



Elections Commission Minutes

November 12, 2019

College of Law Advocacy Center

- **Call to Order:** 6:05pm
- **Members Present:** Justin Ravelo, Blake Mathesie, Jackie Mustian, Alex Richmond
- **Members Absent:** SOE Ahan Jain, Julie Darcey, Ryan Dyson (all excused)
- **Guests:** Chief Justice Dana Keller and Associate Justice Zack Nations
- **Committee Business:** Discuss recommendations for the Elections Code and other relevant laws, procedures, and statutes

- **Old Business:** None
- **New Business:** Discuss recommendations for the Elections Code and other relevant laws, procedures, and statutes
- **Meeting Adjourned:** 8pm

The follow recommendations were made and discussed at length:

Composition of the Elections Commission

- As currently written, the Supervisor of Elections (SOE) Chairs the Elections Commission. This creates a conflict of interest in nearly every case, because even if the allegations are not related to the SOE, the SOE is usually a witness in some fashion.
- Statutes allows the Chief Justice to appoint any student to the Commission. The Commission should be composed entirely of law students to ensure a fair and impartial process. Law students are typically unaffiliated with any student government matters and likewise have a better understanding of ensuring proper rules of procedure, evidence and due process rights.
 - Appointments to the Commission should be for the entirety of law school, similar to the Supreme Court.
- Currently, the Elections Commission is both an appellate board and a fact finding board. Most of the time as an appellate board, there are no facts issued by an investigative body and the Commission must then rely on the facts from the party's while acting in an appellate capacity. This makes a muddy appellate record for both the Commission and the Supreme Court, as it becomes unclear what the appeal is based on and what evidence was utilized during a lower court finding. The SOE, or another designated office, should act as a fact finder.¹
 - Similarly, the Elections Commission is currently seven members. Having a seven

¹ A law student should act as a prosecutor for any allegations of violations of the elections code. The Commission understands that there has been difficulty in obtaining certain positions within the judicial branch. However, we believe this is due to a lack of advertising and consistency in the roles of the positions. Even within statutes, the Attorney General, General Counsel, and University Defender positions all have similar, and sometimes overlapping, roles. If the Senate were to make it clear what each of these positions do year round, it would allow for more consistency and likely lead to more involvement.

member panel is difficult to organize and control. The Supreme Court has five members. Generally, appellate courts have more members on their bench than the courts below them.²

- One option that was briefly mentioned was having a smaller fact finding board for initial violations for the purpose of hearing testimony and issuing findings of facts. In this scenario, three members of the Commission or the Supreme Court would hold trial as opposed to having the entire commission present. Having a trial with seven members is extremely cumbersome and difficult.
- Rules of Procedure should not be in statutes. This is to allow flexibility with the Commission when needed, such as when more time is needed for a party to present their case. Generally, a legislative body is not supposed to enact procedural rules for a judicial entity.³
- There should be a process similar to a Summary Judgement motion, wherein the parties waive a right to a hearing under a mutual understanding that there are no facts at issue, only law.
- It is difficult to issue findings of facts and/or an appellate opinion within 24 hours as needed by statute. While the statute only requires “results” to be posted, the Commission generally will post the results through the minutes and supplement them with a written opinion. This should be edited to make it clear that the Commission may have more than 24 hours to issue a written opinion(s) with findings of
 - It is suggested to allow the Commission 24 hours to issue the decision and 72 hours to formalize the findings of fact and opinion(s)

Enforcement of the Elections Code

- Most of the cases before the Commission, the Supreme Court, and the Vice President are structured as one campus political entity versus another. In typical government proceedings where the government is enforcing a penalty, it is the government making allegations versus that entity. It should be the Supervisor of Elections, or the Attorney General or other officer, who files and investigates all alleged violations. Party’s who disagree with their findings should be able to appeal them, but the appeal should be the party who thinks they were wronged versus the SOE/Attorney General who made the decision.
 - Currently, there are issues where allegations are made and then dropped by parties for a number of reasons. When a party drops a valid case there is little that can be done after the case is dropped to enforce a penalty if there was an actual violation
- The Attorney General position is a complex position within statutes. While they are appointed by the Student Body President, they are expected to review and forward certain pieces of legislation, represent the Executive Branch in certain proceedings such as the Supreme Court, and serve as a quasi-prosecutor before the Commission. The Attorney General is clearly a political appointee who reports to the President, and thus should not be involved in the elections process.⁴ In practice, no Attorney General has issued findings of fact or appeared before the Commission in the last three years.

Statute definitions

- Examples of statutes that are routinely at issue during elections:
 - **Campaigning** – The distribution of campaign materials, use of campaign materials, or the **solicitation of support** for or against a ballot item, political party, and

² For example, the District Courts of Appeal across Florida generally sit in three member panels when hearing cases. When appealed, those cases may be heard by the seven member Florida Supreme Court.

³ Similarly, the Florida Supreme Court has held that it is a violation of the state constitution for the Florida Legislature to adopt procedural rules for the courts. *In re: Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014) (Court refused to adopt a statute that was not part of the evidence code requiring certain qualifications for medical negligence expert witnesses on the grounds that the statute was procedural). The Legislature may enact substantive law, such as the Florida Evidence Code, but when doing so the Court still approves the code through their own Rules of Procedure.

⁴ The SOE is also appointed by the President, but has no roles outside of the election unlike the Attorney General.

candidate for an elected office of the Student Body.

