

IN THE STUDENT JUDICIARY
FOR THE UNIVERSITY OF ALABAMA

No. 16-003

JARED HUNTER;
SGA PRESIDENTIAL CANDIDATE

Appellant,

versus

SGA ELECTIONS BOARD

Appellee,

Appeal of SGA Elections Board

OPINION

CHIEF JUSTICE YOUNG delivered the opinion of the Court, which was joined in full by the four other justices who served on the present case.

The Court has removed the names of individuals involved in this appeal as it was not able to determine whether these individuals had been notified of the potential for the release of their names according to Section E, Subsection III under “Filing a Complaint” in Article VI of the SGA Elections Manual. The only names mentioned in this opinion were those that were the primary representative of the appellant and the appellee or a public figure.

I

On Friday, February 24th, 2017, SGA presidential candidate, Jared Hunter,

hosted a campaign kickoff event at Heat Pizza Bar lasting from 5:00 PM to 7:00 PM. Earlier that same day, a member of Mr. Hunter's fraternity (Theta Chi) sent an email via the Theta Chi ListServ announcing Mr. Hunter's campaign kickoff event and encouraging members to come and show their support for Mr. Hunter and his presidential campaign. In closing the email, this person states, "Completely unrelated, we will have a bar tab at Heat from 5-7."¹ This individual was listed as one of the Top 5 campaign members that Mr. Hunter initially listed on the intent for candidacy form submitted to the Elections Board on February 15th, 2017.

Mr. Hunter mentioned that he learned about the presence of the bar tab at Heat Pizza Bar as he was making his way to the event. His fraternity brother who was driving him to his event told him about the presence of the bar tab that was paid by another fellow fraternity brother. Mr. Hunter continued with his event despite learning about the presence of a bar tab.

At 8:08 AM on Sunday, February 26th, 2017, the chair of the Elections Board, Keeli Mallory, received notification about this alleged violation from a report filed by a member of another 2017 presidential campaign candidate². Ms. Mallory, in turn, proceeded to inform the rest of the members of the Elections Board regarding the report that was filed by that individual. In her report, this individual stated that she believed that Mr. Hunter and his campaign had violated Article III, Section 3, Subsection C of the Elections Manual and that she had obtained proof from three different sources who verified that the bar tab was provided. The three sources included a friend who attended the event and got drinks, a Heat employee who verified that a bar tab was opened and closed, and a screenshot of the email message sent via the Theta Chi ListServ advertising a bar tab.

In the first text message exchange, the friend in the exchange admits to having a drink on the tab established at the event and provided a description of the person paying for the bar tab, later identified as a member of Theta Chi that was not Mr. Hunter. In the second text message exchange, an employee at Heat Pizza Bar verified to a member of President Roth's campaign team the existence of a bar tab and that she intended to verify the amount of the bar tab by asking a manager at Heat Pizza Bar about the financial transaction.

After reviewing the initial complaint, the Elections Board notified Mr. Hunter about the alleged violation at 12:17 PM on February 26th, 2017 who responded with a statement denouncing the connection between the presence of the

¹ Appellee's brief.

² Appellee's brief.

bar tab and his kickoff event. At 2:03 PM on Monday, February 27th, 2017, the chair of the Elections Board notified Mr. Hunter via email regarding their meeting to discuss the alleged violation levied against him and that he was invited to appear in person at the hearing to detail his side of the story.

After Mr. Hunter and his advisors showed up at the hearing, the Elections Board proceeded to inform him and his party about the rules for the hearing process before recording the hearing. The recorded hearing lasted from 10:37 PM to 10:55 PM. The Elections Board then deliberated on the violation after Mr. Hunter and his party left the proceedings. During the proceedings, the members of the Elections Board, except the Faculty member who was absent, unanimously decided that Mr. Hunter was found to be in violation of Article III, Section 3, Subsection C of the Elections Manual. After deliberations at length, the members of the Elections Board outlined his list of violations stemming from the bar tab incident, including having knowledge of the \$500 bar tab, exceeding his spending limits due to this knowledge, and lying to the Elections Board by not acknowledging that the author of the email mentioning the bar tab to the Theta Chi brothers was part of his campaign. As part of the lying to the Elections Board, the members felt that he was not truthful about the exclusivity of the bar tab being just for Theta Chi fraternity members as well as having another member of his campaign team submitting graphic for submission and approval under the name of another member of his campaign team throughout the campaign process.

