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## Student Judiciary

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**Andrew Gordon and Eyal Halamish, Petitioners**

v.

**Timothy Leonard, in his official capacity as Chair of the Student Election Commission,  
Respondent**

**2005 ASM SJ 3**

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### JUDGMENT

Cite As: 2005 ASM SJ 3

♦  
**Nathaniel Romano**  
Chief Justice

♦  
**Grant Collins**  
Vice-Chief Justice

♦  
**Timothy Leonard**  
Chair, Student Elections  
Commission

♦  
**Nicholas Fox**  
Associate Justice

♦  
**Yin-Chin Wang**  
Associate Justice

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*Before Romano, CJ, Fox and Wang, S.JJ.  
All Parties Appeared Pro Se.*

**PER CURIAM.** This case is in a real sense a companion case to our earlier election case *In Re: Spring 2005 Candidate Eligibility*. 2005 ASM SJ 2. As in that case we are called to decide whether the Chair of the Student Election Commission exercised his authority in a manner consistent with the laws of the Associated Students of Madison. The exact issue is whether the acceptance of certain candidate declaration forms was “late” and thus improper.

#### 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.

All parties agree that Chair Leonard and the Commission accepted certain candidacy declaration forms on 1 March 2005, but after 5:00pm, which was noted on the declaration form as the end of the day. See, e.g. Declaration form of Brad Schulth (*Exhibit A*). These are the candidacies being challenged. *Complaint and Petition for Relief* at ¶¶1-3. The Complaint also originally alleged that the basis for this acceptance was a political affinity between the putative candidates and Chair Leonard. *Id.* at ¶¶1-2. No candidacy forms were accepted after 1 March 2005.

Several pre-trial motions were heard by the Court. First, Eyal Halamish was allowed to join as an additional petitioner. See, Rule 9(a), *Student Judiciary Rules of Procedure* (2005). In addition, the first two counts of the complaint, those alleging partiality on the part of Chair Leonard were dismissed. Rule 12(a)(1), *SJRP*. The only question left for the Court is whether Chair Leonard accepted late applications and what effect, if any, this might have on the list of candidates for Spring 2005.

#### II

We are required by the Rule to explain judgments with an opinion. Rule 5(a), *SJRP*. This applies even to judgments without a trial. See, Rule 12, *SJRP*; *TRC v. SSFC II*, 2004 ASM SJ 17 (summary dismissal). Because we entered a summary judgment from the bench on counts one and two of the complaint, we must explain our decision.

These first two counts alleged that Chair Leonard violated a principle of impartiality. Count one alleged that Chair Leonard's association with the UW College Republicans violated *ASM By-laws* §6.01(G), which requires that "all Commissioners shall abstain from relationships with Candidates [...] that may be reasonably construed by the Student Judiciary as potentially damaging to the democratic nature of the elections." *Complaint* at ¶1. The second count alleged that allowing late forms to be turned in late by persons who shared the Chair's political affiliations violated *By-laws* §6.01(H), which prohibits actions that "call into question the Commissioners' impartial performance" of their duties. *Id.* at ¶2.

These counts were dismissed because they fail to allege violations of the *ASM By-laws*. Rule 12(a)(1), *SJRP*. By their very text, these provisions relate solely to the Commissioners of the Student Election Commission. *By-laws* §§6.01(G), (H). Chair Leonard is not a Commissioner; he is a Student Justice. The distinction is important. Student Justices may only be removed by the Student Council for malfeasance after the introduction of a bill of impeachment. *Const.* Art. VII, §6(g); *By-laws* §1.06(B). This is not to say that the allegations in these counts, if true, would not warrant removal of the Chair from his position either on the Commission or the Court; however, his actions cannot violate provisions that only limit the actions of Commissioners. These claims must be dismissed for failure to state a claim. Rule 12(a)(1), *SJRP*.

### III

Turning to the question of Chair Leonard's actions, we now address whether those actions violated the laws of ASM. We must ask what the effect of the acceptance of these claims is.

