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Jean Cocco vs ERC minutes

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*University of South Florida Government
Supreme Court 2013-2014*

Brandon Telchi (BT): all rise. The university of south florida student government supreme court will now hear the appeal brought forth by Mr. Jean Cocco against the elections rules commission for points assessed during the general and run-off elections. Presiding over this hearing is the honorable chief justice Bryan Buenaventura (BB). We will now recite the pledge of allegiance... I pledge allegiance to the flag of the united states of America, and to the republic, for which it stands, one nation, under god, indivisible, with liberty and justice for all. Alright thank you. You may all be seated.

BB: okay, good afternoon everybody. Before we start I'd like to address the members of the gallery: I would just like to remind everybody that this is a public hearing and it is being recorded. And it will later be transcribed into record, so I ask that you all please keep the talking to a minimum. Please keep the comments to yourself so that we can have a fair process here today. I ask that you treat these proceedings as it would be a real court room. Please be respectful to both parties, and I also ask that if you have any sort of emergencies please use this door to the top so that we can have no interruptions. I have instructed the clerk to monitor the room; if anyone is on their cell phones or are being disrespectful they will be asked to leave. And we also have security on site that will help assist that, if possible. With that said, we are ready to begin. I want to say that the justices that are present on the bench are myself Bryan Buenaventura, associate justice Michael Kalmowicz (MK), associate justice Corey McCance (CM), associate justice Lindsey Betros (LB), and associate justice Alexis Sacasas (AS). The two justices who have recused themselves from today's trial are senior justice Daniel Shapiro and ranking justice Sammy Hamed. And with that, I confirm that the supreme court of university of south florida student government does indeed have quorum. The day is march 19th, 2014, and the time is 5:52pm. This hearing will proceed as prescribed in the student government statutes as well as the supreme court rules of procedure. Both parties are assumed to be sworn in. I want to advise both parties that you will be assumed to be sworn in and that presenting false testimony is a violation of the university policy and can result in sanctions by the appropriate offices. I will now address housekeeping matters: I want to ask that both parties approach the podium when addressing to the bench. This hearing will be heard under our appellate jurisdiction. This matter is being appealed- this matter is being appealed by the points that were assessed by the elections rules commission to the cocco/whyte campaign for the general and run-off elections. The procedures for today for this trial are as follows: petitioner jean cocco can make an opening statement of a time limit of 5 minutes, the respondent, the elections rules commission, will make an opening statement with a time limit of 5 minutes as well; after that we will move to the argument portion of the trial. The petitioner will have a maximum of 20 minutes to state the argument, in which any of the justices may propose questions to the petitioner with the expense of their time. After the petitioner has exhausted their 20 minutes the respondent will also have 20 minutes to make their argument or rebuttal. The court may also pose questions at the expense of their time as well. After both arguments are heard members of the court may extend the time if we all are in agreement. The petitioner will then state a closing statement limited to 5 minutes. And then the respondent will also have a closing statement of 5 minutes as well. At that time the trial will be adjourned at the court will retire for deliberations. Are there any questions from both parties on the procedures for today?

Daniel Christopher (DC): no questions your honor

Jean Cocco (JC): no questions Mr. Chief Justice

BB: I'd like to remind the parties that we are on the record. And with that said we will now hear the case of Mr. Jean Cocco vs elections rules commission. Petitioner, Mr. Jean Cocco, you have five minutes for your opening statement, I'll warn you when you have a minute left.

JC: thank you. Ladies and gentlemen of the court I appreciate your time today. I will begin with my argument. The elections rules commission improperly assessed points to the cocco/whyte campaign because it violated the campaign's due process right by failing to prove the charges beyond a reasonable doubt. Following an inquisitive rather than adversarial process and indirectly manifesting bias against the cocco/whyte campaign. A) failing to prove charges beyond a reasonable doubt – the elections rules commission violated statutes by assessing points to the cocco/whyte campaign without assessing the proper burden of proof. In order to assess a point, the ERC needed to prove that a violation had been committed beyond a reasonable doubt. And this is a very high standard; it's the same one applied in criminal cases. The definition of beyond a reasonable doubt is clear in statutes that no logical explanation can be derived from the evidence. To meet the proper burden of proof a combination of hard evidence and witness testimony is necessary, though it's still not sufficient. Clearly this standard does not take into account as the evidence used by the ERC is precarious at best. The defense offered a multiplicity of logical explanations, for each charge. And these explanations were thrown out without proper consideration. The standard is not preponderance of the evidence which would allow the points to be assessed if the ERC was convinced of the charges 50% +1, rather beyond a reasonable doubt means that there could not have been any other logical explanation. Therefore the hearings that were held did not allow for charges to be proven beyond a reasonable doubt. B) lack of an adversarial process – in order for any charge to be proven beyond a reasonable doubt, an adversarial trial must be held. In one of the grievance hearings an adversarial process was completely absent. In the hearing pertaining to the use of A&S fees to purchase business cards the ERC was the investigator, the prosecutor, the judge and the jury. Under the principal of American jurisprudence, a charge cannot be proven beyond a reasonable doubt without an adversarial process. The ERC clearly violated the cocco/whyte's campaign's due process rights by assessing a point based on an inquisitive hearing absent an adversarial process. ERC ROP 5.5 ought to be rendered invalid as it violated the rights of the defendant to plead their case in an adversarial process. C) bias within the ERC – the ERC treated the other presidential candidates with favoritism. Only one investigation was commenced by the ERC and it was against the cocco/whyte campaign. It was not a plain site violation and required much research to delve into, indicating that the ERC was only vigorously looking into the cocco/whyte campaign. Additionally, the ERC would not approve written verification of why some grievances were approved and some were not. Further, there was no formal process to decide whether grievances ought to be pursued, and if there was it conducted off the record. This resulted in several arbitrary decisions being made regarding which grievances to be pursued and which to be thrown out. Furthermore the supervisor of elections does not provide proper justification as to why these grievances were dismissed for the Arnold/nouri campaign. The ERC failed to investigate legitimate concerns such as the lack of specificity in the Arnold/nouri campaign budget statement. Taking together these actions clearly indicates a manifest bias within the ERC. Now the relief sought is in the light of this abridgement of due process the cocco/whyte campaign requests that all

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points assessed to it by the ERC be rendered null and void. Those points being void, the cocco/whyte campaign requests that Jean Cocco and Rhondel Whyte without points and being the clear victor of this run-off election, are certified as student body president and vice president of the 55th term. Thank you for your time.

