

IN THE STUDENT JUDICIARY
FOR THE UNIVERSITY OF ALABAMA

21-001

JOHN DODD, CANDIDATE;
JACK KAPPELMAN, CAMPAIGN MANAGER;

Complainant,

versus

JAKE WAGGONER,
CHAIR of ELECTIONS BOARD; ELECTIONS BOARD et al.;

Defendant,

Appeal for Judicial Review

OPINION

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

The Student Government Association’s Elections Board presides under the guidance of the Elections Manual. According to Article II, Section L of the Spring 2021 Elections Manual, the Elections Board “shall issue decisions in accordance with this Constitution and any rules and regulations created by the Student Elections Board that reside in the Student Elections Board manual.” Rulings of the Elections Board may be appealed to the SGA Judicial Board.¹ If the Judicial Board finds rulings of the Student Elections Board not in accordance with provisions of the SGA Constitution or the Elections Manual, the Judicial Board shall declare such rulings unconstitutional.²

The Elections Manual addresses endorsements of Student Government Candidates in Article XIV of the Spring 2021 Elections Manual:

¹ Article II, Section L of the Spring 2021 Elections Manual

² Article II, Section M of the Spring 2021 Elections Manual

Only UA students eligible to vote in an SGA election or groups comprised exclusively of UA students eligible to vote may, with prior approval of the candidate, publicly endorse a candidate.

Candidates may be contacted by any University of Alabama registered organization for the purposes of speaking at meetings to seek endorsements. Any public endorsement must include the disclaimer statement below:

(Organization name) endorses (candidate name) for (insert position). Our members' votes are their own and they have the right to choose whether to vote and whom to vote for. We encourage all voters to research any and all candidates and to decide for themselves.

Endorsement from groups, organizations, or individuals outside the campus and its population is strictly prohibited. Members of the faculty are discouraged from engaging in campaigning on behalf of students or making statements in support of selected candidates in the classroom.³

I

On February 23, 2021 at 8:39 PM, Elections Board Chair Mr. Jacob Waggoner notified College of Arts and Sciences Senate candidate Mr. John Dodd via email that a violation had been filed against the John Dodd Senate campaign. In his email, Mr. Waggoner provided the following grounds for Mr. Dodd's alleged violation: "Elections manual section 'XIV. Endorsements' in the Elections Manual states that any public endorsement must include the disclaimer statement provided by Elections Board."⁴ The email stated that the alleged violation "pertain[ed] to a post by John Dodd on Instagram that is attached."⁵ Mr. Waggoner erroneously failed to attach the Instagram post in question this initial email. At 9:00 PM, Mr. Dodd responded to the Elections Board via email requesting additional information due to the omitted attachment. At 11:46 PM, the Elections Board provided Mr. Dodd with a screenshot of the Instagram post in question and informed Mr. Dodd that he had twelve hours to issue a response. On February 24, 2021 at 7:38 AM, Mr. Dodd responded to the Elections Board with the following:

That photo was me sharing news of my endorsement, being that I am an individual and not an acting organization endorsing myself, I did not re-include MARS statement of endorsement that they had listed in their photo of me on their page. Due to the apparent inconvenience of that, I added the endorsement statement to my picture as well. If you have anymore questions, please reach out.⁶

³ Article XIV of the Spring 2021 Elections Manual

⁴ Complainants' Filing for Judicial Review

⁵ Id.

⁶ Defendants' Statement of Stipulated Facts

Pursuant to the guidelines outlined Article XVIII of the Elections Manual, the Elections Board held a hearing in which they unanimously found Mr. Dodd's campaign responsible for the reported violation. The Elections Board bestowed three violation points upon Mr. Dodd's campaign and notified Mr. Dodd via email at 4:55 PM on February 24, 2021. In said email, the Elections Board provided the following rationale for their ruling: "The Elections Manual states that every endorsement must have a disclaimer. As John Dodd's post stated an endorsement by MARS, this instance of the endorsement required a disclaimer."⁷

On February 24, 2021 at 6:09 PM, Mr. Dodd's campaign manager, Mr. Jack Kappelman, formally filed an appeal for judicial review with Chief Justice Meagher on behalf of the John Dodd Senate campaign concerning the aforementioned Elections Board ruling.

