



## Student Judiciary

511 Memorial Union, 800 Langdon Street, Madison, WI 53706

phone: 608.265.4ASM ♦ fax: 608.265.5637

www.asm.wisc.edu/student\_judiciary/index.html

### In Re: Spring 2005 Election Complaints Regarding Candidate Eligibility

2005 ASM SJ 2

#### JUDGMENT

Cite As: 2005 ASM SJ 2

*Before Romano, CJ, Collins, VCJ, and Fox, SJ.*

*Mr. Eric Varney and Mr. Robert Thelen III Complaining.*

*Student Election Commission Chair Timothy Leonard Responding.*

♦  
Nathaniel Romano  
Chief Justice

♦  
Grant Collins  
Vice-Chief Justice

♦  
Timothy Leonard  
Chair, Student Elections  
Commission

♦  
Nicholas Fox  
Associate Justice

♦  
Yin-Chin Wang  
Associate Justice

**PER CURIAM.** The Court today is called upon to resolve an election complaint regarding the eligibility of certain candidates based upon which college said candidates are enrolled in, and based upon whether some candidates who missed the candidacy information session—where the candidacy contract was signed—should be eligible to run.

#### I

The Student Election Commission (SEC), chaired by Justice Leonard, receives its power from the Student Judiciary to run the elections for the Associated Students of Madison (ASM) student government. See, *ASM Const. Art. X §3(a)* (2004); *ASM By-laws §6.01(A)* (2004). For the Spring 2005 elections, the SEC set the following dates: an interest session for all potential candidates on 23 February 2005; all candidacy declaration forms due on 1 March 2005; mandatory information session and contract signing session on 6 March 2005; and the actual Spring 2005 elections, which are to run from April 5 – 7, 2005.

Petitioner Varney challenges the eligibility of some candidates arguing that there are candidates who are not currently enrolled in the college or school for the seat for which they are running. *Complaint* at ¶1. Moreover, Petitioner argues that some candidates did not make the mandatory information session and therefore are not eligible to run in the Spring 2005 election. *Id.* at ¶2. Respondent Leonard, Chair of the SEC, argues that the SEC has the discretion to not only set rules for the elections, but also has the discretion to determine whether some candidates may be eligible or ineligible. *Response of the SEC to Complaint.* We address these claims now.

#### II

In regards to candidates who are not currently enrolled for the seat for which they are applying: the *ASM Constitution* states, “Seats [of the Student Council] shall be apportioned among reasonable academic units by law every four years.” Art. VII §1. “Apportioned among” means that a candidate who runs for a seat on the Student Council is enrolled in that academic unit, and is therefore constitutionally qualified to represent that college or school. It is illogical and unconstitutional, for example, that a Letters and Science graduate student could run for a seat in the Business School. Representatives on the Student Council must represent the school for which they are elected. See, *Gibbons v. SEC* (1997 ASM SJ 2) and *Evans & Krupp v. SEC* (2001 ASM SJ 11).

In *Gibbons*, this Court specifically identified that it was the University’s definition of a student that was controlling. *Gibbons, supra.* There, the Court was specifically recognizing legislation of the Student Council, the Redistricting Plan of December 12, 1996, that mandated this conclusion. *Id.* No evidence has been presented showing that this has been countermanded

by later legislation. Indeed, the *ASM Bylaws* are silent on this issue, and we are left with the sole admonition by the *ASM Constitution* that seats are to be apportioned among “reasonable academic units.” In the absence of Student Council legislation to the contrary, the only “reasonable” academic unit we can conceive of are those identified by the University.

In *Austin Evans and Trent Krupp v. SEC, supra*, the Court relied on the Office of the Registrar’s classification of a student to determine for which seat the student was eligible to run. In that case, two students who were in their first year (commonly the “freshman year”) were denied by the SEC the right to run as freshman candidates because their advanced placement credits meant that they were not considered “freshman” by the University. *Id.* at 1. The Court upheld this decision. *Id.* at 2. There, the Court held that “[t]he *ASM Constitution* makes it quite clear that Seats on council are to be apportioned by reasonable academic units. To define the [academic unit] on the SC by societal perspectives and definitions rather than by some sort of academic standard blatantly violates the *ASM Constitution*.” *Id.* at 2 (footnote omitted). Clearly, the common law of ASM is that the University defines the academic units among which Student Council seats shall be apportioned.