BB: counsellor are you ready to give your opening statement?

DC: yes your honor.

BB: you will have five minutes and I will warn you when you have one minute left.

DC: may it please the court. Members of the court, the laws and guidelines set by student government statutes and the rules of procedure are not here to hinder candidates in any way. However, their purpose is to ensure that the elections run smoothly and that all candidates are given a fair and equal opportunity to achieve the offices in which they intend to run. Now members of the court when one or more of these rules are violated through a ticket or candidates actions, proper procedures are set in place to assess them. And according to title 7 of the student government statutes, statute 701.2.4 it is the duty and responsibility of the elections rules commission to assess those violations. Now we are here today because the plaintiff ticket is appealing the rulings of the ERC on four violations that were handed down to them from various grievances. On the grounds of procedural error, and a lack of evidence that was proved beyond a reasonable doubt. Now we will show that the ERC was correct in their actions and justifications of the handling of those violations to the plaintiff ticket; four of those violations including 1)not happening the SG link present on their campaign website at the time of campaigning, 2)using A&S funds for the purposes of buying business cards for their campaign, 3)passive campaigning in the student government services lab by a member of their campaign staff, and finally 4)using a celebrity endorsement to further their campaign. Now on the basis of procedural error we will show you today that on the course of the investigation in assessing all four grievances, the ERC acted in accordance to student government statutes and their rules of procedure. And members of the court we will prove that the evidence used in assessing these grievances were present beyond a reasonable doubt. Now members of the court, the ERC did act in accordance with statutes and ROPs and today you will see through the evidence of the grievance hearing that the law is clear: the actions that were carried out by the plaintiff ticket were in violation of that law and the ERC did everything according to the laws that bind them to their duties and were correct in their decisions. Thank you.

BB: is the petitioner ready for their argument? Mr. Cocco you will have 20 minutes for the body of your oral argument, I will notify you when you have five minutes left. You can start whenever you're ready, and I do want to remind you, any one of us can ask you questions at the expense of your time.

JC: okay, may it please the court, I will go ahead and begin with my argument. In terms of the use of a celebrity: the ERC did not inform any candidate in regards to what the definition of celebrity is. According to statute 701.3.3 it says that the ERC is required to inform candidates of the elections rules and regulations through a candidates meeting. And according to statute 701.3.5 the ERC is required to distribute all necessary information to the candidates in the election. So the-

BB: did you go to any of these meetings where they asked you to- what the rules and all the regulations were?

JC: I did go to a candidate meeting yes. Nevertheless, it was not explained in thorough what exactly a celebrity was, what exactly was meant in terms of this information regarding endorsements or what not. Now according to the statute, it says 701.6.9 campaigns may not use university and student government logos and trademarks; campaigns may not also use university figureheads as official endorsement. Official endorsement shall be at the discretion of the elections rules commission and its rules of procedure. Now the statute clearly says university figureheads or administrators are not allowed to be had as an official endorsement. There is a conflict with the rules of procedure of the ERC in title 7. ROP 1.1.2 says that the rules of procedure of the elections commission shall not conflict with the student government statutes, it may however further defines any statute of the section that deals with the operations of the elections rules commission.

CM: Mr. Cocco I would like to take you back to the chief justices question real quick. You said that it wasn't defined, the term celebrity, but weren't you told at any point that you could not have a figurehead or a celebrity endorsing you?

JC: in the candidate meeting no I was not.

CM: at any point was that an issue that was brought up by ERC or any of their organization, their body? Was that every mentioned to you in any way, shape, fashion, or form?

JC: no sir. So, in regards to the ROPs, it says 5.7.2.1.0 using a celebrity or university figurehead on campaign materials such as rocky or president Genshaft or any NCAA divisional athlete. Now, the statute says one thing and the ROP says another thing. So in terms of defining what a celebrity is, it's nowhere in statutes or ROPs, so it is conflicting with itself.

LB: didn't you make a Facebook event for the Charlie Christ?

JC: yes there was a Facebook event made.

BB: and do you believe that Mr. Charlie Christ is considered a celebrity?

JC: no sir I do not.

BB: please explain why.

JC: excuse me. The term celebrity is in the eyes of the beholder. What if a noble prize winner in physics came to campus to speak, would he be considered a celebrity? Perhaps in the physics field, but to the general public, a celebrity as the noble prize winner you wouldn't consider a celebrity. Charlie Christ is a private citizen, he's a mentor and is a friend of mine who came to advocate-

LB: isn't a private citizen someone who is out of the public eye? And wouldn't you agree that Charlie Christ is in the public eye?

JC: I would agree that he's in the public eye, but I wouldn't agree that he's a celebrity in the public eye. And that's to the eyes of the beholder. Now if that was properly defined in statutes or in ROPs then we could have a better idea of what a celebrity is.

CM: Mr. Cocco we're an organization of higher education, do you not know the definition of a celebrity?

JC: I do know the definition, however-

CM: what would that definition be?

JC: that's the thing, it's not clearly defined in statutes, if it was defined in statutes what they were looking for a celebrity to be, then that would be clear. A celebrity could be anybody. A celebrity could be the NCAA athlete who to many is not considered a celebrity because he's just playing a sport. So again the term celebrity if it was defined in ROPs or statutes then it would have been a clear path on what to choose.

