



JUDICIAL COURT OF TEXAS A&M

Syllabus

KHANG TRAN NGUYEN v. ELECTION COMMISSIONER
MAXWELL

CERTIORARI TO THE STUDENT GOVERNMENT ASSOCIATION
ELECTION COMMISSION

No. | 73-02. Argued: October 21, 2020 Decided: October 23, 2020

The Appellant, Khang Tran Nguyen, came before the court against Appellee, Election Commissioner, Cara Maxwell, on October 21, 2020. The appellant, Nguyen, claimed he was wrongfully disqualified for failure to submit a valid expense report. Nguyen was pictured on Instagram campaigning with a black poster board. Election Commissioner Cara Maxwell informed candidate Khang Tran Nguyen of his violation, and thus his fine of disqualification. The court has examined whether the disqualification of the appellant, Nguyen, was justified given the expense requirements in the code.

MINOR, V.C.J., delivered the Dissenting Opinion

Dissenting Opinion

Mr. Nguyen was cited with the campaign poster in question on October 1, 2020, after the September 30th 5:00 deadline for filing expense reports. Nguyen claimed he brought the poster board from home, and he did not spend any money on the election (the flyers attached to the poster were expensed through the student print allowance.) Nguyen says he did not spend any dollars on campaign material, therefore did not have to file an expense report. Election commissioner argued otherwise; the poster board is campaign material, and must be expensed.

Examining the code from a purely objective, original, and textual approach, I have to agree with the Election Commissioner. The Student Government code offers multiple regulations for matters such as this. First off, what qualifies as a campaign material, and what should be expensed and reported.

S.G.A.C. Article VII, §I

- (a) Each candidate for any office shall be required to keep accurate, up-to-date records of all campaign receipts and expenditures.
 - (1) The term “expenditure” is defined as the fair market value or actual cost, depending on the appropriate circumstance, of all campaign materials used or obtained by any candidate in their campaign and any fines incurred by the candidate...
 - (6) the term “campaign materials” shall be defined as any items, services, or materials used or intended to be used in the course of campaigning or preparing for a campaign.

According to the text, the appellant was in possession of an item per definition of the “campaign materials,” and used the material to campaign. By way of the Instagram post evidence, it was clearly used for purpose of campaigning. Thus, by the text, a campaign material is qualified to be an “expenditure,” and must be reported. The appellant failed to expense the campaign material, and as a result, received a finance violation, resulting in a disqualification. **S.G.A.C. Article VI, §IV** includes the violation and fine for such issues:

Lack of receipts or Fair Market Value Form	Disqualification
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The appellant argued repeatedly, he did not understand which items should be expensed, and was very confused whether or not to expense the poster board. Obviously, if you use campaign material, per the code, it is an expenditure, and should be reported. In addition, appellant argued the poster board was made by several different brands, hence he did not complete a fair value form, as he thought it would be unfair to other candidates. It is apparent however, the appellant had no other expenditures, and reporting this item would have allowed him to stay well within his budget. The code clearly states to use the fair value system for items without a receipt, or donated material. It does not say withhold expensing any campaign material, for any reason.

S.G.A.C. Article VII, §I

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- (b) Candidates must use the following system when determining the expensed cost of materials:
 - (3) all donated materials are to be expensed at fair market value, regardless of quality.

S.G.A.C. Article VII, §II

- (b) all candidates filed under a minor race will have a budget of \$200.

S.G.A.C. Article VII, §I

- (c) It is the responsibility of the candidate to assess a fair market value for any donated campaign materials or campaign materials used without any proof of payment. This shall be done by filling out the Fair Market Value Assessment Form provided by the Election Commissioner. Fair Market Values must be assessed using a minimum of two (2) vendors. If a candidate lists less than the required amount of acceptable vendors, the candidate shall receive a minor violation. This form shall serve as the receipt for donated items and must be included in the submitted finance report.
- d) Candidates must list the entire cost of each individual expense that results in campaign material that in any way suggests support for their candidacy. There shall be no prorating of costs to account for unused campaign items which were purchased

Nor does the code state donations are limited to an outside source. Needless to say, donations can include items from the candidate himself. Regardless of whether or not the appellant had a receipt for the campaign material, by the text, the poster board is classified as a donated material, and is to be expensed.