In the case at bar, the Petitioner specifically charges Mr. Jacob Clemen, a student currently enrolled in the College of Letters and Science but who has applied to the Business School and who, consequently, has chosen to run for the Business School seat on the Student Council, even though he has not been formally accepted to the Business School. *Complaint* at ¶1. The candidacy declaration form states, “[Your student ID number] will be used to verify you can run for the seat you have selected and that you are currently enrolled. The Registrar determines in which school and in which year you are enrolled and you may only run for a seat representing that school or year.” *Candidacy Declaration Form, Exhibit C*. Since Mr. Clemen was not enrolled in the Business School at the time the candidacy declaration forms were due, he cannot be considered eligible by the SEC to run for this seat. Elections are based on current eligibility, not future eligibility. Just as one who is not a freshman cannot run for a freshman seat, neither can one who is not a member of an academic unit represent that academic unit. *Gibbons, supra; Evans & Krupp, supra*, at 2. We can see no reason why the rule of *Gibbons* and *Evans* should be abandoned simply because the putative candidate is not running for the freshman seat.

Therefore, the Court now imposes a rule: All candidates running for a seat in the ASM student government must be enrolled in the college or school for which they are running *at the time the candidacy declaration forms are due*. All students in the current elections and future elections who do not fulfill this rule are enjoined from being placed on the election ballot.

Petitioner urges the Court to remove all candidates not currently enrolled for the seat for which they are running, and to instead let them run for the seat of the college or school which they are currently enrolled. This the Court cannot do. The candidacy declaration forms specify that a student must run for the seat for which he or she is currently enrolled. *Exhibit C*. Mr. Clemen asked the SEC—after submitting his declaration form for the School of Business seat—if such a practice was acceptable. We have already ruled that it is not. Due process does not allow any official, even one with certain discretionary actions, to act by bending previously established rules. See, *McCabe v. Evans* (2004 ASM SJ 2) at 2-3 (ASM bodies must act according to previously established rules, otherwise their actions are void); *Const.* Art. IV §2. Additionally, it would be a different story were the Council to redefine “reasonable academic unit” away from the definition imposed by the University. Cf. *Gibbons, supra*. Since this is not the case before us, we will not answer it here. Mr. Clemen, having failed to declare his correct candidacy for the seat for which he is currently enrolled, is enjoined from being placed on the Spring 2005 elections.

### III

Petitioner also argues that there were some candidates who did not make the mandatory information and contract signing session on 6 March 2005. *Complaint* at ¶¶2. Both Petitioner and Respondent agree that some candidates were given prior permission to miss the meeting (and consequently reschedule). In addition, some candidates did not attend the meeting but spoke with SEC Chair Leonard after the fact, attempting to explain their reason and request another meeting.

The candidacy declaration form specifically states that there will be one mandatory meeting for all candidates, “There will be **ONE** candidate information and contract-signing session. It is MANDATORY that candidates attend in order to be included on the ballot. Candidates who do not attend and sign the contract will not be on the ballot.” *Exhibit C* (emphasis original). The candidacy declaration form nor the *Spring 2005 Election Rules* specify anything regarding those who cannot make that mandatory meeting, other than that those who miss will not be included on the ballot. There is no clause which reads to the effect, “In the event a candidate cannot make this meeting, he or she must contact the SEC Chair with an appropriate excuse to reschedule another meeting.” The Court is bound by the written law, and if no emergency provision is listed, the Court cannot assume that one exists. See *TRC v. SSFC II* (2004 ASM SJ 17, summarily dismissed).