On February 28th, 2017, the Elections Board released their findings in a violations report detailing their decision and the accompanying sanctions for Mr. Hunter and his campaign, which included 20 hours of community service hours for a major violation of campaign ethics³ relating to providing a bar tab for those attending his event, 25 community service hours for the second major violation of campaign ethics⁴ relating to lying to the Elections Board, and a loss of privilege in the form of a campaign blackout period from 8:00 AM on Wednesday, March 1st lasting to 8:00 AM on Monday, March 6th, 2017 relating to exceeding the spending limit for his campaign⁵. The Elections Board further issued an official notice to Mr. Hunter and his campaign that another violation of any kind would be constituted as grounds for disqualification from this election.

After receiving the list of imposed sanctions on his campaign, Mr. Hunter notified the Court of his intent to file an appeal at 11:50 AM on Wednesday, March 1st, 2017 and officially filed the appeal at 1:18 PM with the Chief Justice of

³ Article III, Section 3, Subsection C of the Elections Manual

⁴ Article III, Section 3, Subsection A of the Elections Manual

⁵ Article IV, Section 1, Subsection A of the Elections Manual

the Student Government Association Student Judiciary for the Judiciary to review the sanctions imposed by the Elections Board on Mr. Hunter and his campaign while also requesting that the Judiciary place a temporary stay on the sanctions imposed on him and his campaign.

After completing the initial process for filing an appeal of the Elections Board's sanctions on Mr. Hunter and his campaign, the Court issued a memorandum detailing its decision to not grant Mr. Hunter's request for a temporary stay on his blackout campaign period due to lack of sufficient evidence submitted by either party. Mr. Hunter and his campaign then proceeded to submit additional documentation supporting his arguments in his initial appeal. The Elections Board Chair also submitted additional information. Careful consideration of the evidence presented by both parties led to the order issued by the Court to reduce the blackout campaign period to three days instead of the six days initially imposed by the Elections Board.

II

In this case, we consider whether the Elections Board's decision to impose a loss of privilege sanction in the form of a six-day blackout period on Mr. Hunter and his campaign was correct and appropriate for the violation he committed. We also consider the bases of Mr. Hunter's complaint regarding his responsibility for the presence of a bar tab at his campaign kickoff event. Furthermore, we consider whether Mr. Hunter falsified or omitted information as claimed by the Elections Board, exceeding his campaign spending limit resulting from the bar tab, Mr. Hunter's concern with bias within the Elections Board as well as the alignment of sanctions with the regulations in the Elections Board Manual he and his campaign were cited as violating. Lastly, we consider the definition of organizationally affiliated.

In considering these questions and matters, we hold that the Elections Board was correct and appropriate in their decision to impose a loss of privilege sanction on Mr. Hunter and his campaign. However, we also hold that the severity of the imposed six-day campaign blackout period overstated Mr. Hunter's involvement with the bar tab and as such will be reduced to three days with Mr. Hunter and his campaign following and adhering to the initial mandates outlined by the Elections Board in the February 28th Violations Report. We also hold that Mr. Hunter was responsible for omitting or falsifying information during the Elections Board hearing. Furthermore, we hold that the Elections Board was correct in deeming the bar tab as an "in-kind donation" and in ascertaining that Mr. Hunter, in turn, exceeded his spending limit by \$500. However, we also hold that that there was an appearance of bias in the Elections Board process for which the

Court has made recommendations to alleviate this appearance and preserve the legitimacy and fairness of the Elections Board process. We hold that the alignment of the sanctions was correct with regards to Mr. Hunter's violations as outlined in the Elections Board's Manual. We also hold that the Elections Board has since defined the term "organizationally affiliated" since the time of this appeal. Finally, the Court holds that the "Elections Board Review" section of the SGA Elections Manual dictating the Review Board process violates Article VI, Section 2, Subsection E and Article IX, Section 1, Subsection D (3) of the SGA Constitution, which results in the Court striking down the "Election Board Review" section of the SGA Elections Manual as unconstitutional.

