

STUDENT GOVERNMENT ASSOCIATION SUPERIOR COURT

No. 1

*SAMANTHA HEPBURN, CANDIDATE FOR SGA VICE-PRESIDENT V. ISAAC
KABRICK, COMMISSIONER, SGA ELECTION COMMISSION*

[November 22, 2021]

CHIEF JUSTICE HUTCHISON delivered the unanimous opinion of the Court; JUSTICE WALLS did not participate in the judgment.

Petitioner Samantha Hepburn brings this appeal of the decision of the SGA Election Commission (“Commission”) not to review Petitioner’s grievance number FA21-017 during the Fall 2021 SGA General Election. Petitioner challenges the Commission’s decision not to review the grievance and asks this Court to reconsider the grievance on its merits regardless of the deadline originally imposed on all candidates. We hold that the Commission’s decision not to grant review of grievance FA21-017 was correct because the grievance was filed two hours after the deadline for submissions. However, the Commission’s written response to the grievance, issued in Election Commissioner’s Opinion EC 2021-002, raises serious concerns about other decisions of the Election Commission that are directly related to the substance of the grievance filed by Petitioner. Oral argument was scheduled to consider a single issue raised by Petitioner’s original grievance and addressed by the Commission in its response. After hearing oral argument, this Court AFFIRMS the decision of the SGA Election Commission in part and REVERSES in part.

I.

This appeal arises out of the recent election for Student Government Association (“SGA”) President and Vice President, featuring Angelora Castellano and Samantha Hepburn against Zack Lissau and Denzel Akuffo for the office of President and Vice-President respectively. During the campaign and election process, the Lissau-Akuffo Campaign received only a single point and the Castellano-Hepburn Campaign received none.

Pursuant to SGA Constitution, Art. V, § 5, SGA Code Annotated (SGACA) Tit. IV, Ch. 2, § 4, and SGACA Tit. VI, Ch. 5, §§ 34, 37, the Court has jurisdiction and is the final appellate review over this matter. Furthermore, questions of law before the Court are subject to de novo review and questions of fact are reviewed for clear error. *Echols v. SGA Election Board*, SC 2016-002.

II.

The facts, as outlined in the following paragraphs, are largely uncontested by any of the parties. The Lissau-Akuffo Campaign submitted an initial financial report to the SGA Election Commission, which detailed \$407.73 in campaign expenditures. *Lissau-Akuffo Financial Report Dated October 24, 2021*. The Election Commission “found cause to investigate the absence of a certain video from the report.” *EC 2021-002*. The Commission reached out to the Lissau-Akuffo Campaign to determine whether the video in question should be considered a “professional service” and thus be reported on the campaign’s financial report. *Id.* Candidate Zack Lissau and OU student Blake Hiebert responded to the Commission’s inquiry and asserted that “Mr. Hiebert was not a paid professional and his services were provided in accordance with

the Code’s provision for non-professional services performed by students.” *EC 2021-002* (citing SGACA Tit. VI, Ch. 1, § 1(a)). The Commission determined that because the video was made by Mr. Hiebert, an OU student, it was not produced professionally and did not need to be included on the Lissau-Akuffo Campaign’s financial report. *EC 2021-002*.

The Commission continued to review the Lissau-Akuffo Campaign’s financial report and developed probable cause to question the source of various campaign photographs included in campaign materials. *Id.* The Commission determined the photographs were taken by OU student Brayden Love. *Id.* Mr. Love had charged at least two other campaigns \$35 for taking campaign head shots. *Id.* The Commission assessed 1.0 point to the Lissau-Akuffo Campaign for failing to record the \$35 as a campaign expenditure or donation on their initial financial report. *FA21-016* (citing SGACA Tit. VI, Ch. 4, § 25(b)(vi)). The Lissau-Akuffo Campaign issued an amended financial report as a result that listed the headshots and campaign pictures as a \$35 donation. *Lissau-Akuffo Financial Report Dated November 4, 2021*. The inclusion of the \$35 donation brings the Lissau-Akuffo Campaign’s official campaign expenditures to \$442.73.

