



Student Judiciary

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In Re: Spring 2005 Election Candidate Eligibility Jacob Clemen, Intervenor

2005 ASM SJ 2.

Denial of Motion for Candidacy

Cite As: 2005 SJ Ord. 6

♦
Nathaniel Romano
Chief Justice

♦
Timothy Leonard
Chair, Student Elections
Commission

♦
Grant Collins
Vice-Chief Justice

♦
Nicholas Fox
Associate Justice

♦
Yin-Chin Wang
Associate Justice

*Before Romano, CJ, Collins, VCJ, Fox, Leonard, and Wang, S.JJ.
On Motion to Intervene and For Relief from Mandate.*

YIN-CHIN WANG, Student Justice. Originally Mr. Jacob Clemen filed a motion for leave to file as intervenor and to appeal against Student Judiciary judgment *In Re: Spring 2005 Election Complaint Concerning Candidate Eligibility*, 2005 ASM SJ 2. With the consent of Movant, the motion was amended as to add Movant to the Spring 2005 election ballot, as candidate to run for the L&S seats. Movant claimed that inequity was imposed on him when he took the advice of Student Election Commission and ASM staff to give up L&S candidacy and to pursue business school candidacy, but only to discover the failure of both candidacy because such advice was found improper by this court in the said case. This court finds that neither does the *ASM Constitution* nor the principle set forth in the said judgment allow such a motion. It is also found that Movant failed to prove by a clear and convincing evidence that the abandonment of L&S candidacy was solely based upon improper advice by the election staff. Therefore motion is denied.

The said case, citing the *ASM Constitution* Art. VII §1, *Gibbons v. SEC*, 1997 SJ 2 and *Evans and Krupp v. SEC*, 2001 SJ 11, firmly held that any candidate who is interested in running for a seat in the Student Council shall select candidacy that represents the academic unit he or she is currently enrolled in. The classification of academic units is determined by the Office of Registrar, which further determines a student's eligibility to run. The court in the said case therefore clearly impose a rule that "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." *Candidate Eligibility, id at 2*. Movant thus was barred from pursuing business school candidacy for the fact that he was not currently enrolled in business school, or his admission to business school had had not been yet confirmed.

Movant, while not intended to continue his pursuit of business school candidacy, now moved to be added on the ballot as candidate for L&S seats, alleging that the doctrine of equity required the grant of motion. It is apparent to this court that Movant's request, while blocked by written rules of law, may be satisfied through the operation of equity doctrine. Movant claimed that his good faith reliance on *ultra vires* words and actions by the election staff was the direct and sole cause of the abandonment of L&S candidacy, which in whole resulted in his failure to be included on the ballot. However, the court's discovery merely revealed Movant's attempt to obtain advice from the election staff as to the selection of candidacy was after the deadline for candidacy form, March 1, 2005. It means that Movant had made the conclusion of pursuing business school seats, filled in the candidacy form with such motive in mind, and submitted the candidacy form with such motive in mind, all before or on March 1, 2005. Movant's attempt to obtain advice did not occur until, as the emails between him and Ms. Jen Weaver showed, March 2, 2005. According to pertinent reading of the evidence, Movant cannot be said to abandon L&S seats solely based on the misleading words and actions of the election staff. The formation of intention

was not the fruit of impropriety done by the election staff, but Movant's ideal of what the operation of ASM rules should be like and what interpretation the Student Judiciary should reach.

This court appreciates Mr. Clemen's enthusiasm in serving the student body and his pointing out a possible downside of eligibility rules, which may result in a situation where an academic unit is represented by someone that is no longer enrolled in that academic unit. This court also encourages his persistence in such a respectable cause and his continuing campaign effort should he later be admitted into business school. However the adoption, enforcement, interpretation and the amendment proposal of all rules affecting ASM business shall be reserved for someone in authorized positions, in order to avoid the disturbance of democracy. Every student with concerns over the design of current system is invited to participate and voice concerns, with the understanding that a mere private personal hope of the ideal cannot withstand the legitimacy of valid, not yet overturned rules.

Accordingly for the reasons stated above,

IT IS ORDERED that Petitioner's Motion for Leave to Intervene is GRANTED; and

IT IS FURTHER ORDERED that the Petition for Relief from Mandate is DENIED.

By the Court,

SO ORDERED.

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TIMOTHY LEONARD, *Student Justice*, took no part in the consideration or decision of this Petition.