- 1. **Solicitation of support** shall be defined as publishing the name or likeness of any candidate or political party to expressly advocate the election or of defeat of a candidate; that cannot be interpreted as something other than an appeal to vote, through publishing, for or against a specific candidate.
 - The highlighted language, as strictly interpreted through plain meaning, would indicate that solicitation under the campaigning definition *must* be interpreted *only* as an appeal to vote and cannot be anything else. This leads very few options for the Commission and Court to uphold violations, as most violations under solicitation can possibly be something else, such as advertising, marketing, mistakes, ect.⁵
 - One Justice said this statute is nearly “unenforceable” as written and recommended the language “reasonably interpreted”
 - The underlined language appears to have a typo. It appears to separate the act of advocating the general elections (such as “vote on December 4th”) and advocating the defeat of a candidate (such as, “don’t vote for Merope Gaunt”). It does not appear to account for advocating for the support of a candidate (such as “vote for Sarah Connor”).⁶
- **Campaign Materials** - any material, including but not limited to social media, electronic communication, videos, posters, placards, signs, signboards, leaflets, folders, handbills, fliers, banners, t-shirts, buttons, paint, University owned walls that may be painted on, handwritten announcements or circulars of any size and consistency that publicize a political party or candidate for an elected office of the student body, and calling the action to vote
 - The Commission has had difficulty interpreting this statute because of the structure of the language. It appears the Senate intended to generally make it so that campaign materials included calling the action to vote and publicizing a political party of candidate. As written, however, it reads that the publication portion only applies to handwritten announcements or circulars. Furthermore, it is unclear what is intended of the last part: “calling the action to vote”. Is that a separate example campaign material or is it a part of the definition of campaign material that is needed for the examples listed prior to it?⁷
- The Election Code will be enforced three (3) weeks prior to an election.
 - The Senate should clarify if the Elections Code can be enforced outside of this window. For example, can the SOE issue violations if a party starts

⁵ See *Unite v. SOE*, 2018-AP-04, at 3 (Moorhead, C.J., concurring) (stating, “I hope it helps the legislature understand not everything has to be specifically defined in every instance.”) and *The Legacy Party v. The Amplify Movement*, 2019-AP-01 (holding: The phrase “cannot be interpreted as something other than an appeal to vote”, when interpreted according to its plain meaning, puts a substantial burden on the opposing party.)

⁶See *Amplify Party v. Unite Party*, Fall 2019-1 at 2.

⁷ The statute currently written, due to the commas and strange sentence structure, could reasonably be interpreted in three different ways. When drafting legislation, it may be more efficient to space out language with specific subsets as opposed to having large paragraphs or run-on sentences. For example, rewritten, the language could be clearer if it were: Campaign Materials: Materials that (1) publicize a political party or candidate for elected office, and (2) calls for an action to vote. In this reading, the (1) and (2) are both required to be considered campaign material. If the language were instead: Campaign Materials: Materials that (1) publicize a political party or candidate for elected office, or (2) calls for an action to vote. This language would indicate that either (1) or (2) is sufficient to be considered campaign material. If the language were: “publicize a political party or candidate for elected office and calling for an action to vote” it becomes less clear if the “and” is being used to connect the entire sentence together or merely to connect “candidate for elected office” with “calling an action to vote”. The more commas used in a long statute, especially when using different function words separating and adding clauses, the less likely the language is clear by itself.

campaigning two month before the election? Or, a week after this three week period? Similarly:

- “Failing to remove campaign materials within twenty-four (24) hours of the closing of the polls” constitutes a violation under 711.6
 - Can the Commission enforce this statute?⁸
- Violations based on off campus property are nearly impossible to enforce. It is very difficult for a party to prove that a political party or candidate knew that their campaign material was illegally placed on private property. Even then, if proven, the Commission cannot force a private property owner to remove certain things from their property.

Other

- Overall, a points based system should be utilized entirely as opposed to issuing fines
- Time, dates, and deadlines should stay somewhat consistent throughout a chapter of laws. Currently, the elections code has variations of 24 and 48 hour deadlines. Similarly, there are multiple areas where there are one, two, or three week deadlines for certain statutes. Consistency makes it easier to understand the purpose of the deadlines and makes it easier for the parties to keep track of the elections code they are supposed to follow
- Administering a test for the elections code is unneeded for members of the Commission. Courts, Judges, and attorneys are not expected to memorize every possible law that can be at issue before them. The statutes are easily found online, and it is more important for members to understand: due process, freedom of speech, rules of evidence, civil procedure, and professional responsibility. These are all fundamental courses in law school and removing the test would increase participating in the Commission
- The elections code should be easily found the SGA Elections webpage

⁸ This is merely an example of a conflicting statute. There are different statutory canons of construction a court may generally use when trying to interpret a statute that is not clear within the plain meaning. For example, under the *Whole-Text canon*, a court can use the entire text of a document as context to a confusing part of it. Likewise, the *absurdity doctrine* allows for a court to use the plain meaning of the language up to the point where the language would lead to an absurd result. Finally, the *general/specific canon* instructs courts to apply a specific provision if it appears to otherwise conflict with a general provision. For this referenced statute, the Commission and Supreme Court have sustained violations after the three week elections period due to the fact that there are multiple different statutes the Senate has passed year after year that allow violations of post-election activity or inactivity (such as failing to submit statements or remove material). Thus, under the absurdity doctrine, while using the context from the whole text and general/specific canons, it would be absurd to believe that the Senate would write and pass this language while intending for certain violations to be unenforceable. See- *CANONS OF CONSTRUCTION*, UNIVERSITY OF HOUSTON LAW CENTER, https://www.law.uh.edu/faculty/adjunct/dstevenson/2018Spring/CANONS_OF_CONSTRUCTION.pdf . For A more thorough explanation on statutory interpretation see VALERIE C. BRANNON, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS (Congressional Research Service) (2018), <https://fas.org/sgp/crs/misc/R45153.pdf> (last visited Nov 25, 2019) and https://isb.idaho.gov/wp-content/uploads/canons_w_commentary.pdf