Polls closed in the Fall 2021 SGA General Election on Wednesday, November 3, 2021, at 7:00 PM. Vice-Presidential Candidate, Samantha Hepburn, filed grievance *FA21-017* at 9:04 PM on Thursday, November 4, 2021. *FA21-017*. In the complaint, Hepburn alleged that “the Lissau-Akuffo campaign used professional services to produce a campaign video and photos with fair market prices valued at well over the

spending limit...” provided for in the Code of \$500. *EC 2021-002* (quoting *FA21-017*). The Commission rejected the complaint because it was submitted after the 24-hour deadline provided by the Code, which was 7:00 PM November 4, 2021. *EC 2021-002*. The appeal of this decision by the Commission is the subject of this opinion.

The Court acknowledged that the Commission was correct in dismissing the complaint because it came after the deadline established by law. However, as noted in the facts, the Commission responded to the complaint and raised issues regarding “professional services” performed by students. These professional services are at the heart of the original complaint and the subject of the appeal to this Court. As such, the Court set a date for oral arguments to clarify what should be considered “professional services” per the Code. Oral arguments were heard on Thursday, November 18, 2021, at 6:30 PM. The Castellano-Hepburn Campaign, Lissau-Akuffo Campaign, and SGA Election Commissioner Isaac Kabrick were each given 20 minutes to present oral arguments to this Court and subject themselves to questioning by the Justices.

III.

In the campaign for President and Vice-President, the upper limit for campaign spending is five hundred dollars (\$500). SGACA Tit. VI, Ch. 4, § 23(a). “All campaign spending, and donations must be accounted for.” *Id.* § 23(b). Furthermore, “donations to a campaign do not alter the upper limit for campaign spending.” *Id.* § 23(g). Campaign spending “shall not include the value of any non-professional services performed by students.” SGACA Tit. VI, Ch. 1, § 1(a). Campaigns or

candidates may be subject to disqualification if “campaign expenditures exceed ten percent (10%) of [the] spending cap.” SGACA Tit. VI, Ch. 5, § 29. The Code states that “All complaints regarding violations of SGA campaign rules shall be submitted in writing to the Election Commission within five (5) days of the incident which generated the complaint or within twenty-four (24) hours of the close of polls – whichever is sooner.” *Id.* § 28.

The crux of this Court’s analysis is the definition of professional services related to campaign spending. The SGACA defines campaign spending as:

The value of any products, services, or expenses incurred by the campaign. “Value” should not include any discounts, which are not available to the general public, but should include the value of any services or products donated. This shall not include the value of any *non-professional services performed by students*.

SGACA Tit. VI, Ch. 1, § 1(a) (emphasis added). In the brief submitted by the Castellano-Hepburn Campaign, Petitioner argues that “professional services” should be classified as “a service requiring specialized knowledge and skill with specialized being defined as a skill that must be purposefully obtained for a specific purpose, such as photography or videography.” *Castellano-Hepburn Campaign Brief*. The brief submitted by the Lissau-Akuffo Campaign asserts that professional services should be limited to “jobs executed by paid third parties.” *Lissau-Akuffo Campaign Brief*.

It is this Court’s opinion that neither of the definitions asserted by the campaigns encompass the proper meaning of what shall constitute professional services per the Code annotated. The Castellano-Hepburn Campaign’s definition is overly broad and could dissuade future students from engaging and participating in campaigns which goes against longstanding principles of the Student Government

Association. Equally frustrating is the definition given by the Lissau-Akuffo Campaign because strictly limiting professional services to those performed by paid third parties fails to recognize the rules against donations as well as the inequities potentially caused by students with specific and marketable skill sets that create an inherent, unfair advantage for one party over another.

The appropriate measure of defining professional services shall consist of a balancing test. The factors to be considered for determining whether or not a service is “professional” shall be:

- (1) Level of experience with the service provided;
 - a. Is the provider a novice or do they provide this service regularly?
- (2) Past transactions for related services;
 - a. Does the provider typically charge for this service or donate their skills?
- (3) The provider’s view of their knowledge or skill;
 - a. Does the provider hold themselves out as a professional on social media or other platforms?
- (4) Time and effort required for delivery of the service;
 - a. Is the service something that requires little effort to produce or extensive time and resources to put together?
- (5) Level of equipment used in providing the service;
 - a. Is the service produced using everyday technology or highly specialized equipment?

