

ASSOCIATED STUDENTS JUDICIARY
CALIFORNIA STATE COLLEGE AT LONG BEACH

Summary Report

CASE OF: DURAND vs ELECTIONS COMMISSION,
A. S. 10 (1966-1967)

DATE: May 5, 1967

ISSUE: Conduct of A. S. Elections

DECISION:

1. This Court finds the Plaintiff guilty of failure to submit an expense sheet by the time specified in the Elections Code and orders that he be disqualified from assuming the position of Senator-at-large.
2. In keeping with the decision in the case Roberts and Wilson vs. Elections Commission, ~~ASJ-34~~ (1966-1967), we uphold the distinction drawn therein between regulations which have as their purpose to insure a fair and orderly election and those which do not. Thus, a penalty less than disqualification (viz. a fine) is justified for a violation of the regulation to remove campaign material since the purpose is purely one of maintenance—to insure the campus is cleaned up after an election. This differs from the regulations that require approval of campaign material and submission of an expense sheet which have as their purpose to guarantee that no one candidate is unlawfully influencing the outcome of the election by displaying material or spending in excess of that which is allowed all candidates by the Code.
3. To enforce the Code, we find the distinction drawn above to be particularly adequate. Since submission of campaign materials and expense statements are required before the election winners are announced, the remedy of disqualification will insure that all candidates comply. Commonly, however, a violation of the clean-up regulation occurs after the winners are announced so that the threat of disqualification poses no remedy to insure campus maintenance by the losing candidate. Thus, a fine is most appropriate since it will be levied against all candidates found in violation, not just the winning candidates.
4. In reaching this decision we have provided a remedy to the immediate problem of defining a particular instance when a lesser penalty is justified, but there remains three larger problems which are bound to plague the operation of Student Government in the future.

These problems are (a) the substantive issue of whether all the rules of the Election Code are necessary, (b) the lack of an established range of penalties for each regulation in the Code, and (c) the question of who is to enforce the Code and who is to judge violations thereof.

- (a) We feel that the time has come for the legislative body, the A. S. Senate, who is charged with the responsibility of enacting all regulations, to undertake a critical review of the present Elections Code and, indeed, the whole election process on this campus. An important question is whether we need this entire volume of minute rules to maintain a fair and orderly election. The enforcement rules as discussed above are not at issue, rather the rules of campaigning governing the size and number of signs, limiting the amount of expenditures, and all those rules which stifle the election process to the point of impotence. We are confident that if these confining limitations were relaxed and the candidates were allowed to conduct a more open campaign, as they do at most other campuses, that the degree of student involvement and participation would take a decided upturn.

The present list of campaign rules defy adequate enforcement. It is common knowledge that in each election many unreported violations occur. The candidates are reluctant to contest the violations of their opponents for fear of instigating a counter-complaint which may also be justified. The Elections Commission simply does not have the manpower to seek out violations and when a zealous Commission comes along and attempts to do so, citing the letter of the law, the result is utter chaos. Only a small portion of violations are discovered and once again the Commission succumbs under the dark cloud of discredit. There is no practical way to enforce all these questionable rules and to ask the Commission to do so is to invite frustration. It should be remembered that this country has conducted almost two-hundred years of successful elections with a minimum of regulation.

- (b) In this connection, we also find the time ripe for the legislature to enact a penal section for Election Code regulations, involved is a classification of all the regulations of the Code and establishing the range of penalties that can be imposed by this Court for each classification. While it is possible to wait for such definitions to be rendered in case law, we feel it is the duty of the legislature to set the record straight.

It should be paramount in the minds of the reviewers that the purpose of elections is to staff in legislative and executive positions those persons chosen by the people. Thus, abrogation of the people's will by disqualification of the candidate elect should be applied sparingly and only when the facts demand that he has gained office by fraudulent or other illegal means.

(c) The last and most important problem concerns the authority of the Elections Commission--what safeguards are present to prevent the Commission from making at least hasty and at most arbitrary and biased decisions on the disqualification of candidates. We feel that the function of the Commission is that of a policeman, and like a policeman should undertake to remedy possible Code infractions in the field and as a last resort file a complaint against the individual; and like policemen, the Commission has no business to judge those persons they have arrested for prosecution. Unfortunately for the students on this campus, the Commission now acts as policeman, prosecutor and judge; the situation stands as an open invitation to abuse. This year's Senate should not have given the Commission this authority.

It is essential, therefore, that we return to the intent of our legislative bodies of the past, notwithstanding the sole maverick Senate of this one year, to place the judicial authority in the hands of the Judiciary, not the Administrators (Bylaws, Chapter I, Article III) and to honor the written law in recognizing the Judiciary as the only competent arbitrator in disputes between the Commission and the Candidate, not to allow the Commission to decide upon its own cause (Bylaws, Chapter II, Article VI, Section 2).

As it is clear that only this Court can issue fines in the lesser case of a maintenance violation, Roberts and Wilson vs Elections Commission (Supra) so it should be the only body to impose the supreme penalty of disqualification in the higher cases.

It is incumbent on the next legislature to undertake these tasks, we hereby so order.

OPINION BY:

Michael J. Hanna, Chief Justice
Donald Eisenberg, Associate Justice

Dissenting: Donald Granger, Assoc.
Justice

DURAND vs. ELECTIONS COMMISSION

A Dissenting Opinion

I agree with my fellow justices that:

1. The plaintiff had failed to submit his expense sheet for the election by the time required and was rightly disqualified at that time by the elections Commissioner for violation of the elections code;
2. Such an offense is more serious than failure to remove campaign materials after the election, as in the case of Wilson and Roberts vs. Elections Commission.

I disagree with my fellow justices in that:

1. Failure to submit the expense sheet on time, when there appears no evidence of overt contempt (e.g. refusal to submit an expense sheet), does not seem sufficiently serious to warrant the maximum punishment possible in an election case. To demand that this ultimate penalty be invoked in such a situation appears to represent a presumption by the court of the candidate's most extreme culpability, a tacit presumption that he is attempting to conceal unethical conduct.

While one cannot adopt the other extreme, that forgetfulness is a natural ill and is to be forgiven outright, it would appear that a position tending towards this end of the balance is to be preferred in the interest of presuming innocence until guilt is established and in tempering justice with mercy.

2. The failure to submit an expense sheet in cases where no overt contempt can be shown to exist is insufficient to overthrow the will of the people as expressed in the election. While situations do exist which call for the disqualification of candidates, public opinion as expressed through the ballot box should be of prime consideration in any elections case, and it should be with gravity and humility that the court seeks to presume upon the wishes of the electorate.

3. Most grievous of all is the fact that the court was not left with more alternatives which seemed realistic. Under the present system, the court had only two alternatives of punishment: disqualification or a ten dollar (\$10) fine. Since, under the circumstances, the former seemed too extreme and the latter too facile for such a violation, there appeared to be no possibility of punishment offered the court which was in proportion to the offense. It is to be deeply regretted that the Judiciary is not empowered to impose a mediary and more commensurate punishment, such as a term of social probation or increased fine. Because, however, these possibilities did not exist for consideration by the Judiciary, it

seemed impossible to render justice within such a wide, and yet limited, scope.

It is for these reasons that I must dissent from the opinion of my fellow justices.

Donald J. Granger

DONALD GRANGER
ASSOCIATE JUSTICE