

CRAIG PREMJEE, Petitioner v. ANDREW TAYLOR

No. 2011-001

STUDENT GOVERNMENT COURT OF APPEALS**March 10, 2011, Argued****March 30, 2011, Decided**

PRIOR HISTORY: Appeal from Election Commission, March 10, 2011.

DISPOSITION: Reversed.

DECISION:

Premjee established a polling location by providing his phone to another for the purpose of voting, in violation of the Election Code. The proper punishment for this violation is not disqualification.

COUNSEL: Lee Arnold argued the cause for petitioners.

Jack Wehman argued the cause for respondents.

JUDGES: Kilroy, C. J., delivered the opinion of the Court, in which Lopez and McGee, JJ., joined. Tabrizi, J., filed an opinion, concurring in part and dissenting in part, in which Syed, J., joined, p.3.

OPINION:

Chief Justice Kilroy delivered the opinion of the Court.

The Student Government Court of Appeals has jurisdiction over an appeal from an Election Commission decision, and this claim is both ripe and non-moot. No motions for re-hearing have been made as of the writing of this opinion.

Andrew Taylor made the complaint seeking immediate punitive action against Craig Premjee.

On the night of March 9th, 2011, Premjee, a candidate for Vice President of the Student Government Association, was campaigning at a bar just off campus. He walked up to a crowd of potential voters and asked if they had voted. Somehow, a voter, Joeanthony Leyva, ended up with Premjee's phone and used it to vote. Because of highly limited and conflicting testimony, it remains unclear if Premjee offered his phone or was asked for it. Premjee walked some distance away while Leyva voted. When Premjee returned, Leyva handed back the phone and said that he had voted.

Taylor, an editor for the Daily Cougar, witnessed this exchange occur, but was too far away to offer any testimony on the exact exchange between Leyva and Premjee. Taylor took note of the event and returned to the Daily Cougar offices, where he informed Jack Wehman, the editor-in-chief, what he had seen. Wehman informed Taylor that he believed that Premjee had violated campaigning practices. Wehman called both Premjee and Michael Harding, who was running for President with Premjee. Because of concerns about the sobriety of both candidates and a lack of any sort of oath or affirmation of truth, the Court declines to repeat or summarize the content of those phone calls.

The next morning, Taylor filed a complaint with the Election Commission, while Wehman ran a front-page story in the Daily Cougar recounting the events Taylor witnessed that night. The complaint was heard by the Election Commission later that afternoon.

While they investigated, the Election Commission suspended Premjee, Harding, and all their supporters from campaigning for the rest of the day and the election. The Commission's final ruling was that Premjee knowingly set up a polling location in violation of the election code and both Premjee and Harding were disqualified.

A valid appeal was made that night.

I. Mr Premjee violated the Election Code by setting up a polling location.

The Election Code forbids a candidate from setting up a polling location (Art. VII, § 4, cl. 1), defined as "a voting apparatus used by an individual other than the owner" (Art. V, § 7, cl. 2). A voting apparatus is never explicitly defined, but the Code mentions that it includes but is not limited to "laptops or personal digital assistants with access to the Internet" (Art. 5, § 4, cl. 1).

It was difficult for the Court to get any reliable testimony about the exact circumstances of the violation. Testimony conflicts as to whether Premjee handed over his phone to Leyva or if Leyva asked Premjee for his phone. All the Court knows for certain is that once in possession of Premjee's phone, Leyva used it to vote. Leyva did not respond to an e-mail asking him to attend

the hearing. The Court was able to call Leyva at home during the hearing and get some testimony from him, but he seemed both unwilling to testify and fuzzy on the details. The complainant, Taylor, did not actually hear the exchange that ended with Leyva in possession of Premjee's phone. Taylor could only produce recorded phone calls between Wehman and Harding, Premjee, and Leyva. These phone calls were not sworn testimony and usually would not be allowed into evidence, but they were useful for background information. The Court did not weigh the exchanges in these phone calls when coming to a decision.

