an infraction that the slate committed in a previous academic year. This type of action would violate the Election Code because it would place candidates affiliated with a slate on a disadvantage, since they would be liable for offenses committed by their slate in a previous year. Hence, they would not be afforded an opportunity for election equal to that of independent candidates.

The Equal Protection clause, however, does not prevent the Election Board from considering evidence related to the intent of a slate or an independent candidate, simply because the evidence is derived from a previous year. If the Election Board had received a complaint form during this election cycle containing evidence derived from electronic materials or other types of documents that originated in the 2015-16 academic year, it would have been appropriate for the Election Board to review this information.

One can imagine a scenario in which a slate or a student that intends to run as an independent candidate, plans a scheme a year in advance to violate the rules of the Election Code in order to gain an unfair advantage in the electoral process during the upcoming academic year. If a year later, evidence revealing this plot were shown to the Election Board, it would be the Election Board’s responsibility to review this evidence and determine its validity. Under these circumstances, if members of the Election Board decided to not even review this information, they would not be fulfilling their constitutional duty to maintain a fair electoral process.