

SPRING TERM, 2022



## JUDICIAL COURT OF TEXAS A&M

### Syllabus

DENNIS HERRERA *v.* ELECTION COMMISSIONER MAXWELL

CERTIORARI TO THE STUDENT GOVERNMENT ASSOCIATION  
ELECTION COMMISSION

No. 74-03. Argued March 31, 2022

Dennis Herrera (“appellant”), a candidate for Senator for On-Campus Residencies, was disqualified by the Election Commissioner (“EC”) for failing to submit his finance forms by the proper deadline. The appellant received three write-in votes, falling short of what is required for a write-in candidate to win a seat. The appellant filed a petition for Writ of Certiorari with the Judicial Court arguing that the EC did not uphold her duty to run a “free and fair election” under the Student Government Association Code (“S.G.A.C.”) by keeping his name on the ballot. The appellant stated that by allowing his name to remain on the ballot, voters were misled to cast a ballot vote instead of writing his name in. The appellant is asking the Court to merge his ballot votes with the votes that were written-in for him, enabling him to assume a currently vacant seat as a Senator for On-Campus Residencies. The Judicial Court must evaluate the validity of the EC’s application of the Election Regulations under the S.G.A.C. and determine if the appellant should receive the votes casted for him on the ballot.

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## Opinion of the Court

MCINTOSH, C.J., NESMITH, V.C.J., PALIT, BAGLEY, MEISENHEIMER, and MOSTY, JJ., delivered the opinion of the Court, in which SCHROEDER, J., joined.

The appellant's initial disqualification came about due to his failure to submit his null expenditure report by 5 pm on March 2, 2022, the deadline communicated by the EC. V S.G.A.C. §601.9(3) (d) clearly outlines that candidates who are disqualified less than 7 days prior to the start of voting "shall not be removed from the ballot under any circumstances, and the disqualification shall not be publicized by the Election Commission until the announcement of unofficial results after voting has taken place." Therefore, since the appellant was disqualified at 12:47 am the day that voting began, the appellant's name remained on the ballot.

Following his disqualification, the appellant sought to then run as a write-in candidate and informed voters to write his name in rather than select his name on the ballot. As provided under V S.G.A.C. §601.3(4) (a), a candidate "must receive at least 5 votes for that position" in order "to be considered for a write-in seat." However, the election results show that he only received 3 write-in votes, thereby rendering him unable to assume a seat on the Student Senate. The appellant was under the impression that if he received the additional votes from those who selected his name on the ballot, he would meet the 5 votes minimum and be able to fill a seat. However, the Court determined that whenever a candidate is disqualified from an election that they have filed for, they are disqualified for the entire election cycle.

V S.G.A.C. §601.6(4) (b)(1): "The following acts prevent a candidate from maintaining qualification within a current election: ...failure to submit a signed finance form by the appropriate deadline."

Therefore, if the appellant could not maintain qualification for the current election, he would not be eligible to receive a seat for Senator for On-Campus Residencies even by write-in votes.

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The appellant acknowledged that he was properly disqualified by the EC for failing to submit his null expenditure by the expressed deadline—in other words, he was not disputing his initial disqualification. Rather, the appellant argued that he was critically disadvantaged as a write-in candidate because his supporters were misled into selecting his name on the ballot when they should have instead voted for him by writing his name.

The Court, however, found that the fundamental issue at hand was that of disqualification. Regardless of the amount of votes that he received as a write-in candidate, the appellant was disqualified and therefore made ineligible. A candidate that has filed to run for a seat in an election cycle and has then been disqualified by the EC is unable to circumvent their disqualification by receiving write-in votes. Furthermore, the EC followed what is clearly outlined in V S.G.A.C. §601.9(3) (d) by keeping the appellant’s name on the ballot.

The reason for keeping a disqualified candidate’s name on the ballot, when disqualified less than 7 days prior to the start of voting, is to allow them the opportunity to appeal their disqualification to the Judicial Court. If a candidate’s disqualification were to be overturned by the Court, it would first be necessary that they are able to receive votes—a condition that requires their name to remain on the ballot. While the appellant asserted that the EC should be obligated to publicly announce a candidate’s disqualification, the Court found that this would have an unpredictable effect on the outcome of the vote, which again places the candidate’s wishing to appeal their disqualification at a potential disadvantage.

Furthermore, under V S.G.A.C. §601.9(3) (d)(1), a candidate that wishes to be removed from the ballot has the ability to “withdraw from the election at any time in writing via email to the Election Commissioner”. It is further outlined that the EC “may only remove a candidate from the ballot within the 7 days prior to voting opening upon receiving an emailed request for withdrawal from

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the candidate,” again supporting the EC’s action of keeping the candidate’s name on the ballot.

The Court has determined that the EC properly followed the Election Regulations, including the stipulation for a “free and fair” election. As a result of the appellant’s disqualification, the candidate is ineligible to receive a seat even by the means in which the candidate seeks.


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SIGNATURES OF THE JUSTICES

No. 74-03

  
Karissa McIntosh, Chief Justice

  
John Nesmith, Vice Chief Justice

  
Sawyer Bagley, Associate Justice

  
Kyle Schroeder, Associate Justice

  
Caleb Mosty, Associate Justice

  
Ishita Palit, Associate Justice

  
Catherine Meisenheimer, Associate Justice