AS: Mr. Cocco to you what is a celebrity? In your own words.

JC: a celebrity, I'll give you an example, I would say Justin Bieber, I would say Brittany Spears, I would say someone in pop-culture who is involved in terms of a wide scale, world-wide scale. That's what a celebrity would be.

LB: so you would consider chief justice John Roberts, you would not consider him a celebrity?

JC: I would not consider him a celebrity, I would consider him a figure of the court, of the supreme court.

CM: what about president of the United States?

JC: I would not consider him a celebrity either. He may have a celebrity-like status but he's not a celebrity, at the end of the day he's the president of the United States.

CM: would you consider him a figurehead?

JC: a figurehead? In terms of what?

CM: is he a figurehead, by definition-

BB: Mr. Cocco I think we're veering off on a certain path and I just want to go back to your point where you said that you did not receive the proper procedures in these meetings, is that correct?

JC: correct.

BB: if you received word that no celebrities and/or university figureheads, would you have still continued on with this action that you did by inviting-

JC: no if the term celebrity was properly defined I would have had a better idea of what to do in terms of whether or not I wanted to bring Charlie Christ to campus or not. Like I said, he's a friend of mine. What

if for example I had a close relative who happened to be famous or a celebrity? I can't bring them to campus and violate my free speech rights? I mean this is a violation of the Buckley vs. Valeo case in the citizens united case where you are restricting political free speech. So again, in ROP 3.6 it states that no NCAA division one athlete can be featured in campaign materials, so if an athlete decided to run for office here in SG they cannot put their name on their own materials because they are considered a celebrity? It's vague. It's not clearly defined. Statutes need to be rewritten as well as their ROPs so candidates that are running for office can clearly understand what exactly a celebrity means. It's too vague and it's in the eyes of the beholder.

CM: just to be clear we're not here to debate what the policy should say, we're here to debate whether or not ERC was correct in their understanding of the way it's written now.

JC: I would agree with you. So the statute says one thing, and then the ROP says another. And it says that it will further define the statute within the ROP, and then within the ROP it doesn't define what a celebrity is. Okay so that's celebrity. I will move on to the computer lab grievance. Okay. In terms of the computer lab grievance: there was a precedent set in the 53rd term of president Goff and it was in the senate meeting that in terms of-

BB: repeat the term again

JC: 53rd term. And it was said during a senate meeting that passive campaigning within the computer lab wearing a shirt is not reasonable because if you go in the computer lab and you're going there to do homework and then you're required to put your shirt inside-out or you're required to take off the article of clothing when you're trying to go to school and study, it's not reasonable to make someone wearing a button or anything of a campaign, to require them to take off the article of clothing. That's a violation of the first amendment. In addition, the ERC did not inform candidates of the computer lab was a polling station so in terms of online correspondence on Facebook or on the SG website, nowhere did it say that the computer lab was an official polling station. And within statutes it says that in order for it to be an official polling location, a member of the ERC has to be there to staff it, and in nowhere during this election was a member of the ERC at the computer lab to staff it, thus it's not considered an official polling location. Moreover, in the picture that was in the records, that was received in the campaign grievance, it's not- you cannot clearly see whether it's a shirt or not, you cannot prove it beyond a reasonable doubt. The picture was taken without a timestamp, we don't know when the picture was taken, we don't know where it was taken, we don't know who took it, so it's a question of why is it that this is being, not being proven beyond a reasonable doubt. You can't prove that it's the shirt, at all.

BB: Mr. Cocco would you say that it is indeed Ms. Reeba? Or I'm sorry I forgot her name.

JC: Ms. Robasa? Yes it is her. She was there studying for homework, but again, when was this picture taken? You know, how can you prove that she was wearing the shirt at any time? If you guys are looking at the pictures right now it's not clear, you can't prove it beyond a reasonable doubt. So in terms of the computer lab argument, if it was considered an official polling location the ERC member would have to be there to staff it to consider it an official polling location. And moreover in the evidence- or the

records that were providing to you and myself in the campaign grievance form, there is no clear indication that the shirt is being wore, that that is a campaign shirt. And lastly, in terms of how this campaign grievance form was filled: there was no proper signature on the grievance form saying who signed it or who didn't sign it. So it's a clear violation of due process. Alright, okay, move on to the website link: the ERC must have proved grievances beyond a reasonable doubt, this was not accomplished. The absence of the SG link on the site was not proven beyond a reasonable doubt. Again, I was not properly informed about the elections rules and regulations through a candidate meeting, and not all necessary information was distributed. Based on the deliberation from the minutes that were heard from the ERC, when we told them that our website link was on the wts2014.com/social aspect of the website, nowhere in the hearing did they investigate that to prove the case. And in terms of when these pictures were taken, the screenshots were taken of the website, we were having technical difficulties in ensuring that our main website wts2014.com was properly working so in terms of trying to figure out the technical aspects of the website, trying to figure where exactly the link could go, we created an auxiliary website wts2014.com/social which is still considered the website; if you google it it's there, if you click on it it's there, the link is there. So again, I reiterate, if they had done a better job looking into it and looking at our website, and looking at all the analytics they would understand that the link was there. And therefore, it was clearly available and invisible to the general public and I public the voracity of the claims being made. I'll go ahead and move on to the A&S business cards.

CM: Mr. Cocco were you at any time given a copy of or directed to review ERC's ROPs or statutes regarding the elections.

JC: I was- on the website it's on there yes.

CM: where you directed in that?

JC: directed by whom?

CM: by ERC to view those documents.

JC: not directly no, I had to do it on my own affair.

CM: what exactly was mentioned in these meetings for the ERC?