III

The point around which this case revolves is whether the Elections Board's decision to impose a loss of privilege sanction in the form of a six-day blackout period on Mr. Hunter and his campaign was correct and appropriate for the violation he committed—exceeding his spending limit stemming from the bar tab present at his event. In order to understand this violation and its accompanying sanction, the Court had to first determine whether Mr. Hunter and his campaign were responsible for the bar tab at the event.

During its review of the present appeal, the Court found that Mr. Hunter was in violation of Article III, Section 3, Subsection C by admitting to prior knowledge of the bar tab and failing to act upon the information in an ethical manner. However, the Court finds Mr. Hunter's level of involvement in the bar tab to be indirect as he provided definitive proof that not only was the bar tab set up and paid for by a Theta Chi fraternity brother via a printed receipt, financial bank logs, and the credit card used to pay for the tab that had the name of the fraternity brother in question that matched the printed receipt but also that this brother has no apparent campaign affiliation. Furthermore, the Elections Board failed to provide definitive proof that Mr. Hunter orchestrated or was actively involved in setting up and paying for the bar tab.

While there is a lack of evidence directly linking Mr. Hunter to the set up and payment of the bar tab, Mr. Hunter admitted in the Elections Board recorded hearing that he learned of the bar tab from his fraternity brother who was giving him a ride to his event as he made his way to Heat Pizza Bar on the day of the campaign kickoff. Where the Court finds Mr. Hunter responsible for this violation is that he failed to act accordingly and ethically upon acquiring this knowledge, such as actively stopping the bar tab or removing himself and his campaign event from the establishment. Thus, the Court finds that the Elections Board was correct

in finding him in violation of Article III, Section 3, Subsection C for capitalizing on the presence of the bar tab, which was constituted as providing something “tangible of value to affect the student’s vote.” Thus, the Court finds that the 20 hours of community service were appropriate for this violation.

As a result of finding Mr. Hunter partially responsible for the bar tab and that he failed to act ethically by removing himself and his campaign from the situation as well as his continuing of the event to capitalize on the incentive of free alcohol, we find the bar tab set up at Heat Pizza Bar to be an “in-kind donation.” As such, the bar tab does exceed Mr. Hunter’s campaign budget as allowed in Article IV, Section 1, Subsection A of the SGA Elections Manual and thus, the Elections Board was correct in assigning the sanction of loss of privilege for Mr. Hunter’s violation of this provision due to the presence of free alcohol as an incentive to attend the event. Given that free alcohol was used as an incentive for attendance, the Court agrees with the Elections Board that the loss of privilege was the appropriate sanction as free alcohol is deemed to be of far greater value than say a campaign flyer or button that resulted in exceeding the spending limits. While the Court agrees with the sanction assigned for Mr. Hunter’s violation, as alcohol was the incentive provided, the Court finds the imposed sanction of a six-day blackout campaign period was excessive and did not accurately portray his involvement relating to the bar tab. The Court finds Mr. Hunter partially responsible for his inaction and continuing with his event, seeing as he is responsible for the campaign events and its happenings. Acknowledging Mr. Hunter’s indirect level of involvement in the bar tab, the Court holds that the campaign blackout period be reduced to three days, ending at 8:00 AM on Saturday, March 4th, 2017.

For the foregoing reasons, the Court finds the Elections Board was correct in assessing 20 community service hours for having prior knowledge of the bar tab and failing to act ethically to correct the situation, capitalizing on its presence. Because the Court views the free alcohol provided by the bar tab as an incentive and, in turn, an in-kind donation, which Mr. Hunter acknowledges in his appeal that the bar tab could have the appearance of an in-kind donation, we find that the Elections Board was correct in imposing a loss of privilege in the form of a campaign blackout period, but the Court finds the severity of the length of the campaign blackout period was excessive. Therefore, the Court holds that the six-day campaign blackout will be reduced to three days to end at 8:00 AM on Saturday, March 4th, 2017.