Because of this deficiency in detail and the burden of proof resting on the complainant (Art. IX, § 6, cl. 4), the Court looked primarily at Premjee's testimony to see if he had admitted setting up a polling location. When pressed on his actions, Premjee stated that he walked away to allow Leyva to vote without being intimidated. Even if Leyva asked for Premjee's phone, Premjee was aware that the phone was intended to be used for voting and should have asked Leyva to use his own personal phone. This is a very simple request to make, and Premjee was unable to demonstrate why he did not make it. It is clear that Premjee's phone was being used by another for the purpose of voting, which violates the bar against setting up a polling location. The direct purpose of this bar seems to be to prevent a candidate from intimidation and forced voting by setting up a laptop or phone and forcing students to vote while the candidate confirms. Walking away from the voting does mitigate some of the possible intimidation, but a voter would have a difficult time selecting an opponent, if he so chose, while he were using a candidate's phone. Every candidate should exercise a high degree of care to prevent even the implication of impropriety. Even if someone asks for a candidate's phone for the purposes of voting, this Court considers it to be setting up a polling location.

II. Premjee's violation is properly classified as a Class 1 violation, not deserving of disqualification.

The Election Code lists three major penalties for violating the campaigning rules (Art. X, § 1, cl. 3). A Class 1 violation, the weakest violation, is defined as failure to adhere to the campaigning rules set by Art. VII, which includes the ban on setting up polling locations. A Class 2 violation primarily consists of defacing another's election materials and is irrelevant to the current discussion. A Class 3 violation is worded ambiguously:

Knowledge of the commission of a violation prior to or during its occurrence; (no defendant shall be penalized absent a showing that the knowledge was coupled with failure to attempt to prevent

the violation or attempt to rectify the violation).

The plain meaning of the violation is difficult to definitively state in and of itself. On first reading, it seems that if a candidate knows that his actions would violate the Code, his actions would result in an automatic disqualification. But this is an absurd result. Given the distinctiveness of each penalty, the weight of severity placed over these violations can be misconstrued while appearing to lack the independent burden that the general violation indicates. If this interpretation is kept, then it effectively erases the Class 1 violation and makes every violation a Class 3, because of the Court's and Election Commission's shared presumption that the candidate has read the Code and is aware of all of its provisions (Art. III, § 3, cl. 1). If mere knowledge that an action could be held to be a violation is the difference between a Class 1 violation and a Class 3 violation, then every violation is a Class 3 violation. The Court cannot envision a way for a candidate to unknowingly set up a polling location or use a loudspeaker. Therefore, all of the offenses in Art. VII, §4, cl. 1 must be done with knowledge that one was doing it.

The Senate does not keep records of the debate on these, so it is impossible for the Court to directly discover the intent of the Senators who wrote this particular section. Regardless, if there are discrete classes of violation written into the Code, the Court will accept the reading that keeps this intent intact.

The Court believes that the Election Commission misinterpreted the knowledge requirement of a Class 3 violation. Knowledge, by definition, is subjective and specific to the individual. Premjee's testimony indicated that he did not believe that his actions were in violation of the Code, so he did not have the requisite knowledge. If the Commission had already ruled that using a candidate's phone to vote was an illegal polling location and had directed Premjee to this decision, then the Commission could have ruled that his action was a Class 3 violation. Without the knowledge that his actions would be classified as a Class 3 violation, Premjee's offense can only be properly classified as a Class 1 violation.

Repeatedly breaking the law is an aggravating offense widespread in American criminal law. Repeat offenders are almost always treated more harshly because they have the knowledge that the crimes they commit are in fact crimes. Giving repeat offenders harsher sentences serves as a method for the system to deter further criminality because the standard penalties do not have the proper deterrent effect. If it had been shown that Premjee had been soliciting votes this way throughout the election, knowing that he was breaking the Code, the

Court would have no qualms with a disqualification by the Election Commission.

The Court also looked at the previous five elections to see if there was any precedent for disqualification for setting up a polling location. Even though the Court was unable to find the same violation, similar violations (campaigning in classrooms, using university printers to make additional campaign material) were dealt with by a suspension of campaigning privileges. The Court could not find a single instance of an Election Commission disqualifying candidates for the first violation of campaigning rules. The Court also noted that the forms used to hand out Election Commission decisions also mentioned that further violations might result in disqualification, further lending credence to the idea that disqualification is reserved primarily for repeat offenders.