JC: well that's the thing, it was a candidate meeting and I don't exactly recall all that was mentioned, but we had a written aspect of what exactly the electronic material was in regards to what site, and where exactly it has to be on the website, and have a better idea of this voting link.

CM: so it's your testimony that at no point were ROPs or campaigning statutes in anyway mentioned-

JC: I'm not saying that- I'm saying they were mentioned but I don't recall which were mentioned and which were not. I don't recall them explicitly mentioning that you have to have a campaign link on the website, and where it has to be on the website.

LB: so what you're saying is that there was a link it just was not on the main page?

JC: correct

LB: and you're saying ERC did not look at that page?

JC: correct

BB: and you're saying that the SG link was somewhere on your website-

JC: it doesn't say where it has to be, it just says it has to be on the website; it has to be linked to the website.

BB: and you were aware of having- having to have the link on the website?

JC: I wasn't aware because I wasn't properly informed of that in the candidate meeting. Okay, so in regards to the business portion: if non A&S funded entities or organizations are able to access A&S student fees by the use of the marshall student center (inaudible) be an exception to this. The problem is that techsmart is being allocated fees to non A&S funded orgs. So that's the question: why is it that Greek organizations that require memberships and dues are receiving A&S funding to have prints? It's not clear in this- in the policy. And when we public records requested the contract between techsmart and SG it says that all approved student organizations will be entitled to the use of the A&S fees in terms of the techsmart office. Not all student organizations in what they said in their official opinion, all organizations being A&S and non A&S. so it's a question of why are we violating our own finance code if an organization- a Greek organization requires dues they're not allowed to receive A&S funding, so why is that they're receiving A&S funding to help with these prints?

BT: five minutes.

JC: thank you Mr. Telchi. So it's a question of- it's a shadow policy, it's not clear, it's conflicting. If the fraternity is receiving A&S funds they should be aware of that. At no time were they informed that they were receiving A&S funds because they've always been told that they do not get A&S funding.

CM: so your testimony is that the funding was A&S funding but you weren't aware that it was A&S funded, therefore-

JC: because I wasn't properly informed of that. If I had been informed that fraternities were being allocated A&S fees through the techsmart office then that would have never happened. But again in talking to the director of the business office, she couldn't explain it either.

CM: is it not the candidates responsibility to know where all of his funding is coming from?

JC: it is but it's also the ERCs responsibility to let us know whether what services we can use or not. I understand that we can use the computer services downstairs, but in no way was the policy explained. Where does it say that Greek organizations are entitled to funding in the policy? It doesn't. It says approved student organizations, which means that someone has to do the approval, and so why are we giving Greek organizations A&S funding if they're not technically approved? It's against our finance code,

they're not following the proper procedures. And if I had been informed of that properly, this situation would have never happened. And again, in terms of these campaign grievance forms there is no proper signature on these forms so who signed it? Who is accepting it? All there is is a timestamp, we don't have proper signatures of all of that?

BB: did you attend any of these grievance hearings Mr. Cocco?

JC: I attended one regarding the website link and the one regarding the use of business cards.

BB: and did they present to you or any sort of- what kind of evidence did they present during these grievance hearings?

JC: from what I recall there was no physical written evidence that was presented. It was more of that the A&S business office has some sort of blanket p/o that gives techsmart 80,000 dollars as lump sum and that's what- that was the end of it. There was no written policy anywhere saying that Greek organizations get this money. All that was said in this contract was that approved student organizations are entitled to these services.

CM: I missed which ones you were in attendance

JC: the voting link and then the business cards. That was done- those were the first two hearings.

BB: Mr. Telchi how much time does Mr. Cocco have?

BT: two minutes.

BB: you have two minutes left do you wish to exhaust them or the opposing party can-

JC: I'd just like to repeat that the ERC cannot prove beyond a reasonable doubt these charges, and that there was a gross amount of due process violations that occurred in this process. Had I been properly informed of all of these rules and regulations, then our campaign would have been better in following these rules and regulations. In nowhere did we know that Greek organization receive A&S fees, nowhere did we know that the SGCS was an official polling location, nowhere did we know that Charlie Christ is considered a celebrity, and nowhere were we told exactly where the link has to be on our campaign website. And in addition, these grievance forms that were filled, there is no proper signature on them, there is only a timestamp, there is template errors, there is a bunch of errors in regards to this process. So I thank you for your time court and I wish you a good night, for now.

BB: alright, you may step down. Counsellor you may not approach the podium. You will have 20 minutes for your argument, at any time the justices can ask you questions at the expense of your time, and you may start whenever you're ready.

DC: thank you your honor. May it please the court. Pursuant to statute 702.7.1 in title 7 of the student government statutes, it states that if a candidate or campaign ticket's actions violate student government statute or ERC ROPs, and if those actions are proven beyond a reasonable doubt, then the

ERC may assess violations to the respective ticket. And the burden of proof is established in statute 700.4 which states that the standard must be met by the claimant's evidence that no other logical explanation can be derived from that evidence. Now in reference to the violation of the voting link being absent from the ticket's website, the plaintiff ticket is claiming that the ERC did not prove beyond a reasonable doubt that the voting link was not there, and that the website did contain the link when the page went live. Now ERC ROP 3.9 states that "any campaign materials such as t-shirts, signs, flyers, etc, must have the www.sg.usf.edu /vote website link printed on them" and furthermore statute 700.9 clearly defines campaign materials, and it says that campaign materials are "any physical or electronic materials which promote a candidate or impute another candidate"

BB: counsellor would by that notion, would like Mr. Cocco said, he said that his link was on one part of the website, does that mean any sort of the part of the website has to have the website link on it? Like every single portion of it? Is that what you're arguing?

