

OFFICIAL DECISION

CASE: GARZA, AILEEN, VS. THE ASSOCIATED STUDENT BODY

The petition before the court is that of Aileen Garza for reinstatement of her candidacy for Junior Senator.

The facts of this case are as follows:

The plaintiff decided to run for office on Thursday, March 21. Petitions for candidacy were not due until Friday, March 22nd as specified by the Elections Commission and she was therefore within the time limit set in filing for candidacy. The Parliamentary Procedure lecture had been given on Wednesday, March 20th and as a result the plaintiff did not attend the lecture which included pertinent information in regard to the elections.

The plaintiff, Aileen Garza, was unable to take the first Constitution and Parliamentary Procedure test due to illness. On Wednesday, March 27th, she took the tests required for candidacy and failed the Parliamentary Procedures test and was therefore disqualified by the Elections Commission.

On the direct testimony of Richard Jones before this court, it was ascertained that because of doubt as to a make-up test for those who were taking the exam for the first time on Wednesday, the administrator of the Parliamentary Procedures exam, Dr. Cain, had been asked if there would be another make-up examination. According to testimony, Dr. Cain answered that he believed there would be such a test. Dr. Cain's opinion was given to the plaintiff by the witness, Richard Jones.

8 Senator Howard Adler in testimony before this court to determine the intent of the Senate in establishing the make-up exam stated that it was the Senate's intent to give each potential candidate a chance to take the test twice.

It is the opinion of this court based upon the testimony given that while the plaintiff was disqualified by the Elections Commission in accordance with a strict legal interpretation that other considerations must be brought to bear. The underlying justice of the disqualification must be questioned.

The A.S. Judiciary as the body empowered with judicial review of any Executive Commission's decisions must take into account the underlying justice of the original decision. Since there is no other organ on campus empowered to check on Executive Commission when fairness is at issue, this duty devolves upon the Judiciary as the court of final ~~appeal~~ appeal.

It is the decision of this court that the issue of fairness arises in this case. The Judiciary feels that it must give close scrutiny to the elections calendar issued by the Elections Commission. The scheduling of the election dates set up by the Elections Commission is the issue in point.

First, the scheduling of the Parliamentary Procedures Lecture before the final date for petitions to be handed in penalizes those desirous of running for office who decide upon that intention after the lecture has been given. In this instance, anyone who decided to petition for candidacy after one o'clock in the afternoon on Wednesday, Marcy 20, was penalized by having missed the lecture.

Secondly, the testing schedule was set so closely to the beginning of the election campaign that those with valid reasons for missing the tests could seek no redress. Those persons such as the plaintiff who had valid reasons for missing the test Monday had only one chance to take the test and pass, because the Elections Commission disqualified all candidates who had failed to pass the testing qualification on Wednesday evening. This in effect gives some candidates a change to pass the test twice while others have only one chance irrespective of extenuating circumstances and therefore unfairly discriminates against those persons validly unable to attend the first test. That there were conflicting views as to the possibility of another make-up exam is testified to by Dr. Cain's answer to Richard Jones.

Thirdly, the Associated Students Election Code, Section 14, states that any candidate who fails to meet the essential qualifications will be referred to the A.S. Judiciary by the Elections Commission. If this process of referral is to have any meaning, the election schedule must be set up to allow the A.S. Judiciary time to render a judgment. The Elections Commission in their scheduling of election dates failed to give disqualified candidates a chance to appeal to this court without penalty in the form of loss of campaign time.

It is therefore the decision of this court that Aileen Garza be reinstated pending the outcome of the Parliamentary Procedure test, and we hereby order the Elections Commission to set up a second test for the plaintiff. The plaintiff is further warned that all expenses incurred in campaigning while the outcome of the second test is pending are at her own financial risk.

Majority Opinion:

Chief Justice - James T. Burns
Justice - Debbie Roberts
Justice - Lowell Martindale
Justice - John Maguire