We begin by noting what powers the Commission, and thus the Chair, is actually exercising. The powers exercised by the Commission are not natural to it; they are but delegations from this Court. See, *Const.* Art. X, §3(a); *By-laws* §6.01(a). Under that delegation, the Commission exercises whatever authority the Court itself could exercise, and is bound just as the Court is bound, as well as by the other express limitations found in Section 6, which is the specific grant of power. *By-laws* §6.01(a). Nothing in that delegation alters the ability of this Court to exercise its plenary election authority. *Id.*

The Constitution grants this Court sole authority to "oversee" the elections. *Const.* Art. X, §3(a). This includes not only what is normally considered "judicial" authority, but a plenary grant of authority, including sole ability to legislate on the matter. See, *Const.* Art. X, §3(e) (Student Judiciary has authority to propose *By-laws* regarding elections); *Const.* Art. XII, §2 (Student Judiciary "may specify in the *By-laws*" rules for voting); *Schober v. Evans*, 2004 ASM SJ 14 at 2-3 (each section of Art X, §3 is a specific grant of authority). However, this authority is limited by the express limitations found in either the *ASM Constitution* or the *By-laws*.

This Court, then, has delegated the entirety of its authority to the Commission. *By-laws* §6.01(a). However, the Commission must exercise this authority within the explicit limits found in Section 6 of the *By-laws*, and it may not exceed any authority of the Student Judiciary itself. The Commission may only exercise the authority it has been granted. *Mallo v. Dep't of Revenue*, 2002 WI 70, P.15; 253 Wis. 2d 391; 645 N.W.2d 853; 2 Am. Jur. 2d ADMINISTRATIVE LAW §130. It may not act beyond the scope of its delegation. *Id.*

The Constitution mandates that the ballot lists candidates by name. *Const.* Art. XII §3. To be placed on the ballot, the Judiciary requires the Commission specify a deadline by which declarations are to be received. *By-laws* §6.02(B). Clearly, the Commission may choose whatever deadline it wishes; this becomes an election rule. *In Re: Spring 2005 Candidate Eligibility*, 2005 ASM SJ 2 at 3 (substantive limitations published by the SEC are "rules")

regardless of their nominative declaration). Once the Commission has established an election rule, it must follow it without exception. *Id.* at 3-4. All relevant rules, criteria, and texts of ASM law must be followed without addition, subtraction or modification. *TRC v. SSFC I*, 2004 ASM SJ 7 at 1.

However, such rules must be established and formed by the authority given. The Commission, like this Court, cannot establish a rule the enforcement of which is contrary to law. Exercising only that authority granted to it, the Commission may not establish rules that are outside of the authority granted to it. 2 Am. Jur. 2d ADMINISTRATIVE LAW §134. It cannot establish a requirement that does not exist under the statute. *Id.*

Clearly, the requirement to establish a deadline does exist under statute. *By-laws* 6.02(B). However, there is a general limitation on the authority of the Student Judiciary when establishing deadlines. If the deadline specifies a specific “day” it must include the entire natural day, that is, the 24 hour period running from 12:00AM to 11:59PM local time. *By-laws* §5.04(B)(II) (a “day” means a “day”). This is a general provision limiting the authority of the Student Judiciary itself. *Id.* The full Court itself has determined that this is how to interpret this rule; in deciding the appeal of *Evans v. Roulhac*, 2004 ASM SJ 10, *appeal denied*, 2004 SJ Ord. 15. There, an objection to consideration was filed because the petition for appeal was filed at 7:30PM, after the official “close of business” but the Court determined that it would accept the petition anyway because of the definition of a “day,” though it ultimately denied the appeal.

Thus, there is a general limit over the ability of the Student Judiciary with respect to deadlines. This general limit must also limit the plenary authority of the Judiciary over elections. When the judiciary delegated the entirety of its authority over the elections to the Commission, it delegated as well these limitations. Thus, the Commission was required to abide by principle that a “day” includes the entire day. The Commission may only make rules in harmony with the rules and procedures imposed on and by the Judiciary. 2 Am. Jur. 2d. ADMINISTRATIVE LAW §134; *cf. State v. Outagamie Cty. Bd. of Adjustment.*, 2001 WI 78, P.60; 244 Wis. 2d 613; 628 N.W.2d 376.