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NICHOLAS J. FOX, *Student Justice (concurring)*. I write today to concur to the Court's decision to deny Mr. Clemen's Petition to be allowed to run as a candidate for the College of Letters and Sciences, and to address some of the issues presented in THE CHIEF JUSTICE's dissenting opinion from the Order.

One of the essential holdings of *In Re Spring 2005 Election Candidate Eligibility* (2005 ASM SJ 2) was that candidates who are not currently enrolled in the school or college for which they are applying to run cannot run for said college or school. Candidacy declaration forms for the Spring 2005 elections were due on 1 March 2005, per the Court's ruling in *Gordon and Halamish v. Leonard* (2005 ASM SJ 3). Accordingly, all candidacy declaration forms must be filled out properly and turned in to the SEC Chair or other ASM Coordinator on 1 March 2005. Mr. Clemen filed his declaration form by the required deadline.

However, Mr. Clemen filled out the declaration form incorrectly. He indicated that he was running for the Business School seat instead of the Letters and Sciences seat. The candidacy declaration form clearly states that a candidate must run for the seat in which he or she is currently enrolled. There is no clause indicating it is acceptable to enroll for a seat in a school or college in which a candidate *might* be enrolled at a later date. The declaration form stresses the present, not the future. Mr. Clemen declared his candidacy for a seat for which he was not able to declare his candidacy. If he had any confusion on this matter, he should have sought guidance prior to his filing.

Moreover, the evidence presented to the Court does not satisfy our equitable claim provision set forth in *In Re Spring 2005 Election Candidate Eligibility*. We ruled that equity in that case would be extended to those parties who could show the Court that the SEC or its Chair acted with *ultra vires* power, and therefore were misleading to candidates. All evidence of *ultra vires* actions indicates that such actions were made *after* the candidacy forms were due. Mr. Clemens provides emails beginning 2 March 2005—already one day past the declaration form deadline—showing said actions. THE CHIEF JUSTICE would have this Court believe that the new evidence of *ultra vires* actions is enough for equity; however, THE CHIEF JUSTICE fails to reconcile the fact that the misleading actions and statements occurred *after the fact*, and therefore had no bearing or influence on which seat Mr. Clemen applied for when the forms were due. If the *ultra vires* actions occurred before the form filing, then the Court would have an equitable issue at hand. Since this is not the case, I do not feel the issue is present before us.

Despite THE CHIEF JUSTICE's attempted parallel with other candidates similarly situated, I think this case is clearly different from other candidates in this election. When examining the cases of Kiernoziak, Saar, and Halamish (see *In Re Spring 2005 Election Candidacy Eligibility*), the Court ruled that since the SEC Chair has taken *ultra vires* actions *before* the informational session, those actions therefore had a bearing and influence on named candidates' actions. Those candidates were making a good faith effort to comply with the Election Rules per the SEC Chair's interpretation of those rules. I do not think that is the case before us today, namely because no action was taken prior to Mr. Clemen's filing. He filed incorrectly, and therefore is not eligible to be placed on the ballot. He is, of course, as THE CHIEF JUSTICE points out, free to pursue other methods of election, such as a write-in campaign.

Finally, THE CHIEF JUSTICE's arguments that the rules are ambiguous and may be different from "what a normal student thinks" are misplaced. The rules are quite clear: a candidate must be enrolled in the school or college for which he or she is running; the Registrar determines this status; if a candidate is not currently enrolled in the school or college for which he or she is running, then the candidate cannot run for that seat. These rules are clearly delineated on the candidacy declaration form. There is no implication of when the next school year starts, or when Student Council takes session, or whether or not the candidate might be enrolled in a school or college or not. If the rules were ambiguous, or if something was not defined, then THE CHIEF JUSTICE's argument about "what a student thinks" might be relevant; however, in this case, the rules are clear, so what a normal student thinks is not relevant. This Court should not get involved in determining thought processes when all the student has to do is read the provisions printed on the form and comply with them.

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NATHANIEL ROMANO, *Chief Justice (dissenting)*. The Court today concludes that neither law nor equity allow an innocent student to be placed on the Spring 2005 Ballot, despite a good faith reliance on the words and actions of the Student Election Commission. Because I believe that such a conclusion is too harsh an application of equity, I must respectfully dissent.