DC: because the campaign website is considered a campaign material, the website just has to be on that website at all; it doesn't have to be on every page but just any part of that website. And by that definition a campaign website which is an electronic material that goes to promote a candidate qualifies under that definition of campaign material. Now when the grievance was filled to the ERC on February 17th, 2014, when the page went live, the website did not include the SG voting link, in addition, when (inaudible) filled the grievance he attached screenshots of every part of the wts2014 website.

LB: Mr. Christopher, may you just explain how the ERC proved beyond a reasonable doubt that link was not there.

DC: when they received the screenshots on the grievance, and to direct the courts attention to those screenshots, you will see that nowhere on the website was the link there.

LB: are these timestamped?

DC: yes, they are.

BB: and are they, like you said, are these specific parts of the website that have to have the link on them or are they just parts of the website that didn't have them on there?

DC: the link has to be on any part of the website.

BB: and I guess with the question that Ms. Betros is trying to ask: was that proven that beyond a reasonable doubt that no part of the website had this link.

DC: yes your honor because on those screenshots every part of the website was taken. And if you look at those screenshots of every part of the website you will see that the SG link is not there.

LB: well Mr. Christopher, you know, beyond a reasonable doubt means no other logical explanation can be derived, so when Mr. Cocco was saying that was a link posted on there wouldn't you consider that another logical explanation?

DC: but when you look at the evidence and the link is not there on any part of the website then that does prove beyond a reasonable doubt that the SG link was not on any other part of the website.

AS: Mr. Christopher, did a member of ERC actually themselves physically look at the page to see if there was a link provided?

DC: yes they did. When they received the grievance they themselves went on the website and looked every single part, and they did not see the link there.

LB: did they take pictures?

AS: do you have proof of that?

DC: they took- they received the pictures from the grievance but then they confirmed it by looking themselves.

LB: but just to clarify, the ERC never- they never took the pictures from the website.

DC: they did not take their own pictures, but they looked at the pictures first but then they confirmed it by looking at their own. Now the plaintiff ticket has stated that the ERC did not inform any candidate that the link has to be on their campaign website. However, when a candidate or ticket runs in the election they acknowledge that their participation and actions must follow student government statutes and ROPs and therefore the ticket has the burden to ensure that every action or step that they take in the election follows those statutes.

CM: Mr. Christopher, you said that they were told that they had to follow statutes and ROPs, were they directed specifically to the statutes and ROPs and informed that they should take the time that they should look at them, or was it that you just need to follow to it, don't worry about actually knowing it.

DC: well your honor, this had occurred during the campaign meetings. The campaign- at the campaign meetings the ERC did give them general guidelines and then said that there are further guidelines that you must look at in statutes and ROPs to make sure that you are proper- that you are following proper procedure.

AS: so could it be considered that it was addressed- that it was upon the candidate to look at the ROPs by themselves, they weren't told exactly which ROPs to look at or anything like that?

DC: they were told that in title 7 and in the ERC ROPs there are processes that each candidate must take and that their actions throughout the campaign have to follow those statutes or else they fall under as violations.

BB: counsellor, was the ROPs provided to these candidates at all?

DC: yes they were your honor because the ERC did give them the link and told them where to find the ERC ROPs and the SG statutes.

BB: and there is a way to show that these ROPs were in fact on the website at the time?

DC: yes your honor.

BB: and functioning?

DC: they were directed to the SG website and the specific parts that contained ERC ROPs and the title 7 statutes which they were supposed to look at. And looking at it, this given the fact that the ERC notified candidates of the proper rules and procedures of the elections proves that the ERC acted accordingly in the response to the violation, and therefore the ERC was correct in assessing the violation of ERC ROP 3.9. The evidence brought to the ERC with the original grievance, the screenshots of the website, clearly show that at the time of publication which was February 17, 2014, when the website was live, during the period of campaigning, the SG voting link which is mandated by statutes and ROPs to be present, was not. And this clearly shows that the violation was committed and proven beyond a reasonable doubt and that the ERC was correct in assessing and ruling on the charge. Now in reference to the charge of the use of A&S funds for business cards for the campaign: the plaintiff ticket is stating that there was a procedural error in the way the ERC handled the situation, and that the ERC overstepped its bounds to pursue the matter as it was beyond their scope and power. However members of the court, the ERC believed that the ticket violated statute 702.5.8 and under ERC ROP 5.7.2.1 they committed a violation that states that "no candidate or member of a campaign shall use any A&S funded materials for any political campaigns with the exception of materials produced in the Student Government Computer Services." Now because no individual person brought forth the grievance to the ERC and the ERC suspected and carried out the investigation on their own, according to ROP 5.5 there are certain processes that the ERC must take to follow proper procedure. When the candidate amend their budget statement and include additional expenses they must submit those amended expense forms to the ERC pursuant to ROP 4.2.

LB: Mr. Christopher can you explain what process that the ERC took for the grievances being filed, and explain that process.

DC: to direct your attention to ROP 5.5 it states "that in the event that the ERC suspects a violation has occurred they shall follow the investigation procedure as follows" 5.5.1 the candidate or campaign ticket who is believed to have committed a violation shall be notified in a timely manner. And the ERC did do that when they sent out emails to the plaintiff ticket notifying them of the violation. Pursuant to ROP 5.5.2 the elections rules commission shall meet to discuss the evidence and hear testimony in regards to the issue. 5.5.2-

LB: that's kind of what I wanted to discuss. Would you say that there was an adversarial process offered during this hearing?

DC: yes there was.

LB: even though the ERC was the prosecutor and the judge for this hearing?

DC: oh, no, I mistook you your honor. The ERC did allow witness to come in and testify for both sides. The ERC stood back and listened to both sides make their argument and then deliberated as they are supposed to do by statute.

LB: however, I don't think you're answering my question Mr. Christopher, the ERC was the prosecutor for this and the judge, so they prosecuted and they judged the testimony and evidence, correct?