When establishing the deadline, the Commission is free to establish it however it sees fit and appropriate. However, when it decides to set a “day” as the deadline, it must accept the entire day. This Court could not limit a “day” to a period less than a “day.” *By-laws* §5.04(B)(II). Since the Commission’s authority cannot exceed the authority of this Court, it cannot limit a “day” to a period of less than a “day.” To allow it otherwise would be to allow it to exercise its authority in a manner beyond the statutory grant. *By-laws* §6.01(a); *Outagamie*, 2001 WI 78 at P.60; 2 Am. Jur. 2d ADMINISTRATIVE LAW §134.

Thus, we cannot give effect to the putative limitation found in the declaration form that it must have been turned into the Chair by 5:00PM on 1 March 2005. To do so would be to give effect to an unconstitutional rule, which we cannot do. Accordingly, we believe that the deadline set by the Commission was 1 March 2005. As long as a declaration was received on that day, it was within the deadline; the Commission cannot enforce an unconstitutional rule.

Further, we believe that this case is distinguishable from the eligibility complaint found 2005 ASM SJ 2. There, the issue involved a meeting time, not a “day.” Obviously, meetings can, and often will, occur for periods of less than a day. In setting a time frame for a meeting, the Commission is not setting a “deadline” within the meaning of section 5.04(B)(II). To hold otherwise would lead to a patently absurd result, inconsistent with the statute and itself violative of due process. *See, e.g. Industry to Industry, Inc. v. Hillsman Modular Molding, Inc.*, 2002 WI 51, P.8; 252 Wis. 2d 544; 644 N.W.2d 236.

We further do not believe that the classification of the Declaration Form as a contract should change our interpretation. We are emphatically not backing away from the proposition that declaration forms are contracts; the candidate declaration forms are, and remain, contractually binding. *In Re: Spring 2005 Candidate Eligibility*, 2005 ASM SJ 2 at 3; *Nichols v. SEC*, 2003 ASM SJ 10 at 2. The contract, though, is binding only so far as it is not contrary to law. 17A Am. Jur. 2d CONTRACTS §229. Contracts beyond the scope of an agent's authority are unenforceable as to the principal, here the Judiciary. 3 Am. Jur. 2d AGENCY §84. We cannot, and will not, enforce those parts of a contract that are unenforceable. This does not mean that enforceable sections of the contract, such as the mandatory meeting requirement, or the deadline itself, will not be enforced. On the contrary, to not enforce them would, as another panel determined, violate due process. *In Re: Spring 2005 Candidate Eligibility*, 2005 ASM SJ 2 at 3.

Further, Student Services Finance Chair Janell Wise, as *amicus curiae*, urges that we strictly interpret deadlines, and would have us find for the Petitioner in this case. In holding as we do, we do not gut the deadline requirement, we merely make sure that it accords with the actual authority granted. The Commission cannot exercise its authority beyond the scope of its grant. It is limited by the general limits on the powers of the Court. As such, should it choose a day as the deadline, it must follow the rule that a day means the entire day.

#### **Orders of the Court.**

WHEREFORE the Student Judiciary adjudges that the Student Election Commission had no authority to limit the deadline arbitrarily to 5:00PM, this Court holds that Chair Leonard acted fully within his authority to accept declaration forms after 5:00PM but on the deadline date. Therefore,

IT IS ORDERED that Judgment be entered for Respondent Chair Timothy Leonard; and

IT IS FURTHER ORDERED that the Petition will be and is DISMISSED.

By the Court,

***IT IS SO ORDERED.***

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Nathaniel V. Romano  
Chief Justice

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Yin-Chin Wang  
Student Justice

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Nicholas J. Fox  
Student Justice

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