The SEC argues, however, that the candidacy declaration form is not actually a rule (as found in the *ASM Constitution, Bylaws, or the Spring 2005 Election Rules*), and therefore the SEC has discretion in enforcing the provisions on the declaration form. The Court cannot accept this logic. In *Nichols v. SEC* (2003 ASM SJ 10), the Court ruled that the candidacy declaration form is a contract, and that by signing the contract, the signer “[binds himself] to all points stipulated and promulgated by the SEC,” *Id.* at 2. Likewise, the SEC is bound by these forms, for the SEC is also a party to the contract. The candidacy declaration form is a contract and is legally binding on all parties. Every candidate who signs the candidacy declaration form and enters into this contract is bound by all of its provisions, including the SEC.<sup>1</sup>

Additionally, even if the declaration form could be construed to be not a contract, it would still be binding upon the SEC and its Chair. We have only this very term determined, in the mandatory *en banc* setting, that ASM organizations cannot escape by “re-defining” themselves out of constitutional obligations. See, *CFACT v. Kiernoziak, et. al. Appeal*, 2005 ASM SJ 1 (en banc) at 2-4 (Council cannot define its members in such a way as to avoid binding them under viewpoint neutrality). A document, such as the Candidate Declaration Form—that is, for all intents and purposes, an official form put out by the SEC Chair, that states certain substantive information—is a rule; we cannot hold any differently. The Candidacy Declaration Form is binding on both candidates and the SEC, either because it is a contract, or because it falls within the legislative definition of “rule.”

Due process is guaranteed for every act of the ASM. *Const.* Art. IV §2. We have long held that due process is binding on all officers, appointees, and corporate bodies. See, *McCabe v. Evans, supra* (due process in the context of Council appointments); *LIC v. Werner Appeal*, 2003 ASM SJ 18 (en banc) (due process in the SSFC process); *Baumgardner v. SEC*, 2003 ASM SJ 1 (due process in election process). When the SEC and its Chair are bound, either by

---

<sup>1</sup> When regarding senior class officers, however, this provision is not binding. Senior class officers are not running for office in ASM; rather, their election is combined with the general ASM election. Therefore, Adam Schlicht, for example, who is only running for a senior class position does not have to attend the mandatory meeting, but Megan Jensen, for example, who is running for both an ASM position and a senior class officer position must attend the meeting because she is running for an ASM seat.

contract or by their own rules, they must adhere to them without exception. As VICE-CHIEF JUSTICE GREEN once wrote for this Court, "It is important that criteria, bylaws, the ASM constitution, committee standing rules, and all other relevant texts be followed to the letter. This means a 'plain reading' of the words. Additions, subtractions, and improvisations of the phrasing are violations [of the Constitution]." *TRC v. SSFC I, supra*, at 1. Here, the "relevant text" is the Candidate Declaration Form, which, in no uncertain terms, bound both the Chair and the candidates to the "**ONE** candidate information and contract-signing session [that was] MANDATORY that candidates attend in order to be included on the ballot." *Exhibit C* (emphasis original). For the Chair to now state he has discretion to waive that mandatory rule plainly violates due process. No officer or appointee of the ASM, especially a sitting student justice, has discretion to waive an otherwise binding rule.

Therefore, the Court imposes another rule: if a candidate did not make the mandatory information and contract signing session as required by the candidacy declaration form, unless there is some emergency provision stipulated on the form, that candidate is not eligible to run in the elections because of a breach of contract.

Consequently, in the case at bar, any candidate who did not attend the one mandatory information session as required by the candidacy declaration form is enjoined from being placed on the Spring 2005 election ballot.