By establishing these factors, flexibility is built into its application to individual students with unique circumstances. All factors should be considered in balancing unique situations. Even when a majority of the factors are met, this does not automatically make an individual a “professional.” Some factors may weigh more heavily than others in certain situations. For example, having a website dedicated to

videography is substantially more dispositive than simply advertising videography services on social media in determining whether it should be considered a professional service. The weight of each factor shall be considered against the totality of all the factors together. Any factor, either individually or in combination, may be enough to tip the scales so long as it is given sufficient weight. While the listed factors should be the primary focus of the inquiry, other factors *may* be considered as well so long as they are related to the specific services provided.

This line of inquiry and factors shall only be used for students who are potentially providing professional services to candidates for election to SGA Offices. Any individual that is not a student at the University of Oklahoma or individuals that have licenses labeling the holder as a professional, shall automatically be considered a professional for purposes of the application of this section of the Code. For example, if a student is a licensed photographer, the factors should not be considered, and the services provided should be included in financial reports by default.

IV.

In the case at bar, the Election Commission was incorrect in its assessment that the video produced by Mr. Hiebert for the Lissau-Akuffo Campaign was not a professional service. However, this is through no deliberate fault of either the Commission or the Lissau-Akuffo Campaign. The Lissau-Akuffo Campaign asserted that they were acting within the limits set by SGACA Tit. VI, Ch. 1, § 1(a), and the Election Commission agreed. This opinion establishes the balancing test required to

conduct proper inquiry of “professional services” as defined in that section of the Code and thus, was not known by either party before this opinion was published.

This Court has determined that Mr. Hiebert’s services constitute professional services based on appropriate application of the factors set forth above. Based on information in the briefs and testimony given during oral argument, Mr. Hiebert has extensive experience in producing videos for different organizations and individual clients. Mr. Hiebert advertises himself as a professional on multiple social media platforms and has his own website dedicated to his media skills. This is a highly dispositive factor in this case because most individuals do not create websites for their hobbies or activities. Websites are normally used by professionals to market their skills and recruit future clientele. Mr. Hiebert also used highly specialized equipment in the production of the video in question as evidenced by use of drone footage in the video. All these elements tend to support the first, third, and fifth factor and weigh heavily in labeling Mr. Hiebert as a professional.

Other factors cut against labeling Mr. Hiebert a professional. Based on information contained in the briefs and testimony at oral argument, Mr. Hiebert has produced videos for various on-campus organizations in the past, such as: High School Leadership Conference, University Sing, and OU Dance Marathon. Importantly, all these videos were donated to these organizations. Mr. Hiebert did not charge a fee to these organizations as most professionals probably would have. This shows that he has a history of donating services to various organizations and could have potentially donated his services accordingly in this instance to the Lissau-Akuffo Campaign. This

inquiry of the second factor tends to suggest Mr. Hiebert is not a professional. However, this is not highly dispositive on the issue because professionals may regularly donate their services for reasons other than strict pecuniary gain.

This Court does not have any evidence of the time and effort required to produce the video in question, so the fourth factor is not considered. Had Mr. Hiebert been able to attend oral argument, he would have been asked questions related to his production of the video, but, as it stands, the Court is not in a position to answer this factor dispositively. Still, the other factors heavily weigh in favor of considering Mr. Hiebert a professional. The Election Commission was incorrect in asserting that he was not a professional and the video should have been assigned a value counted against the Lissau-Akuffo Campaign's expenditures, even as a donation.

V.