DC: your honor the ERC had to be because by statute they are allowed to go on process of committing or of asserting an assessment of a violation if they themselves feel that there is a violation committed. So by statute-

LB: how is this not a violation of due process rights?

CM: excuse you Mr. Christopher does it say anywhere in statutes or ROPs that there needs to be an adversarial trial hearing for ERC violations?

DC: no your honor

CM: okay, I think that's the question you were trying to get-

DC: now, because no individual brought forth the grievance to the ERC as I said in ROP 5.5 there is a certain process that the ERC must follow when they bring forth a violation suspicion on their own. However, when the ERC received the invoice concerning the purchase orders of business cards for the campaign a flag was raised because the purchase order was produced through the A&S business office. And used through a fraternities account. And any blanket purchase orders that come through the A&S business office from a Greek account shows that there was a use of A&S funds. However, the initial suspicion was brought on February 13th with the reception of the purchase order. And the ERC is mandated as I said by statute 5.5 to notify the violator ticket in a proper procedure, which they did as proof through the emails.

BB: and Mr. Christopher did the ERC have a hearing to hold where they assessed- where they discussed the matters that occurred? Did that happen?

DC: yes they did your honor. On February 26th, as mandated by sub-statute 5.5.2 they discussed the evidence and heard testimony in regards to the issue, and after that was done they discussed their findings and deliberated on the outcome of the investigation which was done on that same day.

BB: and did a member of the ERC bring this up to the ERC itself that a violation had occurred?

DC: yes your honor.

BB: and did one of those people also vote to assess a point?

DC: no your honor, to my knowledge this person was left out of the voting because it would have shown a conflict of interest. So they were recused from the voting. Now through the evidence and following

statute- ROP 5.5 the ERC did follow all proper procedure as outlined in the duties of the ERC ROP 5.5 and they did provide notification to the plaintiff ticket in a timely manner and due process was met. Now, members of the court, in reference to the charge of the passive campaigning in the student government computer lab during voting week: the plaintiff ticket is arguing that there was a lack of evidence beyond a reasonable doubt to assess and administer the violation. Now when Ms. Resmondo filed the grievance on February 28th, she believed that the plaintiff ticket violated ERC ROP 3.3 and 3.5. And under the definition of passive campaigning which is outlined in 700.13. Now statute 700.13 defines passive campaigning as "all campaigning in which the person campaigning engages individuals in an indirect manner." One example provided in statutes is that a constituent wearing a campaign button to promote a candidate. And through this definition while wearing a campaign button qualifies as passive campaigning under that same premise wearing a campaign shirt also qualifies.

LB: can you explain how the picture- can you clearly see the shirt that this person is wearing?

DC: well the piece of evidence is brought on two points: you have the picture itself and then you also have the testimony that was brought up in the grievance hearing.

BB: and what was the testimony in regards-

DC: the testimony brought up in the grievance hearing was that for the violation- or for the grievance to be brought apart a picture was taken of the campaign advisor of the plaintiff ticket wearing the campaign shirt in the computer lab. Now, the picture is not clear enough, but when you come to the testimony it corroborates it. Ms. Resmondo when she came in to testify confirmed what is seen in the picture; that it was the campaign advisor of the plaintiff ticket wearing the shirt in the SGCS computer lab.

BB: yes but counsellor wouldn't you agree that we're talking beyond reasonable doubt; there are some sort of issues with this picture that do not clearly explain that this person did indeed- was wearing the campaign material which would merit a violation. Wouldn't you agree that if there's something in this picture that is not clear to beyond a reasonable doubt, wouldn't there still be doubt in this- to question whether or not the person was wearing campaign material in the location?

DC: now the picture provides a partial view, so there is still doubt, but when you compile it and corroborate it with the testimony it creates one solid piece of evidence, and that is what the ERC used in determining the violation.

AS: alright Mr. Christopher I have a question: was the lab stated as an official polling station?

DC: yes your honor. It was stated in both the voter's guide that was told by candidates to collect at the end of their campaign meetings; so after the candidate meetings were brought out and they informed the candidates of the proper procedure, the ERC told the candidates to take one of these voter guides which lists the SGCS as an official polling station, as well as the SGCS- excuse me, yes so it was stated in the voter's guide as well as in the campaign meetings.

AS: so in the campaign meeting a member of ERC verbally told candidates that this was a polling station?

DC: yes your honor. They told the candidates where the polling stations were; they told them where they could chalk and things like that, and then they also told them at the end to collect a voter's guide, and that voter's guide listed all of the campaign voting stations which the SGCS was listed.

AS: so if this was an official voting place why wasn't there an ERC member there?

BB: was there an ERC member there?

DC: the SGCS is considered an open polling station, so students can come in at any time and vote, so it's held under a- it's not as explicit as a polling station as compared to say the library or Cooper Hall or somewhere like that, but it is stated in the voting guide that that is a voting station.

AS: so if it has more lenient rules since it's an open area, would it be justified for a student to be there with, you know, any type of shirt whether it is a part of campaign material-

DC: well your honor if this is- if we're looking at just a general student granted it is hard a campaign ticket to control just what any student does, however though if you look at, excuse me your honor- if you look at statute 702.7.1

BT: five minutes

DC: it states that if a candidate or campaign ticket's actions violate the student government statutes or ERC ROPs, and if those actions are proven beyond a reasonable doubt then the ERC may assess. And then it also states that if- it also states that if a candidate or campaign ticket's actions violate the student government statutes then a- then the ticket can be held liable. Now it's the person that was brought up in the grievance hearing was part of the campaign staff-

LB: was this picture timestamped at all?

DC: yes, at the meeting. There is no timestamp on the actual picture itself, however at the deliberation hearing, at the appeals hearing from the ERC it was asked of Ms. Resmondo to pull up the picture, and it did have a timestamp, and it was taken the same day the grievance was filed.