The Court does recognize, however, that certain candidates contacted the Chair of the SEC *in advance* of the mandatory meeting, informed him that they could not make it due to other engagements, and requested an excused absence, to be made up at another time. *Brief of B. Kiernoziak et. al. as Amici Curiae*, Appendix. While the rule imposed by the Court, *supra*, would bar these individuals from running in the election, we also feel that there is an equitable claim, namely because these candidates could have made the meeting, but the SEC Chair authorized a departure from the rules. As we have held, the Chair had no such authority and was thus acting *ultra vires*<sup>2</sup>. Normally, an act that is *ultra vires* is simply null and void. Yet, here, that act would punish those putative candidates who made a good faith effort to comply with the rules as they see fit. Just as the SEC Chair is bound by due process, so is this Court. *Const.* Art. IV §2. Equity is a long-standing part of due process. Equitable principles demand that those who are innocent of any wrongdoing not be punished. Those who reasonably relied on the *ultra vires* acts of the SEC Chair and made arrangements *prior* to the meeting itself made no wrong and should not be punished. Therefore, the Court presumes that all candidates who missed the mandatory meeting are in breach of contract and consequently enjoined from being placed on the ballot unless those candidates can present clear and convincing evidence to this panel (which will retain jurisdiction in this matter) that arrangements were made *prior* to the mandatory meeting. This is a one-time leniency from this Court.

The Court does feel, in addition, that the evidence presented at the hearing in regards to candidates Kiernoziak, Halamish, Schlicht, and Saar does meet the clear and convincing standard set forth, *supra*. Therefore, Barbara Kiernoziak, Eyal Halamish, Adam Schlicht, and Eric Saar are deemed eligible for the Spring 2005 elections pursuant to the rules and exceptions outlined in this opinion. All other candidates who were excused prior to the mandatory meeting must file, with the confirmation of the SEC Chair, clear and convincing evidence of their excuse, otherwise they will be enjoined from being placed on the ballot. All candidates who were not excused prior to the meeting are enjoined from being placed on the ballot.

---

<sup>2</sup> An action is *ultra vires* if it is beyond the scope of the actor's legal authority. Such acts are presumptively invalid. See, Bernard Schwartz, *Administrative Law*, Section 8.1 (3d edition 1991).

**Orders of the Court –Mandate to the Student Election Commission**

WHEREFORE the Student Judiciary adjudges that the Student Election Commission and its Chair have acted negligently and in violation of the laws of the Associated Students of Madison, Judgment is entered accordingly and the following mandate does issue, to writ:

1. IT IS ORDERED that the SEC Chair shall, within 48 hours of the publication of this Mandate, transmit to this Court a list of all persons who filed candidacy declaration forms to run for a seat apportioned to a school in which that person *was not enrolled* as of the due date for the candidacy declaration forms; the Commission shall be and is permanently enjoined from placing those persons on the Spring 2005 ballot.
2. IT IS FURTHER ORDERED that the SEC Chair shall, within 48 hours of the publication of this Mandate, transmit to this Court a list of all persons who filed a candidacy declaration form but failed to attend the information meeting; the Commission shall be and is permanently enjoined from placing those persons on the Spring 2005 ballot, unless, by clear and convincing evidence, the Chair and said affected candidates demonstrate to this Court that any of those persons received an excuse from him prior to the actual meeting.
3. IT IS FURTHER ORDERED that this Court finds, by clear and convincing evidence, namely their brief as *amici curiae*, that Barbara Kiernoziak, Eyal Halamish, Eric Saar, and Adam Schlicht made such prior arrangements to the mandatory meeting, and shall be placed on the ballot, provided that all other rules and regulations validly promulgated by the Commission are met.
4. IT IS FURTHER ORDERED that any other putative candidate affected by this Order may, as of right, file with this Court as interveners, demonstrating by clear and convincing evidence why the terms of this Mandate should not apply to him or her.
5. IT IS FURTHER ORDERED that the Student Judiciary shall issue a public reprimand to the Chair of the Student Election Commission at its next regular business meeting, such reprimand to be entered in the official records of the Student Judiciary.
6. IT IS FINALLY ORDERED that this Court shall retain jurisdiction to make such modifications and supplemental orders to this mandate as it deems appropriate.

By the Court,

***IT IS SO ORDERED.***

\_\_\_\_\_  
Nathaniel V. Romano  
Chief Justice

\_\_\_\_\_  
Grant Collins  
Vice-Chief Justice

\_\_\_\_\_  
Nicholas J. Fox  
Student Justice