

IN THE SUPREME COURT FOR THE
ASSOCIATED STUDENTS OF THE UNIVERSITY OF ARIZONA

ORIGINAL

James Allen, Petitioner
Candidate for ASUA President

vs.

Michael Colletti, Respondent
in his official capacity as ASUA Elections Commissioner

Argued: March 29, 2011
Decided: March 30, 2011

CHASE, J. delivers the opinion for a unanimous Court.

OPINION

CHASE, J.:

FACTUAL AND PROCEDURAL BACKGROUND

Petitioner, James Allen, brings this appeal after automatic disqualification in the race for ASUA Student Body President. During the course of Petitioner's campaign for President, he accumulated 12 checks for violations of the ASUA Elections Code. Checks were issued in accordance with the Violation Guide, created by the Respondent, the ASUA Elections Commissioner. Petitioner received four complaints on March 8, 2011, resulting in five violations of the Elections code and ten checks. Prior to March 8, Petitioner already had received one violation result in two checks. Thus on March 8, 2011, Petitioner had 12 checks resulting in an automatic disqualification under the Violation Guide.¹ Petitioner timely appealed the five violations on March 8 to the Elections Commission. The Commission removed one check for formal complaint two, discussed below, and affirmed the remaining 11 checks against Petitioner. Petitioner timely appealed the remaining violations to this court. This court has jurisdiction pursuant to 6-1.05 of the Elections Code.

DISCUSSION

I. Standard of Review

Petitioner asserts that the allegations against him amount to constructive fraud and thus Elections Commissioner must use a clear and convincing standard for evaluating these

¹ Automatic disqualification results when a candidate receives 10 or more checks.

allegations.² Petitioner supports this argument by citing to *Brazee v. Morris*, 204 P.2d 475 (1949) for the definition of constructive fraud:

“Constructive fraud may be defined as a breach of legal or equitable duty of which, irrespective of the moral guilt or intent of the fraud feisor, the law declares fraudulent, because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Neither actual dishonesty of purpose nor intent to deceive is an essential element of constructive fraud.”

Id. During oral arguments, Petitioner attempted to apply the public confidence and public interests sections of this constructive fraud definition. Petitioner failed to take into consideration that violation of any statute would injure the public interests, as the purpose of laws is to protect the public. Clearly not all violations of statutes amount to constructive fraud. That would make having constructive fraud have no independent meaning at all. Besides Petitioner’s interpretation of this definition being impossibly broad, *Brazee* has nothing to do with the facts of this case. *Brazee* involved specific performance of an option agreement to sell two lots of land. No allegations of contract dispute or sale of land were made in this Elections Dispute, thus the court cannot find how *Brazee* can possibly apply.

A requirement of clear and convincing evidence for the Elections Commissioner is nothing short of absurd. Clear and convincing evidence is the same burden the State must meet when showing a Parent should not have custody of their child. Clearly, the issue of an election for a student government position does not carry the same sort of weight as a parent losing their child. Nor does the Elections Commission have anywhere near the investigative powers of the State.

This court instead adopts a standard of preponderance of the evidence for the Elections Commissioner to apply in reviewing allegations against a candidate for ASUA office.³ Elections disputes are best classified as civil matters and thus the general civil standard of preponderance of the evidence should apply. Additionally, the Elections Commissioner has only 24 hours to make a determination regarding a violation. Any standard above preponderance of the evidence would not be practical in such a situation.

Next, the court must consider which standard to apply in reviewing a determination by the Elections Commissioner. Under *Tubbs v. Elections Commissioner* (2006), this court held that we must give deference to the Elections Commissioner. Thus, we review the Elections Commissioner’s determinations under an abuse of discretion standard.

II. Formal Complaint One

Formal complaint one, as titled by the Respondent, involves an allegation that Petitioner, or his slate, left fliers for his campaign at the UMart. Respondent deemed this a violation of 8-

² Despite counsel’s extensive use of rhetoric in his written brief and oral argument, he failed to assert any other legal argument besides sufficiency of the evidence. As he failed to raise any other arguments, the court’s analysis is limited solely to the issue of sufficiency of the evidence and the standard of review.

³ Preponderance of the evidence means more likely than not, or just over 50% likelihood.

3.01 of the Elections Code, which states, "No leafleting of vehicles on or off campus is permitted." Clearly, this section does not apply to the alleged violation, as the UMart is not a vehicle. The Respondent then points to the definition of leafleting: "Leafleting shall be defined as distributing large amounts of campaign material to one establishment (i.e. leaving a large amount of handbills in a department office or dropping handbills from the top of the Student Union)." This definition does support the allegation that leaving fliers in the UMart is leafleting, however the definition does not prohibit leafleting. In fact, the only prohibition of leafleting in the entire Elections Code is that of vehicles, under 8-3.01.

Respondent further asserts that during the information meeting for candidates, all candidates were specifically told that leafleting was a prohibited activity. However, Respondent was not able to provide any proof of this warning. While it is likely that Petitioner was aware that leaving fliers in a location such as the UMart was a prohibited activity, this court cannot find him responsible based on a this mere possibility. There is no proof that Petitioner was given actual or constructive notice that leafleting of anything besides a vehicle was prohibited. Thus, we hold that this violation was an abuse of Respondent's discretion and we vacate the violation and the two checks associated with it.