Furthermore, what is the purpose of a budget, if an expense report is not filed? A budget is an allowance for a particular amount of money, over a set period of time. The budget is put in place to provide all candidates with an equal playing field, regardless of when the item was purchased, and by whom. Additionally, the fair market value system has been put in place for those items without a receipt, or items donated to the campaign, to which the poster board fits within both categories. The appellant argues the poster board was a “spur of the moment” decision, and because he supposedly brought the poster board from home, he didn’t know if he should expense the item. To be noted, no violation would have resulted from this expenditure, had he expensed the campaign material. The Election Commission put in place regulations for campaign materials which no receipt was available: the fair market value system.

While it is reasonable to bring high school supplies to college, the appellant provided no evidence to support his claim. A pure textualism approach does not give the court authority to make a decision based on the word of the appellant. Did he really bring the poster board from home, or did he purchase the poster board October 1, 2020, past the deadline? Moreover, even if the appellant did bring the poster from home, the text does not give the court the power to determine an amount for which items purchased (purportedly previously) can be used as campaign material without filing an expense report.

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If the court chooses to allow a poster board brought from home, what will be the next campaign material allowed? This is a slippery slope, one the court cannot go down. The code is to be applied equally and justly to all candidates. Appellant failed to expense an item, that should be expensed per the code, and he should be disqualified according to the fine aforementioned.

It can be argued the poster board does not fall within the requirement to fit both of the following criteria:

S.G.A.C. Article VIII, §I(c)

“Items to be expensed shall include, but not be limited to, items that fit both of the following criteria:

- (1) The item would not be purchased but for the candidate’s running for election.
- (2) The item cannot be accessed for free by the regular student.”

As mentioned previously, we do not know if the appellant brought the poster board from home, or purchased during or after the campaign period. Referring specifically to **S.G.A.C. Article VIII, §I(c)(1)**, there is no evidence. But for appellant’s word alone, both requirements would be met. Rather, the evidence shows he used the poster board for campaign purposes, did not file an expense report, and thus is fined by disqualification. Per the code, appellant was required to file his campaign material as an expenditure, whether it be as a donation, or material without a receipt, as stated in **S.G.A.C. Article VII, §I(a)(1)(6), (b)(3)**. He failed to report his expense. The code is clear, if the item is used for campaigning, report it.

I realize the requirement is for the items expensed to fit both criteria. However, by the same token it is not limited to be within these requirements. Besides, this part of the code falls under the auditing regulations, not the candidate’s regulations for expensing such items. **S.G.A.C. Article VIII §I**. Furthermore, neither appellant or appellee argued this part of the code, the core of which the majority opinion is founded upon. As previously mentioned, the appellant did not fulfill the burden of proof, and we cannot be certain he brought the campaign material from home. Be that as it may, I do not think it is relevant if he did or not. Per the code above-mentioned, the material is to be expensed if it is used for campaign purposes.

The scales of justice balance the interests of one individual to those of another. While this item is a small amount, that is not the point. The item was a campaign material, and should have been reported. This miniscule amount may not seem detrimental, however, had the item been valued at \$100, I am not certain the majority would still rule the same. Subsequently, this does not make the code evenly and fairly applied. The application of the text, nothing more, nothing less, is the duty of the Court, and my duty as a Justice. The poster board was clearly a campaign material, whether it was donated or an item without a receipt, and per the code, should have been reported as an expense by the appellant, Candidate Nguyen. He was rightly disqualified.

Dissenting Opinion

SIGNATURE OF THE JUSTICE


Alexandra Minor, Vice Chief Justice