Disqualifying candidates based on a single violation, especially when the candidate genuinely believed that his actions were entirely acceptable under the Code, seems to be overly harsh and only reserved for the most egregious violations. We are very hesitant to take the power of students to choose their own leaders away. The Court should not decide the result of the election unless it was already decided as the result of fraud.

Even though the Court would typically defer greatly to the judgment of the Election Commissioners, as they have the most direct experience with the Code and the various candidates, the Court holds that the decision to disqualify Harding and Premjee is overly harsh and not warranted by the Code. Harding and Premjee were barred from campaigning for the last 24 hours of the election; this is punishment enough for Premjee's actions.

Even though a Class 1 violation is only subject to a warning and not a suspension, the Court will not order a new election or additional campaigning days to compensate for this loss. Premjee and future candidates should now be well aware that using a phone to solicit votes is a violation of the Election Code. This decision serves as a notice to future candidates.

As a last note, the Court would ask the Senate at its earliest convenience to sit down and work on clarifying the Election Code. Multiple ambiguities currently exist in this Code, and candidates and the election process are worse off for it. Moreover, if the Senate does not agree with this interpretation, the Court encourages it to amend the Election Code to better suit their wishes.

Finally, the Court does appreciate the Daily Cougar's work in uncovering this violation, but the Court would ask the editors to refrain from making and publishing a decision about the guilt or innocence of a party before his avenues of appeal are exhausted. Inflammatory

remarks make it much more difficult to give a candidate, guilty or not, the fair hearing he deserves.

Tabrizi, J., concurring in part and dissenting in part, with Syed, J.

By deciding that a single violation is grounds for a ban on campaigning, the majority does a grave injustice to the judicial system and the work that this Court is entrusted to carry out.

The Majority places a high value on testimony which, frankly, was far too conflicting for the majority to come to their decision. The conflicting and indirect nature of the evidence presented cast an enormous shadow of doubt on Taylor's claims. Considering the severity of the consequence, the evidence brought forth simply was not adequate or reliable enough to hold a candidate guilty of setting up a polling location. Both parties presented conflicting testimony, but the only person at the hearing who could actually testify as to the events that took place was Premjee. Taylor relied on recordings and testimony phoned in from the only other eyewitness.

The recorded telephone calls (interviews conducted by Wehman to Harding, Premjee and Leyva) submitted as evidence conflicted with the statements Harding, Premjee and Leyva made during the hearing. When this occurs, the Court should disregard an interview that was not made under oath. Because any person would view the Court's hearing as requiring a higher standard of truth than a late-night phone call, the Court should properly accord greater weight to sworn testimony over telephone recordings. In fact, the Court should never have allowed these recordings to be played in the first place during the hearing.

Moreover, Leyva was absent during the hearing, which made Premjee the only person present during the hearing who could actually testify as to what happened during the exchange. The Court should value Premjee's testimony over that of Taylor's (who admitted to not being close enough to hear the conversation between Premjee and Leyva) or the testimony of Wehman who was not present at all during the incident. The Court, seeking to hear the full story, had to request that Taylor call Leyva to testify. It is not the responsibility of the Court to provide the complainant with their testimony, and the minority in this decision has trouble seeing why the Court even allowed Taylor to call up someone who clearly did not think the hearing was important enough to attend. Further emphasizing the importance of the testimony presented by the parties in attendance, the Court would advise future complainants to bring forth any and all eyewitnesses that can adequately and sufficiently pro-

vide testimony as the alleged acts that have been committed.

The evidence presented that Premjee was setting up a polling location relied heavily on hearsay and with the lack of Leyva's physical presence or valid testimony, Premjee's testimony given under oath needs to be given the most weight.

The presumption of innocence is one of the greatest innovations of the Western system of justice. There was no evidence presented showing that Leyva did in fact vote on Premjee's phone. Premjee did not deserve the severe punishment of disqualification because there simply was not enough evidence to prove that he actually broke the Election Code.