The Elections Board contends that Mr. Hunter lied to the Board about three major things by omitting or falsifying information during his hearing. First, he failed to acknowledge the author of the Theta Chi email about the bar tab as part of his campaign even though this fraternity brother was listed in his top five campaign members on the candidacy sheet he submitted to the Elections Board on February 15th, 2017. When asked by the Elections Board about any changes to his campaign, he still failed to acknowledge that the fraternity brother who authored the Theta Chi email was part of his campaign. In their explanation, the Elections Board argued that Mr. Hunter lied by omission in his hearing by failing to acknowledge whether his fraternity brother was on the campaign.

Insofar as the Court can determine, there are currently no rules in place by the Elections Board that requires a candidate to submit a form or in writing documenting any changes to campaign staff members during the campaign process. In their brief submitted to the Court, the Elections Board mentions that they recommend that candidates submit any changes to their campaign. It is possible that the author of the email was initially part of the campaign and perhaps left the campaign. There is currently no way of tracking this information since the Elections Board currently does not require the candidates to submit these changes in staff. Thus, the Court finds that Mr. Hunter cannot be held liable for this omission when the Elections Board does not require the candidates to submit changes in their campaign staff to the Elections Board.

The Elections Board also argues that Mr. Hunter lied about the exclusivity of the bar tab for Theta Chi members only. In the recorded hearing, Mr. Hunter admits to the possibility that the bar tab may not have been regulated and solely available to Theta Chi members as it was advertised by the fraternity in the ListServ email and may have provided opportunities for other patrons to partake in the free alcohol. After reviewing the recorded Elections Board hearing where Mr. Hunter speculated about the possibility that perhaps the tab was not regulated as he understood it was to be upon learning about its presence before the event, the Court finds that Mr. Hunter did not omit or falsify this information. Thus, the Court does not find that Mr. Hunter intentionally lied to the Elections Board regarding this matter.

Lastly, the Elections Board contends that Mr. Hunter and his campaign falsified information when he permitted a member of his campaign team to submit graphics for approval by the Elections Board while the member responsible for doing so whose name appears on the forms was sick with pneumonia. However, the member of his campaign team who filled in for the sick member submitted the graphics for approval using the credentials of the other campaign member, not her

own. From his own admission in the recorded hearings, the Court finds that Mr. Hunter and his campaign did falsify information throughout the entirety of the campaign process by allowing a member of his campaign team to submit graphics for approval under the name of another member of his campaign instead of switching the credentials to the new member who was submitting the graphics.

For the foregoing reasons, we find that the Elections Board was correct in finding Mr. Hunter and his campaign in violation for using another person's name to submit graphics for approval instead of the name and credentials of the campaign member who was actually submitting the graphics and assessing 25 community service hours per the sanctioning guidelines in the Elections Board Manual. However, we do not find him in violation for failing to acknowledge the author of the email as part of his campaign and for admitting to the possibility that the bar tab was not exclusively used by Theta Chi members.

V

Insofar as the Court can determine, the alignment of the sanctions imposed on Mr. Hunter and his campaign by the Elections Board correspond to the correct violations as outlined in Article VI, Section 3, Subsections B and C for intermediate and major violations contained in the Elections Board Manual.

For that reason, the Court holds that the Elections Board was correct in its alignment of the sanctions imposed on Mr. Hunter and his campaign as they relate to the violations for which he and his campaign were found responsible.

VI

Mr. Hunter in his appeal expressed concerns about the presence of bias in the process conducted by the Elections Board since the Chair of the Elections Board as well as the Advisor for the Elections Board shared organizational ties with one of his opponents in the SGA presidential race. Mr. Hunter argued that this bias played a role in the severity of the sanctions imposed on him and his campaign.