CM: Mr. Christopher, do the ROPs or statutes enumerate any exemptions for passive campaigning in any way? Are there any polling booths that are exempt in ROPs or statutes that you know of?

DC: no your honor because the ROPs and statutes state that, excuse me, that a student may not actively or passively campaign within 50 yards in any direction of an official polling station, but in addition the SGCS is also considered an agency of student government, and under ERC ROP 3.5 you cannot campaign there either.

BB: and was that clarified in the meetings that the SCGS is a bureau because many students outside of student government may not know that. Was that all clarified to the candidates in the candidate meeting?

DC: at the candidate meetings the ERC told the candidates to make sure that you look at the statutes and ROPs for further explanation of violations, and on that website it does define the SCGS as an agency of student government.

AS: so then they never specifically told them that- they never specifically told them it was at the hands of the candidates to go and look up the information themselves.

DC: they gave them general guidelines and told them where to find further information. But by statutes because a candidate ticket can be held liable for their actions, it is their responsibility to make sure that every action they take is in accordance with statutes. Now, members of the court, in reference to the charge of a use of celebrity to endorse the plaintiff ticket, namely the use of former governor Charlie Christ, the ERC did have evidence beyond a reasonable doubt to assess and carry out the violations. Now when Ms. Resmondo filed the grievance on February 28th, she believed that the plaintiff ticket violated ERC ROP 5.7.2.10 which states that "using a celebrity or a university figure on campaign materials is a minor violation" and therefore the actions of the plaintiff are worthy of a grievance. And to remind the court, statute 700.9 states that campaign materials is any physical or electronic material that goes to promote a campaign or impute another candidate.

LB: however, celebrity isn't clearly defined in the ROPs correct?

DC: now as the plaintiff said earlier that it was a vague term, it's actually a broad term; now with our modern day we think of celebrities as say the media, so you may think of entertainment, singers, musicians, artists, what-have-you, but if you look at a fundamental definition of celebrity it just says that it is a well-known famous person.

LB: but wouldn't you say that the statute is too broad? Because I mean you could count a celebrity as anyone then.

DC: it's under the discretion of the court, and under ERC ROPs they do have that discretion to make that determination of what a celebrity would be.

BB: so you're saying that the ERC is the one that defined that Charlie Christ is indeed a celebrity?

DC: it was through deliberation, but through that power they do have the discretion to deliberate on that, and make the violation. So they do have that power to determine if it's not broad or exclude, or explicit in statutes.

BB: but in statutes the word celebrity is not mentioned is that right?

DC: the word celebrity is mentioned in the violation statute, but it is not broadly explained- defined correct. Now when we look at a celebrity by a fundamental definition it is simply a person who is

prominent or demands a higher level of notoriety than the average individual. And Charlie Christ as mentioned through the grievance hearing and general knowledge served as the former governor of Florida for four years, and is currently a declared nominee in the 2014 gubernatorial election.

BT: one minute

DC: now in those minutes and through the campaign materials which is a Facebook page is considered statements such as "Charlie Christ visited USF for the cocco/whyte campaign" as well as invitation to come out to the amphitheater by the MSC to see former governor Charlie Christ in support of Jean Cocco and Rhondel Whyte for student body president and VP.

LB: now Mr. Christopher, for the sake of time, I'd like to direct you to another point: I just have a question of why the ERC grouped together the grievances for the Arnold/nouri campaign but not the cocco/whyte campaign; I just want clarification on that.

DC: which grievances?

LB: they just grouped the Arnold/nouri campaign but not that cocco/whyte campaign can you explain that?

DC: they grouped them into the same deliberations is that what you're asking? They were grouped on the same deliberations because they were founded on the same basis, that's why the two of them were grouped into one; because they were both being assessed on the same violation.

BB: would they have constituted different points if not heard as one-

BT: time

BB: we can extend time; does the court want to ask more questions to Mr. Daniel Christopher? Alright, we can continue on, so like I was saying, if they weren't grouped together would they have been assessed more points if they weren't grouped together or not?

DC: they would have separated them if there were two different distinctions between the two because you can't hold two violations on one if they're not the same. You can't evaluate them on the same basis if the violations or the statutes that they violated are the same. So if they were two separate violations then there would have been two separate deliberations on them.

BB: if a candidate violates something twice is it going to be heard as one thing? Is that what you're saying? Or are they going to be heard as one whole thing?

DC: well if you're talking about let's say for campaign materials you don't have the SG link, if you're talking about one violation that is not on the website and then on one violation it's not on a t-shirt then it would be two separate deliberations; but if it's the same grievance for the website then it would be grouped into one.

BB: then can you please explain why they were grouped together?

DC: because again they were on the same basis and on the same piece of evidence?

BB: can you elaborate a little bit more about what the specifics were on that?

DC: if I am correct in what the justice is trying to say, if you're referring to the lack of the SG link on the Facebook page for the Arnold/nouri campaign?

LB: yes

DC: on the picture? So on that one there was a violation for the Facebook profile picture for the campaign not having the SG link. And then on another page there was another violation for not having it on the website. And so that's why they grouped the two.

LB: so when a decision was made to group together these grievances was the meeting on record?

DC: the meeting was on record, yes.

LB: but was it posted to the public?

DC: yes it was. And by statutes the ERC has- by statute 5.5.2.3, excuse me, 5.5.4 the outcome of the investigation shall be made public no later than two business days after the decision has been reached.

LB: I'm not just talking about the outcome of the investigation, I'm talking about the outcome of the meeting to group these grievances together, was a meeting made on the record for them to group them-

CM: I'm sorry are we talking about the Arnold/nouri campaign now or are we talking about the Cocco campaign?

LB: the Arnold/nouri campaign. Do you want me to restate my question?