Ultimately, the decision to label Mr. Hiebert a professional would not change the outcome of the election. Petitioner has never asserted that the Lissau Campaign should be disqualified, merely that the video unfairly influenced the vote count. The Lissau-Akuffo Campaign won the election by 1,149 votes or more than a 34 point margin. It is impossible to quantify the number of votes that may have come from individuals who watched the video and voted for the Lissau-Akuffo ticket solely because of the video. Petitioner provided evidence during oral argument that the video in question has almost 5,000 views and argued that this demonstrates that it reached a wide audience and unfairly influenced the election. This is a circular argument that demonstrates the impossibility of quantifying any votes that may have

come as a direct result of the video. Only about 3,300 individuals even voted in this election and more than 1,000 of those individuals voted for the Castellano-Hepburn Campaign. There is no way to determine how many of the more than 2,200 votes for the Lissau-Akuffo Campaign came from individuals who saw the video and based their voting decision solely on the video.

Petitioner could have argued that assigning a value to the video should have put the Lissau-Akuffo Campaign over the spending cap and thus subjected them to disqualification. Even this assertion is problematic. To face disqualification, the Lissau-Akuffo Campaign expenditures must be more than \$550 or they must have accrued five (5) points or more. SGACA Tit. VI, Ch. 5, § 29. Currently, the Lissau-Akuffo Campaign sits at campaign expenditures of \$442.73 and a single point.

Mr. Hiebert should have been considered a professional and a value should have been given to the video he produced. If that had occurred, a value of less than \$107.27 would result in no action. A value of more than \$107.27 *could* result in a vote for disqualification by the Election Commission. However, the bar for disqualification is extremely high. In this Court's review of prior cases, not a single instance of successful disqualification of a candidate was found. Appeals to this Court from a losing candidate to get the winning candidate disqualified constitute a vast majority of the cases heard but have yet to be successful.

This Court has the authority to invalidate any election where the "true will of the voting public is not reflected" through means of "gross fraud" or "irregularities in the conduct of the election." *Id.* § 40. Given that disqualification forms the basis of

the overwhelming majority of cases before this Court, the fact that disqualification has never successfully been upheld, and this Court could order a new election when something fundamentally unfair occurs; the statute regarding disqualification of candidates seems superfluous. However, addressing whether disqualification is even necessary is a question for the legislature to answer.

VI.

For purposes of the case at bar, it is highly unlikely that the Lissau-Akuffo Campaign would have been disqualified from office even if a value higher than \$107.27 was given to the video. The bar for disqualification is simply too high to meet it in this case or in most other cases for that matter. This is further evidenced by the willingness of the Election Commission to label Mr. Hiebert a non-professional in the first place and not assign any points to the Lissau-Akuffo Campaign. The issue was simply not serious enough to elevate it to the point of disqualification of the candidates and this assessment does not change even after this Court has ruled that Mr. Hiebert should have been considered a professional.

The Commission's decision to reject the petition for timeliness was correct. Deadlines are established by the Legislature for a reason and all candidates were informed of the timeline well in advance. However, issues raised in both the complaint and response identify that the Election Commission was considering implications of the video in question before the complaint was filed. Candidates do not see one another's financial reports at any time. Only the Election Commission can see a candidate's financial reports. Thus, it is the responsibility of the Election

Commission to ensure complete and accurate financial reports *independent* of any complaint filed. The complaint filed in this case, was properly rejected due to timeliness, but the petitioner would not know of any financial discrepancies anyway because they are not allowed to review the information submitted. The Election Commission has a duty to clean up financial report discrepancies regardless of a complaint from one of the parties.

Currently, the Election Commission's authority over financial reports is only subject to this Court's review when properly appealed by a party with standing. In this case, petitioner appealed decisions of the Election Commission in a timely and appropriate manner. Had the Election Commission not published an opinion that touched on issues directly related to those brought up by the Petitioner's original complaint, for which they properly appealed; it is unclear whether this Court would even have jurisdiction to review the case. Given the nature of financial reports and the fact that other candidates cannot review them, this Court invites the Legislature to grant the ability to review decisions regarding financial reports independent of complaints filed by the parties to avoid confusion in the future. In this case, the Election Commission opened the door to review by this Court by touching on issues specifically stated in the rejected complaint.

Accordingly, the Election Commission's decision to not consider Mr. Hiebert a professional is REVERSED and the decision to reject the original complaint from Petitioner for timeliness is AFFIRMED.

It is so ordered.