While the Court recognizes that in this case there is an appearance of impropriety regarding the mutual affiliation between the Advisor for the Elections Board, the Chair of the Elections Board, and one of the other SGA presidential candidates, there is no concrete, definitive evidence that the alleged bias materially affected the sanctioning from the Elections Board. Furthermore, there was no evidence presented to the Court that demonstrated that the Chair of the Elections

Board or the Advisor actively colluded with President Roth. The Court maintains that the contents of a GroupMe conversation without the active participation of one of the members of the Elections Board along with any organizational affiliation between a candidate and a member of the Elections Board does not constitute an act of collusion.

For the foregoing reasons, the Court finds that the alleged bias did not materially affect the decisions and sanctioning of Mr. Hunter and his campaign.

VII

At the time of Mr. Hunter filing his appeal, the Elections Board had not defined what “organizationally affiliated” meant in terms of his sanctioning. Since the appeal was filed, the Elections Board has clarified the meaning of this term and implemented it in current sanctions.

For the foregoing reason, the Court finds that Mr. Hunter should refer to the Elections Boards definition of this term that was implemented subsequent to the filing of his appeal. However, the Court maintains that the requirements outlined within the recently clarified definition of “organizationally affiliated” cannot be applied to the sanctions imposed by the Elections Board on Mr. Hunter’s loss of privilege blackout campaign since his sanctions were under the purview of this Court at the time of this clarification. Moreover, the Court upholds that this newly defined definition of “organizationally affiliated” can be used at the discretion of the Elections Board for future cases brought under their jurisdiction.

VII

As a reminder, it is the Court’s responsibility to interpret the Constitution as the governing documents empower the Judiciary with the authority and jurisdiction to oversee, review, and strike down any provision or process that is deemed to be unconstitutional or inconsistent with a governing document that supersedes the document contain the provision(s) in question. Moreover, the Court must stress that its intention is not to dictate or interfere with the processes employed by the other branches so long as no controversies arise from those processes, they do not violate provisions of our governing documents, and/or the governing documents do not empower the Judiciary with the authority or jurisdiction to dictate these processes.

However, in the course of this appeal, the Court became aware of the procedures for the review process of any sanctions and/or decisions of the

Elections Board in the Elections Board Manual. The procedures outline a process that dictates how their decisions and/or imposed sanctions are to be reviewed and the reasons for filing such an appeal. However, these provisions are not consistent with those in the Constitution, specifically Article VI, Section 2, Subsection E and Article IX, Section 1, Subsection D (3). Article VI, Section 2, Subsection E gives the Judiciary sole jurisdiction over “All appeals arising under student elections regulations.” Furthermore, Article IX, Section 1, Subsection D (3) grants the Judiciary sole discretion over reviewing the rulings and regulations of the Elections Board that “may be appealed to the Judicial Board by any student at The University of Alabama,” empowering the Judiciary to “declare such rulings or regulations unconstitutional” if they are found to be inconsistent with provisions in the Constitution and other parts of the Elections Manual. Thus, the Elections Board cannot dictate the review process when the Constitution grants sole jurisdiction of the appeals to the Student Judiciary. Since the Judiciary is responsible for hearing these appeals, it is responsible for establishing its own process, which is posted on the SGA website.

For the foregoing reasons, the Court finds the review procedures outlined in the Elections Manual to be inconsistent with provisions outlined in Article VI, Section 2, Subsection E and Article IX, Section 1, Subsection D (3) of the Constitution and, thus, strikes down these provisions.

VIII

After reviewing the evidence in this case, the Court had grave concerns about the evidence submitted in an elections report by one of Mr. Hunter’s opposing presidential campaign candidates. In particular, the Court had grave concerns about how the information was obtained from the Heat Pizza Bar, in that, a member of the Roth campaign actively asked an employee of Heat Pizza Bar to verify the financial information of another individual by asking the manager of the establishment for that information, which is a gross and alarming invasion of that person’s privacy and against the law without proper documentation to obtain that information. The Court strongly recommends that the Roth campaign be immediately investigated for potential violations relating to the methods used to obtain information regarding the bar tab.