II

The Court considers the constitutionality of the Elections Board ruling regarding the endorsements received by the John Dodd Senate campaign. The Court first considers the endorsement of John Dodd by Men Against Rape and Sexual Assault. Men Against Rape and Sexual Assault, hereinafter MARS, is a SOURCE recognized student organization on the University of Alabama campus. It endorsed John Dodd via the organization's Instagram page, @bamamars, with the following caption:

MARS endorses Drew St. Charles for Senate in the College of Commerce and Business Administration and John Dodd for Senate in the College of Arts and Sciences. Our members' votes are their own and they have the right to choose whether to vote and who to vote for. We encourage all voters to research any and all candidates and to decide for themselves.

Vote March 2nd, 2021 on MyBama!⁸

In accordance with Article XIV of the Elections Manual, MARS is a student organization comprised solely of University of Alabama students that are eligible to vote in SGA elections. Additionally, the above public endorsement includes the disclaimer statement outlined in Article XIV of the Elections Manual that must be included in all public endorsements. As such, this endorsement very clearly does not violate Article XIV of the Elections Manual. Neither party disputed the validity of this post as a proper endorsement of an SGA candidate.

Secondly, the Court considers the Instagram post by Mr. Dodd. Mr. Dodd shared an image with the following caption on his public Instagram page, @thejohnodd:

I would like to wholeheartedly thank the amazing folks of @bamamars for endorsing me to be the newest Senator of the College of Arts & Sciences! If elected, I look forward to working with MARS, and other campus organizations, in an effort to prevent sexual assault on this campus! #DownForDodd⁹

⁷ Complainants' Statement of Stipulated Facts

⁸ Screenshot provided in Exhibit A

⁹ Id.

The Elections Board found this post to be in violation of the requirements for endorsements outlined in Article XIV of the Elections Manual. The Elections Board maintained that, “Although MARS’ original endorsement was legitimate and did contain the disclaimer, the instance posted by Mr. Dodd did not. Mr. Dodd’s campaign was acting on behalf of MARS by sharing their endorsement and therefore is subject to the same regulations.”¹⁰ Conversely, the John Dodd Senate campaign maintained that Mr. Dodd was merely sharing the news of an otherwise properly executed endorsement. As such, the John Dodd Senate campaign contended that because Mr. Dodd was not actually endorsing a candidate himself, including the disclaimer is not required by the Elections Manual.¹¹

III

Article XIV of the Elections Board states that “any public endorsement must include the disclaimer statement.” This verbiage indicates that no endorsements are exempt from the inclusion of the disclaimer. However, this phrase does not in any way suggest that all speech regarding endorsements shall include the disclaimer, simply that all endorsements themselves must include it. The Elections Manual does not include any specific language regarding the proper procedures for sharing news of an endorsement. While an organization or individual’s endorsement of a candidate and speech surrounding an endorsement can clearly be seen as two distinct matters, no such distinction is made in the Elections manual.

The issue at hand is whether the post in question constitutes an endorsement. To state it simply, sharing an endorsement is not congruent with providing an endorsement. The very nature of an endorsement is bestowing public approval upon another; thus, there exists no room for a candidate to endorse his own campaign, as it is implied that a candidate running for office would surely wish to support his own efforts. Therefore, the suggestion by the Elections Board that Mr. Dodd was acting to endorse himself is logically fallacious. The Court finds that in his Instagram post, Mr. Dodd was not acting on behalf of MARS; he was simply announcing the existing public endorsement from MARS. Thus, the post from Mr. Dodd does not constitute an endorsement. Because the post is not an endorsement, the John Dodd Senate campaign is not required to include a disclaimer.

As such, the Court unanimously finds the Elections Board ruling that found the John Dodd Senate campaign responsible for violating Article XIV of the Elections Manual to be unconstitutional.