DC: no I think I understood. All minutes and all deliberations that went into forming the assessments for the violations were put on minutes; so that was put on minutes.

AS: I have a separate question: why on all of these grievances there was no signature from anyone in the elections rules committee? Are they supposed to sign any of these or?

DC: the only signature on the official opinion is from the supervisor of elections.

AS: okay so on these grievances no member of ERC is supposed to sign that they've accepted it, that they've seen it or...

DC: well on minutes, they take attendance on the minutes to show that they deliberated on it, but when they publish the opinion the only signature that is put on is from the supervisor.

AS: okay so on these grievances there is no signature because it's not needed.

DC: it's not needed, it's just the supervisor's signature that is on it. Now in, going back-

BB: are there any further questions for Mr. Daniel Christopher? Any further questions? Counsellor, since you did exhaust your time, and we have no further questions, we will ask you to sit down and we will now go into closing arguments.

DC: yes your honor.

BB: okay, Mr. Cocco do you have a closing argument?

JC: yes your honor.

BB: okay you have five minutes and we will let you know when you have one minute left.

JC: may it please the court. As I mentioned earlier, the ERC cannot prove the charges beyond a reasonable doubt; there was a lack of an adversarial process in one of the grievance hearings, and there was a clear bias manifested within the ERC; our voting link was on the website; Charlie Christ is not a celebrity, as it's not clearly defined in statutes; the computer lab is not an official polling location because no ERC member was there to staff it; and last, the A&S business cards if we had been properly informed of what techsmart policy was and what student organizations were approved and not approved, then we would have clearly avoided that situation. So therefore, I request that the court please look at these violations, look at this process, and come to a conclusion on the matter. So I thank you for your time, thank you to the court, and go bulls.

BB: okay. Counsellor do you have a closing statement?

DC: yes your honor.

BB: you will have five minutes and we will let you know when you have one minute left.

DC: may it please the court. The laws and guidelines set by student government concerning elections are not here to hinder candidates in any way. However, their purpose is to ensure that the elections run smoothly and that all candidates are given a fair and equal opportunity to achieve the offices in which they intend to run. However, when one or more of these rules are violated through a ticket or candidate's actions proper procedure are set in place to assess them. Now today we showed that the ERC was correct in the process and actions they took in violated these four violations. The four violations concerned the lack of the SG voting link present on the campaign-ticket's website by providing screenshots of every part of the wts2014 website clearly showed that the link was not present at the time of submission, which was February 17th, 2014 during the period of campaigning. We proved that the ERC made no procedural error in notifying candidates of regulations or procedures because this information was given to candidates at candidate meetings and ROPs and statutes. Furthermore to ensure that a candidate or their ticket are in accordance with SG statutes and ROPs it is the responsibility of the ticket itself to ensure that every action that that ticket makes is abiding by the law.

As stated under statute 702.7.1. Now today on the first violation we showed that the plaintiff ticket's actions were clear violation of ERC rule of procedure 3.9 which states that an SG link must be present on all campaign materials. And under statute 700.9 a campaign website does fall under that scripture. Now the second violation concerns the use of A&S funds for business cards for the plaintiff ticket's campaign. And when the ERC received the blanket purchase order from the A&S business office for the plaintiff ticket from a fraternity's account suspicion was raised in the ERC because the blanket purchase order number showed that funds used to purchase the business cards were indeed A&S funds therefore an investigation and assessment were conducted as per the ERCs power and responsibility in ROP 5.5. The ERC acted correctly through the entire process, from the time of giving advance notice of a violation to the plaintiff ticket on February 20th to the publication of the opinion on February 28th. The ERC handled the situation to the letter, and acted properly and accordingly to statutes and ROPs. Thus the ERCs actions and investigation show that the plaintiff ticket's action clearly was a violation of statute 702.5.8 and ROP 5.2.7.1. Now on the third violation concerning passive campaigning on the plaintiff ticket in the SGCS lab: we proved today that the ERC had evidence beyond a reasonable doubt to assess and had down the violation of ERC ROPs 3.3 and 3.5 under the definition of passive campaigning as outlined in statute 700.13. Now at the time of the grievance hearing evidence of testimony provided by Ms. Resmondo stated that the campaign advisor which is considered campaign staff for the plaintiff ticket wore campaign shirt in the SGCS, which is not only an official polling station, but also an agency of student government; and the picture provided by Ms. Resmondo confirms her identification and the plaintiff ticket's action. Both of these facts corroborated by ROPs show that passive campaigning was done by the campaign advisor, and it clearly violated election procedure, and therefore the ERC did have clear evidence beyond a reasonable doubt to take on and administer the hearings and assess the violation. Now on the final violation concerning the use of a celebrity on campaign materials for ticket's endorsement. We proved today that the ERC did have evidence beyond a reasonable doubt to hand out a violation on the plaintiff ticket concerning the ROP 5.7.2.10. Former governor Charlie Christ is classified by fundamental definition as a celebrity. Campaign websites and social media pages as per statute 700.9 are classified as campaign materials and statements such as "Charlie Christ visits USF for the cocco/whyte campaign" clearly show that Governor Christ's position as a prominent political figure through the office that he held was put in promotion of these events thus using his position and name for endorsement on campaign material as outlined in statute 700.9 prove a clear violation of ROP 5.7.2.10. And through this evidence the ERC did have proper cause and power to assess the violation. Now members of the court, the law is clear, and the actions of the plaintiff ticket were also clear, and were proved to be in violation of that very law they agreed to follow. Thus it was the ERCs responsibility to assess those violations, and they did so to the proper extent that the law requires. Thank you.

BB: okay, thank you all for coming. At this time court is now adjourned at 6:50pm and the court will now recess for deliberations. We'll be providing a decision which will be available to the public once it's rendered. Until then, all justices will refrain from discussing the matters of the case to anyone outside the court; court is now adjourned.