Additionally, in the appellant’s brief, the Court was made aware of a potential violation regarding the Roth campaign and an incident at the Alpha Tau Omega fraternity house. The Court strongly recommends that the Elections Board investigate this accusation, to ensure all fairness in campaign events and determine the legitimacy of the accusation.

Insofar as the Court can determine, the Elections Board Manual presently does not have any guidelines on the number of violations that constitute disqualification of a candidate. The Court recommends that the Elections Board create a strict limit for the number of combined levels of violations a candidate can accrue before being disqualified. Moreover, we recommend that the Elections Board Manual have a provision that stipulates violations that automatically result in a candidate's disqualification.

As a result of this appeal, the lack of a recusal/conflict of interest policy came to the attention of the Court. Due to the potential for the appearance of bias, the Court strongly recommends that the Elections Board implement a policy for recusal when there are significant associations between a member or members of the Elections Board and parties to a case that comes before it to avoid the potential for others to call into question the impartiality of the Elections Board and its decisions.

If the Elections Board wants to require candidates to formally submit any changes to campaign staff, the Court recommends that the Elections Board consider amending the Elections Manual to reflect this requirement. The Court also recommends that a formal process be put in place for candidates to submit any changes to their campaign staff.

IX

In the course of this appeal, the Hunter and Roth campaigns have both incurred numerous alleged and certified violations of the Elections Manual. Article III, Section 3, Subsection A of the Elections Manual states, "Candidates are expected to conduct themselves in accordance with Student Government Association documents and the Student Code of Conduct." Chapter 1001.4 of the Code of Laws further states that "Student Government Association members are expected to act professionally and display the highest standards of decency, honesty, integrity, and respect." Moreover, the Capstone Creed proclaims that "As a member of the University of Alabama community, I will ... act with fairness, integrity, and respect." The Court reiterates that as leaders and representatives of their peers, the candidates should be held to the highest standards of behavior and comportment.

ORDER

IT IS HEREBY ORDERED that the loss of privilege in the form of a campaign blackout period be reduced from a 6-day period lasting from 8:00AM on Wednesday, March 1st, 2017 to 8:00 AM on Monday, March 4th, 2017 to a period of three days ending at 8:00 AM on Saturday, March 4th, 2017 as the Elections Board was correct in its assessment of the loss of privilege but excessive in the length of the period.

IT IS HEREBY AFFIRMED that the decision of the Election Board to find Mr. Hunter responsible for violating Article III, Section 3, Subsections C and D was correct.

IT IS FURTHER AFFIRMED that the sanctioning of 20 community service hours in restitution for the bar tab was correct.

IT IS FURTHER AFFIRMED that the 10 of the 20 hours ordered to be completed prior to 8:00 AM on Monday, March 6th, 2017 was correct.

IT IS FURTHER AFFIRMED that the 25 base hours of community service to be completed by the end of the Spring 2017 semester was correct.

IT HEREBY RECOMMENDED that the Elections Board immediately investigate the Roth Campaign for the methods used to obtain information related to the bar tab as the Court is referring this back to the Elections Board for the initial investigation into this potential election violation.

IT IS FURTHER RECOMMENDED that the Elections Board immediately investigate the Roth Campaign concerning the alleged Alpha Tau Omega incident reported to the Court by Mr. Hunter in his appeal brief as the Court is referring this back to the Elections Board for the initial investigation into this alleged election violation.

IT IS FURTHER RECOMMENDED that the Elections Board establish within the Elections Manual a strict limit for the number of combined levels of violations that a candidate can accrue before being disqualified.

IT IS FURTHER RECOMMENDED that the Elections Board establish a provision in the Elections Manual that stipulates violations that automatically results in a candidate's disqualification.

IT IS FURTHER RECOMMENDED that the Elections Board establish a
recusal/conflict of interest policy and accompanying procedures.

IT IS FURTHER RECOMMENDED that the Elections Board implement and
detail within the Elections Board Manual a process that consists of a verifiable
method to formally document, submit, and reflect changes in campaign staff.

DONE and **ORDERED** on this 4th day of March 2017.