As the Elections Manual so specifically dictates that all endorsements contain a disclaimer, going so far as to provide a fill in the blank template, it is implied that all the cases not addressed in Article XIV are not required to include such a disclaimer. The Elections Manual simply prescribes the requirements of proper endorsements without addressing speech surrounding endorsements. As written, the Elections Manual does not address such activity and thus finding campaigns responsible for violations due to such activity is absolutely improper. While the Court does not wish to consider the intentions of the Elections Board in such an

¹⁰ Defendants’ Statement of Stipulated Facts

¹¹ Complainants’ Statement of Stipulated Facts

interpretation, the fact remains that this interpretation improperly expands the scope of Article XIV beyond the actual content of the Article itself.

IV

The Court finds value in requiring disclaimers be included in all endorsements of SGA candidates as outlined in Article XIV of the Elections Manual. The Court in no way desires to suggest the specific extent to which speech surrounding or sharing the news of endorsements should be regulated. Rather, it is the intention of the Court to direct the Election Board's attention to the fact that, as written, Article XIV of the Elections Manual may not be interpreted as extending to speech sharing news of or surrounding endorsements.

The Court will recommend the Elections Manual be revised to address such activity. The Court would like to urge the Elections Board to carefully consider the implications of any resulting regulations in the process of such revision. Total requirements of disclaimers in all speech surrounding disclaimers would require all fliers, images, audible conversation, student media coverage, and otherwise related speech surrounding endorsements include the disclaimer, which may create an undue burden. Conversely, the Court appreciates the position of the Elections Board in their statement, "Many students may have seen the post by John Dodd on Instagram without viewing the post by MARS, in which case they would never see the disclaimer." Again, the Court does not wish to weigh in on where the line should be drawn, so to speak, simply that a line should be drawn for the clarity of all candidates and individuals or organizations seeking to endorse a candidate.

ORDER

IT IS HEREBY ORDERED that the Elections Board ruling finding the John Dodd Senate campaign responsible for violating Article XIV of the Elections Manual be overturned. This ruling is found to be unconstitutional, as the post by the John Dodd campaign does not constitute an endorsement and therefore is not required to include the disclaimer outlined in Article XIV of the Elections Manual.

IT IS HEREBY ORDERED that three violation points awarded to the John Dodd Senate campaign due to the aforementioned minor violation be removed. The overturning of the Elections Board ruling shall include rescinding any sanctions imposed by the Elections Board as a result of the now overturned ruling.

IT IS HEREBY ORDERED that the Elections Manual be revised to address speech sharing the news of an endorsement or otherwise surrounding an endorsement in order to alleviate future ambiguity surrounding the topic.

IT IS HEREBY ORDERED that Elections Board take care to rule based on the Elections Manual and other governing documents as written, instead of based on the desired interpretations of Board members.

FAILURE TO COMPLY with the aforementioned orders warrants an investigation of the SGA Elections Board by the Student Government Association Student Judiciary, led by Chief Justice Meagher.

It is so ordered,



Chief Justice, Student Government Association

March 1, 2021

Exhibit A: Instagram Post Screenshots

Men Against Rape & Sexual Assault is proud to endorse Drew St. Charles and John Dodd in their races for Senate in the Student Government Administration

bamamars • Following

bamamars MARS endorses Drew St. Charles for Senate in the College of Commerce and Business Administration and John Dodd for Senate in the College of Arts and Sciences. Our members' votes are their own and they have the right to choose whether to vote and whom to vote for. We encourage all voters to research any and all candidates and to decide for themselves.

Vote March 2nd, 2021 on MyBama!

1d

cassandra.thomas amazing candidates!! 🍌

Liked by catharinemdelcarmen and 87 others

1 DAY AGO

Add a comment... [Post](#)

Men Against Rape & Sexual Assault is proud to endorse Drew St. Charles and John Dodd in their races for Senate in the Student Government Administration

thejohndodd • Following
The University of Alabama

thejohndodd I would like to wholeheartedly thank the amazing folks of @bamamars for endorsing me to be the newest Senator of the College of Arts & Sciences! If elected, I look forward to working with MARS, and other campus organizations, in an effort to prevent sexual assault on this campus! #DownForDodd

7h

malcolmlowe 🙌🙌🙌

6h 1 like Reply

maleabenzamin yes!!!!

5h 1 like Reply

Liked by anika_ames and 185 others

7 HOURS AGO

Add a comment... [Post](#)