The basic ruling of this Court in *In Re Spring 2005 Election Candidate Eligibility*, 2005 ASM SJ 2, is of course, correct, and should not be disturbed. Further, the rule that a student is not eligible to run for a seat in a college in which he or she is not enrolled is a rule that I do not question. However, neither do I question the conclusion of the panel below that "[e]quitable principles demand that those who are innocent of any wrongdoing not be punished." *Id.* at 4. Here, I believe that equity requires us to allow Jacob Clemen to run for a seat on the Student Council.

Equity is a set of principles by which substantial justice can be done despite legal formalities that may preclude that conclusion. *SEC v. United States Realty & Improvement Co.*, 310 U.S. 434 (1940); 27A Am. Jur. 2d EQUITY §1. The essence of equitable power is the ability to adjust legal remedies and conclusion to reflect pragmatic concerns that, if left unaddressed, would render the legal conclusion unjust. 27AM Am. Jur. 2d EQUITY §2. Equity is used to prevent injustice. *Id.*

Further, the Court already recognized this principle. *In Re Spring 2005 Election Candidate Eligibility*, 2005 ASM SJ 2 at 2. We offered relief to any person who could demonstrate by clear and convincing evidence good faith reliance on otherwise *ultra vires* actions by the Commission. *Id.* That is exactly the case Mr. Clemen has made to us today.

The original panel's decision was based on the presumption that Mr. Clemen was allowed to run only because of the indulgence of the Commission. The trial hearing presented almost no evidence; we simply concluded that Mr. Clemen had filed wrongly, and when appraised of that, tried to weasel back into the election. The evidence now before us, however, shows a different story. The evidence now shows that Mr. Clemen instead met all requirements to be on the ballot, filled out his candidacy declaration form to the best of his ability, and relied on misleading and inconsistent statements of members of the Commission and ASM professional staff.

First, the candidacy declaration form is itself is ambiguous. It states that "you may only run for a seat representing [the school or year in which you are enrolled]." *Id.* at 2 (quoting *Candidate Declaration Form Spring 2005*). While it is clear that you must be enrolled in the school you seek to represent, it does not mention the fact that the Council begins on May 1. For most students, it is unlikely that this is self-evident. Most students function on the academic year of September to May; thinking that he will run for "next year's" Council it is entirely reasonable for Mr. Clemen to assume he must run for the a seat representing the school he will be in "next year."

This Court has long held that unclear and ambiguous election rules should be construed to be most in favor of the candidates. *See, Amendola v. United Council*, 1998 ASM SJ 3. The fault here truly lies with the Commission and the Chair, not with Mr. Clemen. The declaration form is both a contract and a binding rule. *Id.* at 2-3; *Nichols v. SEC*, 2003 ASM SJ 10. Yet, we are faced with a contract and a rule that does not fully explain itself. It says only that you must be enrolled, it does not say when the "trigger date" is. In such a circumstance, Mr. Clemen made a reasonable conclusion.

After making such a reasonable conclusion, Mr. Clemen then relied, in good faith, on *ultra vires* actions by the Commission and Chair Leonard. They told him that he had made a mistake, but that they had authority to fix it if they wished. They did wish. Clearly they had no more authority to take this action then Chair Leonard did to allow some candidates to miss the mandatory meeting. *Cf. In Re Spring 2005 Election Candidate Eligibility*, 2005 ASM SJ 2 at 4-5. Just as with individuals such as Barbara Kiernoziak Eric Saar, and Eyal Halamish should be on the ballot because of equity, so should Mr. Clemen.

Finally, we are not dealing with an issue of a person who failed to file proper documents or attend the meeting. We have no evidence to show anything other than a member of ASM who did everything asked of him. We allow petitioners to this Court to amend pleadings after the deadline without problem; the same principle should apply here. Mr. Clemen met all other requirements; his only fault, if it can be called that, was thinking the way a student normally thinks and concluding that he should represent the school he will spend the next year actually in. "Law reaches past formalism." *Lee v. Weisman*, 505 U.S. 577, 595 (1992). Here, we should not be so formalist as to allow an innocent student to be expunged from the ballot simply because he made a choice that any rational student would make.

I take comfort in the knowledge that the majority's decision does not proscribe Mr. Clemen from taking office is elected as a write-in candidate. Though I doubt that will be of much comfort to Mr. Clemen. I must respectfully dissent.

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Attest: /s/ NVR