Since this court vacates this rule based on the Elections Code and the lack of notice of this prohibition, we do not reach the question of sufficiency of the evidence for the alleged violation.

III. Formal Complaint Two

In this complaint, Petitioner is accused of door-to-door campaigning inside Coronado Residence Hall in violation of 5-3.02, which states campaigning at on-campus housing must be done in accordance with Residence Hall rules, and 5-3.08, which states that door-to-door solicitation is prohibited. Petition was assessed four checks, two for each code violated. On appeal to the Elections Commission, one check was removed "due to insufficient evidence they actually went door to door." As the Elections Commission does not issue written opinions, this court is unable to determine why the Commission found there was insufficient evidence. For the purposes of this appeal, it is important to note that it was the Elections Commission, and not the Respondent, that made this determination.

A resident of Coronado Residence Hall who reports that members of Allen's campaign knocked on her door several times filed this complaint. According to Respondent, the residence stated she opened her door a few minutes after the knocking to see these campaign members down the hall knocking on other doors. Respondent failed to ask the residence who exactly she saw in the hall. Respondent also failed to check with other residence of the hall to see if they could confirm the report. Petitioner argues that without this additional information, there is no way to confirm if this violation actually occurred. The court disagrees.

Additional information would have been useful in evaluating this complaint; however, the court finds the available evidence and the inferences drawn from it is sufficient. Presumably, either the residence is familiar with Petitioner and his fellow slate members from posters around

campus, or from Mr. Ponton being a Resident Assistant in Coronado.⁴ Additionally, the court cannot find any proper reason for members of Petitioner's slate to be knocking on doors within Coronado Residence Hall on the day of elections. Thus, the court finds that Respondent did not abuse his discretion and affirms these violations and the three checks associated with them.

IV. Formal Complaint Three

This complaint alleges that Petitioner and members of his slate came into the Alpha Delta Pi sorority house with laptops for the purpose of soliciting votes. According to the complaint, Petitioner and his fellow slate members watched as the girls of the sorority house voted on Petitioner's laptop. Respondent assessed two checks against Petitioner for violating 5-3.10, campaigning within 75 feet of a polling state. The Election Code definition of a polling station include computers "represented by or representing a candidate." Respondent called the person who made the report to confirm the story.

The court finds that this firsthand account of such an egregious violation is sufficient for the Respondent to issue the violation and the checks. Further, this complaint combined with similar factual allegations of complaint four, make it all the more likely. Thus, the court finds no abuse of discretion and affirms the violation and the two checks associated with it.

V. Formal Complaint Four

This complaint is of a very similar nature to that of complaint three. Here, it is asserted that Petitioner and his slate went to a club meeting with a laptop and encouraged members of the club to vote on that laptop for members of the slate. Again, Respondent called to confirm the allegations in the report. After confirming the allegations, Respondent issued two checks in violation of 5-3.10. This court finds the firsthand knowledge of the complaint, combined with the very similar circumstances of complaint three was sufficient evidence for Respondent to issue the violations. Therefore, the court finds no abuse of discretion and affirms the violation and the two checks associated with it.

CONCLUSION

The court vacates formal complaint one and affirms complaints two, three and four. This ruling leaves Petitioner with nine checks, one short of automatic disqualification. During oral arguments, Respondent suggested that the totality of the circumstances in this case would warrant disqualification of the Petitioner, even if Petitioner did not reach the number of checks required for automatic disqualification. When questioned further on this point, Respondent suggested that some of these complaints, taken by themselves, would warrant disqualification under 1-1.07 of the Elections Code:

"The Elections Commissioner shall have the discretion as to levy a violation and subsequent penalties in the form of warnings, reduction of spending limits, loss of campaign rights, and/or disqualification."

⁴ Mr. Ponton is a member of Petitioner's slate. The Elections Code allows for a violation against one slate member to be assessed against all slate members.

The Violation Guide further states:


“Disqualification may immediately result for certain violations as mentioned in the Code for extreme situations that violate university policy or are severely detrimental to the Election process.”

As this court did not hear arguments regarding the severity of the violations, and as the Respondent has not made a determination under these rules, we remand the case to the Elections Commissioner. Respondent has 24 hours to make a determination regarding Pctitioner’s disqualification under the foregoing sections of the Elections Code and the Violation Guide.⁵

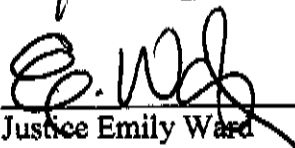
DATED this 12th day of April, 2011.


Justice Brian Chase


Chief Justice Jennifer Dang


Justice Adam Dippel


Justice Matthew Hum


Justice Emily Ward

⁵ At the time of this written decision, the Elections Commissioner has made a determination that Petitioner’s violations were of such a severe nature that they warrant disqualification even though the number of checks required for automatic disqualification have not been met.