

O'CONNELL vs 49'er YOUNG REPUBLICANS

A. S. II (1966-1967)

Argued before the Associated Students
Judiciary on May 19, 1967

Garland L. Holt argued the cause for the Plaintiff. Terry E. Dixon and Lawrence C. Peterson argued the cause of the Defense.

Chief Justice Hanna with whom Mr. Justice Ware agrees, delivered the Opinion of the Court.

The Contestants have asked for an advising opinion. This Court, under its jurisdiction to hear and decide Civil disputes involving Chartered organizations, so renders the Opinion below.

The Plaintiff, in challenging the invalidation of certain witnessed proxy votes in the election of club officers, questions whether the officers of the organization must be specifically authorized in the Club's Constitution, By Laws, or Parliamentary Authority, to require that proxy votes be witnessed. He claims that since they are not so authorized, no such requirement may be established. The Defense responds that the Club's common tradition of requiring proxies to be witnessed supplements these rules, and is not counter to them.

A look at the entire lot of proxy ballots finds all to have been witnessed, but some invalidated because they were not properly witnessed. However, the Plaintiff does not challenge the procedure of invalidation, rather the legal right of the officers to require proxy votes to be witnessed at all. It is to this question that we address our attention.

1. THE TRADITIONS OF THE CLUB

It is apparent that a precedent of several years standing exists which requires witnessed signatures on proxy votes though it is also apparent that at least one and perhaps several members were not aware of this tradition.

2. THE BYLAWS OF THE CLUB.

We agree with the Defense that the silence of the YR Bylaws on the matter of witnessed proxy votes does not establish a prohibition on their use. The witnessing requirement clearly supplements the Y.R. Bylaws; thus, Article V Section 4 has not been violated.

3. THE ASSOCIATED STUDENTS BYLAWS

The Plaintiff further contends that since the officers violated their own Bylaws they also violated Chapter Two, Article VIII, Section 2 (B) of the Associated Students ByLaws which holds Chartered organizations to limit their activities to those stated in their Constitution or Bylaws.

To this we must also agree with the Defense. It would be an error to interpret this section to say that every organization must limit its activities and rules solely to those expressly stated in its Constitution or Bylaws. Other than a loose interpretation here would reduce the clubs on this campus to nil activity, else their Constitution be of the unwieldy length of that of this state. Thus the section in question has not been violated.

4. THE PARLIAMENTARY AUTHORITY OF THE CLUB

The Parliamentary authority of the club is the Sturgis' Standard Code of Parliamentary Procedure (Bylaws Article VII). Plaintiff cites the second edition of Sturgis' (1966) which requires that proxies must conform strictly to the provisions of the Charter, Bylaws and statutes of the organization. However, we find that the organization is not held to the second edition since this revision occurred after the Bylaws were adopted. The absence of such a statement in the original edition, to which they are held, again indicates a silence.

For the above reasons, we find the witnessing requirement to be justified. We would urge, however, that the Young Republicans consider and act upon the recommendations set below.

1. INFORMING THE MEMBERSHIP

The Common Law tradition is clear that an organization's officers must inform the members of the entire voting procedure. While this issue is not at question we do sense a certain laxness on the part of this club to meet this precedent, especially in the use of proxies.

To satisfy the Common Law, a standard requirement is to include supplementary procedures in a written body of rules, such as a Standing Rules of Election Procedure which would be disseminated to the general membership. We feel that it is incumbent on Young Republicans to conform to the Common Law by establishing such a body of rules for distribution.

2. ADOPTION OF STURGIS, SECOND EDITION

We also recommend that the club adopt the second edition of Sturgis as the parliamentary authority. This to insure that the complete procedure of proxy voting be included in the statutes, if not the Bylaws of the Organization. Again, a written listing of procedure, such as the Standing Rules, may satisfy the Sturgis' requirement as being statute.

In short, the combination of the common law and Sturgis, second edition, suggest that supplements to the Bylaws be in statute form, that is, in writing after being approved by a majority vote of the members. This is sound, fair procedure.

Dissenting: Mr. Justice Butkiss

May 21, 1967

OPINION: O'Connell versus 49'er Young Republicans

John Butkiss
A. S. Associate Justice

The only issue before the Court in the case of O'Connell versus the 49'er Young Republicans is that of counting or not counting a certain number of proxy votes as legal votes in the YR election of May 10, 1967. YR President, Larry Peterson, did not allow a certain number of proxy votes to be counted in the May 10, 1967 election for the reason that the proxies in question were improperly witnessed. The Plaintiff charges that neither in the official authority of the Club, STURGIS, or in the YR charter itself is witnessing of proxies made a necessary part of proxy voting and contends that since this is the case, the proxies are legal votes in the election and must be counted as such. The defendant contends that due to past practices, only witnessed proxies are considered legal votes, and, further, only proxies witnessed in a certain manner, namely, proxies witnessed at the time they were written out. I agree with my colleagues, that the crucial question before the Court is that of the validity of past practice of allowing only witnessed proxy votes to be counted as legal votes is established precedent in the 49'er Young Republicans. And, that on the basis of this precedent, only witnessed proxies may be counted as legal votes. But, what has not been shown to my satisfaction is that only proxies witnessed in a certain manner, namely at the time they are written out, have been in the past the only type of proxies considered as legal votes. Evidence to support this type of past practice has not been clearly established. That witnessing was considered an essential part of a proxy vote is shown, not only by the evidence presented to the court, but by the fact that all the proxies in question were witnessed. Further the proxies in question also show that it was considered by a certain number of members that the proxies need not be witnessed at the time they themselves wrote them out. Thus, through witnessing of proxies was past procedure, a specific type of witnessing, namely that of witnessing at the time a proxy is written out, was not felt to be necessary. What we are left with is what may be termed "half" a precedent, which is probably just as bad as none. Thus, in justice to those members who executed their right to proxy voting without understanding the complete customary procedures and due to the fact that it has not clearly been shown that a certain type of witnessing was actually customary procedure, it is my judgment that the proxies in question are legal votes and must be counted. That a communications "gap" between the officers of the YR's and the rank and file membership exists is evident by this case. Officers of any campus organization must see to it that not only written rules of the organization are made common knowledge to its members, but also any customary ways of doing things. It is also recommended that the YR's and other campus organizations closely inspect their election and voting procedures in order to anticipate any possible difficulties such as have been brought before this Court at this time, and that each campus organization should specifically clarify its procedures as regards the use of proxies. A precedent is only as good as it is "common"--that is, an unknown precedent, a little known precedent, or a partly understood precedent is no precedent at all.

ASSOCIATED STUDENTS JUDICIARY
California State College at Long Beach

ORDER OF THE COURT

To: 49er Young Republicans, Larry Peterson, President.

You are hereby ordered: To cease from distroying and hold intact any and all ballots and proxies cast in the election of 49er Young Republican officers, held on May 10th, 1967, This injunction shall be in effect until a decision is handed down by this Court in the case O'Connell v 49er Young Republicans, A.S.11 (1966-1967) which is now pending.

Failure to comply will result in a contempt citation being issued against your name pursuant to Rule #17 of the A.S. Judiciary of California State College at Long Beach.

Presiding Justice

Date: