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Brown vs ERC Trial 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 Senator Evan Brown vs. the Elections Rules Commission on the decision rendered on the 13th of November 2013. Presiding over this hearing is the Honorable Chief Justice Bryan Buenaventura. 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 is stands, one nation, under god, indivisible, with liberty and justice for all. Thank you, please be seated.

Bryan Buenaventura (BB):

Good Evening,

I confirm that the Supreme Court does have quorum present, with that, Court is now in session. The day is November 13, 2013 the time is 6:01pm. This hearing will proceed as prescribed by the Student Government Statutes as well as Supreme Court Rules of Procedure. Although the parties involved will not be sworn in, be advised that knowingly presenting false testimony is a violation of University policy and can result in sanctions determined by the Judicial Affairs Office. So, in the interest of completing a fair hearing, I ask that everyone tell the truth when addressing this Court.

I ask that both parties ask for permission before approaching the bench

Both Parties are free to move about the well as they please.

Before we begin, pursuant to our ROP's section 5.6.3 I will explain the procedures for today's hearing:

Today's hearing will be heard under our appellate jurisdiction:

Rules of Order

1. The Appellant (Evan Brown) may make an opening statement with a time limit of 5 minutes.
2. The Appellee/Respondent (ERC) may make an opening statement with a time limit of 5 minutes.
3. The Appellant will then have up to 20 Min to state their oral argument, in which any of the Justices may question the Appellant at the expense of their time.
4. After the Appellant has exhausted or concluded their oral argument, the Appellee/ Respondent shall have up to 20 minutes to state their rebuttal. The Court may also question the Appellee at the expense of their time.
5. After both arguments are heard, members of the Court may extend time to further question either party if they choose to.
6. The Appellant will deliver a closing statement, limited to 5 minutes, and then the Appellee will deliver a closing statement, limited to 5 minutes.
7. At that time, the trial will be adjourned and the Court will retire for deliberations."

Prior to today's trial there was a pre-trial motion to dismiss the case,

By vote of 3-0 by Court Leadership, the Motion was DENIED.

This trial does indeed fall under appellate jurisdiction pursuant to Statues 501.2.1 "all cases and controversies involving the Elections Rules Commission" due to the fact that the ERC did indeed hold a hearing as evidenced by the "official opinion of the Elections Rules Commission in regards to the Grievance hearing"

Are there any other matters the Justices want to address?

Daniel Shapiro (DS): IN accordance with Statute 503.8, Justice Hamed and I are obligated to state that we sat on the Constitutional Review Ad-Hoc Committee. Acting under the authority granted in the Judicial Ethics Act Title 503.9.6 which grants Justices the ability to participate in the creation of

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measures which concern the “improvement of the law, the judicial system, or the administration of Justice” Justice Hamed and I acted as full voting members of the committee.

BEING that the question at hand is in regards to the ERC’s constitutional jurisdiction rather than an issue dealing with the prudence of the amendments themselves, Justice Hamed and I see no cause for “prejudice, bias, or interest” in the subject strong enough to warrant recusation.

BB: Are there any questions about the format or procedures?

Please keep all comments to yourselves, please turn off any cell phones or put them on vibrate, if you need to exit for any reason please use the door to the upper left.

I would like to remind the parties that we are on the record.

With that said we will now hear the case of Evan Brown vs. ERC

Let the record reflect that the clerk is passing out the brief submitted by Senator Evan Brown; and you may continue whenever you are ready to start.

Evan Brown (EB): good evening your honors. If it would please the court, I would like to open my brief by giving a small synopsis of the events that have happened thus far. Six constitutional amendments, deliberated in the constitution revision ad-hoc committee, read by and modified by the rules committee and presented to the senate and read, were approved by this student body with a majority of at least 80 percent. These six amendments, after they were approved, a grievance was filed against three of them, which was accepted by the elections rules commission. The ERC upheld the grievance and took it upon their own authority to strike down the amendments, regardless of their own jurisdiction. This is why I appear before you today. This hearing should have been tried under the Supreme Court’s original jurisdiction as it explicitly states in statute 701 that the ERC only has the authority to rule and accept grievances filed against candidates; which is why I’m here before you today asking that this ruling be struck down. Thank you.

BB: thank you. Supervisor of Elections Rules Commission, you may step up and have a five minutes opening statement.

Sayf Hassouneh (SH1): alrighty. Hello guys. So my opening statement is pretty much just going to be a rebuttal of the Senator’s opening statement; is that alright?

BB: that’s fine.

SH1: excuse me. So there was a precedent actually set last year; there was-I’m not sure if you guys recall, some of you may not have been around-but there was a student body referendum that was shot down last year. Pretty much through the same mechanism that we shut this one down. What it was, the precedent, was set that you would just not certify the elections if it broke statutes, because as it says in title 2 for our oath, we’re supposed to uphold statutes, I’m sure you all know it; we all took it in here. So it was believed that the best way to uphold statutes in this situation would be to just not put on the ballot, because once something breaks-when someone breaks the statutes it should not be on there; and since it was already on the ballot when we noticed it, we decided that the best way would be to not put on the certification; which was the precedent that was set. Second of all, there was-it was

mentioned that the original jurisdiction should have went to the supreme court, but-sorry about this, I'll find it in a second, I'll find the exact statute, here it is-the supreme court actually has appellate jurisdiction over anything involving the ERC. And as anybody here who is well-versed in law understands, you cannot maintain appellate and original jurisdiction, except for one court, and that is the Supreme Court; but they do not maintain it over the same case, and that's just the US Supreme Court that is the only one that is the exception to this. So I believe that since the supreme-the student government supreme court-had appellate jurisdiction, they cannot also maintain original jurisdiction. And the statute, sorry, is 501.2.1, it's going to be title 5 obviously, which is the one that deals mainly with the judicial branch, and it states that all cases and controversies involving the elections rules commission fall under appellate jurisdiction. And I believe I've really exhausted my talking points; thank you very much guys.

BB: thank you. You may sit down, and now Senator Brown you may present your oral argument. You have 20 minutes. If you exhaust it all, and we feel that we need to ask you more questions, we may choose to do so. You may start whenever you are ready.

EB: thank you your honor. I believe I really went over what I said earlier, but I'd like to go over more in-depth, my original point that the ERC did not have jurisdiction in this to begin with. In statute 701.4, duties of the associate supervisor of elections, it explicitly states that the associate supervisor can only accept grievances filed by students against candidates. Vote on the assessment of violation to a candidate. And the duty-the duties of deputy supervisor to elections are basically the same; it only says that they can accept or rule on grievances filed-

DS: so are you saying that the associate supervisor of elections and the deputy supervisor of elections didn't have that authority but the ERC did; or are you saying that the ERC itself did not have the authority to rule on this grievance.

EB: no your honor, I'm saying-from the beginning the ERC did not have this jurisdiction. As it says in the- in the rule of the ERC-in their own rules of procedure 1.2.1: that the ERC is an unbiased official entity of student government created to oversee the execution and logistics of all student government elections. Excuse me one second. Yes, and it also says, it states in statute 501.1.3 that all cases and controversies involving a contest of elections are to be tried under-

DS: so you are saying that this did in fact constitute a contest of elections and not a normal grievance?

EB: I agree.

DS: so would you not say that to ensure the proper execution of an election that the ERC should have the power to rule on valid issues like this?

EB: no, it does not state it in statutes that the ERC has that authority.

DS: but would you say that's an implied power?

EB: no, it explicitly states that they only have the right to rule against a candidate, not in a referendum.

BB: so the key word here is candidate? There's nowhere in there that says anything about-

EB: there is nowhere in statutes that states that they have the authority to rule on referendums or constitutional amendments.

DS: couldn't you say that under 5.7.1.10 that says that any violations that are not specifically outlined can be left up to the ERC to be considered as a violation. Couldn't that be construed to say that they do have an implied power to rule on something like this? Or would you say that that is still pertaining to candidates?

EB: no, I have to say that it still pertains to candidates as statutes 701.2, 701.3, and 701.4 state that the elections rules commission may only accept and vote on grievances filed against candidates. It is explicitly stated. I don't believe that it gives them any further jurisdiction, regardless of whether or not the statute you just mentioned.

DS: I just want to question: what would you believe is the inherent purpose of the ERC?

EB: as it is defined in the rules of procedure, it is-it should be an unbiased entity of student government that creates and oversees the logistics of the elections. I feel that the ERC was created to oversee the candidates themselves and make sure they were upheld to it, to a certain standard of quorum in their-while they were running for whatever position they were.

DS: how would you rebut what the respondent said in his opening statement about there being pre-existing precedent for this from last year?

EB: I believe precedent does not overrule statutes, so I feel that the court should keep that in mind.

BB: does anyone have any more questions for Senator Brown?

Sammy Hamed (SH): Mr. Brown, pursuant to the title 7 election codes and statute 700.46: an assessment given by the elections rules commission for a breach (inaudible) wouldn't the assessment not imply that the ERC could hold a hearing on this issue, since it was a breach?

EB: could you restate the statute?

SH: yes sir. The statute states that an assessment given by the elections rules commission for a breach of any student governing document, wouldn't that not imply that they could hold a hearing over this issue?

EB: no. they could hold a hearing, but a grievance, they couldn't accept. I would have to say.

BB: do you think you as a senator should create more legislation or some language in order to deal with this sort of thing because it sounds to me like this hasn't really happened before; and the reason we're in this situation right now is because certain things weren't put in place. Do you believe you as a senator can supply some new legislature?

EB: I believe it is absolutely necessary and-

DS: we're saying implied a lot here, so there isn't much precedent for this.

EB: yeah, I have to agree. I would be more than happy to lead a bill in the senate which would give-shed more light on this type of issue because I understand that constitutional amendments aren't really-grievances aren't fully explained in statutes, so I think in the future this should be elaborated on more.

BB: okay, are there any further questions for senator Brown? Seeing none, thank you senator Brown, you may sit down. And you may step up. Mr. Hassouneh I'll remind you that you have twenty minutes so please feel free to address anything that you feel you need to rebut.

SH1: yes sir, thank you very much. So first rebuttal is the duties of the associate supervisor of elections: do you guys all have title 7, or I'll try to enunciate, I'm sorry. Let's see, the duties of the supervisor of elections under 701.4.2 which is on page 9, it states that one of the duties is to assist the supervisor of elections in any manner possible that would ensure the proper execution of the role of the elections commission. Now as stated by Senator Brown, the role of the elections rules commission is to be an unbiased agency which oversees the logistics and execution of the elections. Now I do believe that this is very pertinent, the whole issue with the constitutional amendment referendum was pertinent to execution; that is the definition of execution. So we had to make sure to oversee that we don't execute something that wasn't supposed to be executed; something that violated statutes as we were told to do when we took the oath, we have to uphold statutes. So if we were to violate statutes we could not execute that. And by certifying it and not removing it, as we did with the hearing, we would have been executing something that is wrong honestly; something that violated statutes.

DS: would you believe that the very legitimacy of the constitutional election portion was questioned in the grievance to you in your first level appeal?

SH1: sorry, I'm not quite sure-

DS: it was appealed to you based on the whole-was it (inaudible) or not. So you believe that the very legitimacy of that whole section of the ballot was brought into question with that grievance.

SH1: I'm not quite sure, so I'm going to try and see if I can get your question out. Are you asking about the merit of the grievance filed or are you asking about 705-the whole part of title 7.

DS: I'm asking, do you believe that he-was he petitioning for that entire part of the ballot to be voided, thus calling into question whether it was legitimate or not.

SH1: was who?

BB: why don't we-

DS: the petitioner in your first level appeal.

BB: why don't we start like this: can you please explain to us how this grievance came to the ERC first?

SH1: oh yeah, of course. I'm sure you guys all saw-we tried to post it as many places as we could-the grievance was actually brought forth by (inaudible) and he brought it forth saying that three of the amendments were not published as stated in statute 705.5.3, where it says constitutional amendments shall be published with an explanation of what is being proposed at least five business days prior to being voted by the electorate. Does that answer the first step of your question?

BB: sure

DS: was there any kind of screening process for this? Like was there ever a discussion as to whether you should take up this grievance at all?

SH1: well yeah, the discussion came in when the grievance came in-it was a valid point; we wanted to verify statutes and make sure that what they were bringing had some sort of (inaudible) or tangible evidence.

DS: what I'm getting at is: where did you guys find the authority to actually make a ruling on this?

BB: yeah, where in this language did you see to apply-

SH1: I think-

Corey McCance (CM): if I may, I think you brought up 701.4.2, is it your understanding that this is by any means necessary statute that at that point that in order to execute the job, it is by any means necessary, including upholding these grievances, regardless of whether or not you have the authority for it?

SH1: I mean, I think the question that comes down is in 701.2, which is duties of the officers of the elections rules commission, which is all paid members are considered officers. 701.2.4 says that it is our duty to assess violations, it doesn't necessarily-

DS: can you read 701.2.4 in its entirety?

SH1: I just did, assess violations.

BB: can you repeat that statute number again?

SH1: 701.2.4

SH: do you believe that the word assessment implies that a grievance hearing should be held?

SH1: I do not, but the reason for us holding the grievance hearing was transparency; this is a very controversial and delicate issue. And we decided that we would hold the grievance hearing and make it a public forum.

DS: so wouldn't you say that a violation generally applies to a candidate rather-who was this violation against? Who was committing the violation?

SH1: a violation I do not believe, and I will look up the definition real quick to make sure-because it should be

CM: it's 700-

SH1: yes, thank you very much. A violation is an assessment given by the elections rules commission for a breach of any student body governing document-

DS: so it's assessment. What does the word assessment mean?

SH1: assessment would be something you'd look up in the dictionary; there's no actual definition within statutes.

DS: what is assessment though? Assessment of (inaudible)

SH1: an assessment could be a variety of things; it depends on your interpretation. I'd be glad to open up Merriam-Webster, and we could all look up the definition. But if it's not put in statutes here it says the first word is assistant deputy and then goes to ballot; the rest of the As aren't there, it goes in alphabetical order. It's not in the definition of terms for student government elections.

CM: do you believe that assessment also gives you the authority to rule on that matter; not just to assess and understand the issue, but to actually make a stand against it or for it.

SH1: well, we're supposed to assess violations. I think there is a different way for you-like for people to interpret words. For example, assess could be to look at a situation and assess it or diagnose it, but you cannot (inaudible) to look at it and diagnose it. We assessed that violation by having that public hearing because we wanted to give both sides the opportunity to bring more information; it was just-it was a form of an investigation just in a public forum.

SH: so since we can all agree that the definition of the word assessment is very broad, is there anything in your ROPs that would separate something that doesn't involve a candidate what your procedure for that would be.

SH1: there is no sort of enumeration for the procedure we take for a referendum.

DS: where in statutes-which statute were you referring to when it said assess violations?

SH1: 701.2.4 and let me find the page number for you. It is going to be on page 8, if we have all the certified-the one that says certified as of August 20th. Is that the correct page?

DS: let's see...

SH: 701.2.4 you said?

SH1: yes sir, 701.2.4 says assess violations.

DS: so since it really isn't outlined in statutes what the word assess is, how was it used in context would you say generally throughout title 7.

SH1: I would imagine-

DS: a lot of implication here-

SH1: honestly

DS: for example, 701.2.5 says that the ERC assess violations to campaign (inaudible) or to a candidate. Then 702.7.6 the elections rules commission may assess violations to campaign tickets or a candidate (inaudible). So it seems like it says here it's used mainly for things against candidates rather than-

SH1: I mean, not to cut you off, but it says candidates in the sentence, but nowhere does it say assessing violations could not mean anything else. Just because they've enumerated one part doesn't mean that another part couldn't be implied.

DS: the word assess here seems to mean points though, your assessing points to candidates, because that's the enumerated powers you have-

SH1: that could be your interpretation; my interpretation is completely different. I believe assess violation is to simply state that diagnose and determine if a violation happened and if it did, we must rectify it, we must find a way-

BB: let's go back to this precedence that you said happened last year. Explain how that happened last year and what steps were-because it sounds to me that we never really, ERC ROPs or even statutes doesn't seem like there was something set in place when amendments are challenged so if you could take us back to the-

SH: I just want to be more specific-I just have a question to follow up on that, more specifically was this precedent that you brought up last year, was there a grievance filed for that last year? Because you set a precedent and this year a grievance was filed and a grievance hearing was held; is that what happened last year for the situation?

SH1: I think I'm starting to understand. So first of all, the precedent wasn't set for constitutional amendments, it was set for referendums, just to clarify-

DS: precedent doesn't exactly apply here

SH1: well seeing as the constitutional amendments were actually a referendum, I believe it would apply.

SH: okay

SH1: sorry, let me just answer his question. And then going off yours, there was not a grievance filed, it was internal. There was an impetus from within student government for the elections rules commission to pursue an investigation. Once that happened, which is well within the ERCs right, we're allowed to investigate things on our own, we don't necessarily need to wait for a grievance, but grievances are allowed to come in. regardless, there was no grievance. Again, it was an impetus from within student government. But what happened was, I couldn't tell you necessarily the steps that were taken, I can just tell you the final result. Because the deliberations mainly consisted of the supervisor of elections from the previous year, Joe (inaudible), which is the legal counsel, and a couple other prominent members of student government at the time; I was only a deputy supervisor, so I was not in on the deliberations.

SH: so there was no hearing held for this precedent that you mentioned last year?

SH1: there was no hearing. The precedent was actually with the resolution. What I'm saying is the precedent was set with resolving this issue; not the precedent was set with the way we handled it. We resolved it the same way, we just decided to handle it in a more open manner, so that way people understood what was happening in the ERC and we weren't doing things on a whim.

SH: and would you call- would you agree that you did hold a grievance hearing after this grievance was filed?

SH1: I mean, a grievance, let me see-

BB: because it does state in your opinion that it was a grievance so-

SH1: yes sir. Let me find it.

DS: and if you'll look at the very bottom: by signing below I hereby authorize this document as the official opinion of the elections rules commission in regards to the grievance hearing and its ensuing findings, etc.

SH1: alright. A grievance, as statute 700.26, that's going to be in like the definitions, the first couple pages; that's on page 4 of title 7, a grievance is any complaint brought forth via the grievance form.

DS: yeah, I know.

SH1: yeah, so it's a grievance hearing, just not a grievance hearing for candidates.

DS: is it outlined anywhere in your ROPs how a grievance hearing would go? Was it a candidate?

SH1: no, it is not. But we imagined because there is no enumeration and there is nothing that said we weren't allowed to, we imagined that it was an implied power. And through that, off of that belief and off of that notion, we just figured we'd go about it the same way we'd go about any official meeting of the ERC. So we have to maintain some sort of decorum-

DS: so we used the word implied here, so is the only place that you're saying an actual enumerated power for you to hold this hearing and have that original jurisdiction hearing was with the assessed violations and the overall powers of the ERC? Do you see anywhere else in statutes that enumerates a power for you to actually hold a hearing on an issue that does not deal with candidates?

SH1: yes

DS: and where?

SH1: where it says we're supposed to deal with all logistics and execution-

(inaudible)

BB: can you tell me where it says that again?

DS: it's in the definitions.

SH1: it would be on page-page 3, 700.19.

BB: okay, and it's because of this that you feel that you were just in observing and hearing that grievance?

SH1: it is not just because of this, but this is definitely a player in a sense in the reasoning behind my actions, yes.

DS: so you're saying your case rests on execution and logistics?

SH1: I did not, I said that was one of the players, not the foundation of it.

DS: execution and logistics in addition to assess violations?

SH1: in addition to the definition of grievances, in addition to the roles of the deputies of elections, and the precedent set by the ERC, and the fact that it's an appellate jurisdiction of the supreme court; because had it not been, I would have thought it was your-the original jurisdiction, but it states explicitly-

DS: well, let's circle back to my original question. Do you believe that the petition that you got stating that they weren't published five days in advance constituted a challenge-direct challenge to whether these amendments should have stood? It seems like he's saying these are not legitimate, they should not stand, they-the procedure that they went through violated statutes ergo they have to be voided. Is that what you're saying that this guy said?

SH1: if I recall correctly, I don't believe there a remedy section in our grievance forms. I know in the court there is a remedy section, I'm not sure.

BB: yeah, I think we need to address that. Can you explain to us how this grievance (inaudible) because I've never seen it before. What did the student exactly-

SH1: I don't actually have it on me

BB: it's okay, but can you explain more or less because like you said, in our grievance forms when somebody wants to get a trial they check off exactly specifically what it is so can you explain to us how this grievance form was made to you and from that made you want to hear the grievance; what granted the grievance?

SH1: I guess the way it went is the way we've been doing grievance forms for the past couple of years. It's pretty much-it's a piece of paper. You have to sign it, the supervisor signs it and we timestamp it, and then you state the statute violated, why you believe/how you believe it was violated, and you can go ahead and like-well I guess that's it honestly. There is no remedy section.

BB: okay. And in the years prior, from what you know, it mostly just dealt with candidates?

SH1: I could not honestly give you an answer because in the previous years I worked as a deputy, and we had no grievances filed, so I have no experience in that situation. Yes sir?

CM: so it's-so it's my understanding that you're saying that you have-that the court cannot hold original jurisdiction so it's my understanding that what you're saying is 501.12 and 501.13 coupled together with 501.21-

SH1: I don't actually have title 5 with me; it's not on the website.

CM: scratch that, never mind.

DS: okay, what he's getting at though, is do you believe that this challenge constituted a contest of elections?

SH1: I believe it constituted, let me find it, (inaudible)

CM: and would this not fall under review of legislation?

SH1: I believe it constituted a case in controversy involving the elections rules commission; which it obviously did.

DS: that's the jurisdiction that we used to take up this case, that the elections rule committee was a party-is a party now, and was it a party in that case too? Was the ERC a party in the original appeal?

SH1: had it been, we would not be able to hold an appeal regarding ourselves.

DS: of course

SH1: so I guess that's my way of answering the question: we were not.

DS: so you weren't a party?

SH1: no sure

DS: could you show me (inaudible)

SH1: very simple, it would just be the referendum. It's not necessarily the party, it would be student government who sponsored the referendum. And in this case student body senate. Because it was a student body senate referendum.

DS: the parties in the original hearing that you held wasn't Mr. (inaudible)

SH1: oh do you mean the person who actually brought up the grievance would be, yes, Mr. (inaudible)

DS: who's the other party in that case?

SH1: it would be the student body senate, the people who brought forth the referendum. They had a representative, Mr. Christopher; and if I could actually-is it possible for me to ask the gallery?

CM: I think where he's getting at is was the problem with the referendum or was the problem with the way the referendum was implemented; was it a problem with the election or was it a problem with senate?

SH1: it was the implementation of the referendum.

CM: would ERC not be the other party at that point then?

SH1: no because the ERC is an unbiased agency; we don't do the marketing. I think in this situation the publishing would be a marketing thing. It would be-you have to take it out-we can't do work for anybody else.

DS: here we come back to the term execution and logistics-

SH1: yes sir

DS: would that-

SH1: how could we be unbiased-

DS: publishing, well just publishing six amendments in the paper isn't a biased act.

SH1: it would be because it's a referendum that we're overseeing, and by us publishing it we're giving it a stepping stone above other referendums. If that were the case we would then have to publish referendums for students-no for statutes, because anybody within student government, or within the student government elections, we now cannot have any connection-we cannot do anything for them.

CM: but the problem at hand, the problem that the petition was about was a grievance filed about the execution and logistics-

SH1: of the referendum, not the elections.

CM: of the election of the referendum.

BB: one at a time

CM: the vote of the referendum if I'm not mistaken. So by that point would it not be an issue with the logistics of ERC?

SH1: I think there is some sort of misconception going on here because the issue was that it violated, and I'll find the statute if I recall 705.5.3, and that's the student referendum must be published-or shall be published with an explanation of what's being proposed. Now, that has-that is not the job of the ERC and never will it be; we are unbiased agency, we do not and will not ever go ahead and put peoples' information out there or help them advertise, because that is not unbiased, that is the epitome of bias; by supporting something we are showing our bias. It's like me saying I endorse a candidate and I'm putting him out there and I'm giving him an ability because we're not going to pay our own ERC money to put somebody else's stuff out there. If we did, for the student body referendum we'd have to do it for student body referendums-

DS: this isn't a candidate, this is student government poll that you're following statutes-

SH1: SJP filed last year a student body referendum. Is it our job to publish it? I'm not a member, I'm an unbiased independent agency of student government; I am independent of student government.

DS: you are a part of student government and you have to follow student government statutes.

SH1: very well, but I am independent of their actions. I do not actually have to do anything that student government; like I don't have to advertise for student government.

DS: you're not advertising, you're simply publishing something in the paper.

SH1: publishing something would be advertising, in a sense, in a broad sense.

SH: let me interject for just a second, I want to know why making it generally known constitutes the same thing as being biased towards it. Why would you think that publishing these amendments and making them generally known would make you biased?

SH1: if you don't mind my asking, how would you determine, what way would we go about making it generally known?

DS: you would post them verbatim exactly what the students will vote on.

SH1: and where would we do that?

DS: in the Oracle.

SH1: and does that cost money or not? The answer is yes, and we're not wasting our money to do that for student government; they have their money. Student body senate has their money, they have marketing, they can go ahead and do that. They can make flyers and put them in the oracle. We'd be using our own allocated resources to-

SH: I'd like to make a motion to extend Supervisor Hassouneh's rebuttal for ten minutes.

BB: is everyone-is there a second?

CM: second

BB: so we'll continue on.

DS: this was not a referendum just of senate, this was a referendum of student government as a whole; this was a student government constitutional amendment, different than a normal student referendum (inaudible) or an individual student would file.

CM: and going off of that

SH1: can I just rebut that first?

BB: let him go

SH1: thank you very much, and sorry about that. So you said that a student government referendum, that wasn't the case. Because if I recall correctly-

DS: signed by the student body president

SH1: yes, but student senate referendums still have to go through the student body president. Anything actually that student body senate passes must go through the student body president. It was a student body referendum because I don't recall anybody other than senate actually voting on it. Just because judicial was in on the ad-hoc committee and exec was on the committee, that is just a committee that didn't actually have the final say. The final say came down to senate where they had their right to appeal-or the right to change or amend.

DS: there is the student government referendum and there's constitutional-there's a student government referendum: 705.4, and there is a constitutional amendment: 705.5. A constitutional amendment is a separate issue, it's not a bias, it's a thing adding a constitutional amendment to the end of the document; while student government referendum is something that the senate could pass and then be signed by the president. This is a collaboration of student government.

SH1: so would you tell me that if a student- a student brought forth this whole constitutional amendment that the ERC should advertise it?

DS: I don't believe a student would be filing-

SH1: any student may propose a constitutional amendment, that's 705.5.1.

DS: okay so a student proposes an amendment to the constitution, it goes through senate, it's signed by the president, etc, you as it says in 705.3 would have- would be obligated to publish it, and you wouldn't be saying-

SH1: sorry, you said the ERC would be obligated, I don't read that, that's an implied definition.

DS: given execution and logistics I would say that that would imply that it is the logistics of the election because in order to have the election go smoothly, as execution/logistics would imply, they would have to be published and statutes would have to be followed.

SH1: let's say this was brought forth by student government, there is a reason it says we are an independent and unbiased agency; we are not supposed to collaborate. We don't-you'll never see the ERC collaborating with student government to run an election; and never should it. Because that's where the bias starts to come in, through collaboration, through this whole-the way that you want me to do, there would have had to have been some collaboration, some collusion to a sense.

DS: you're simply advertising what is on the ballot, you are not colluding, you are not promoting anything, you are simply, in plain words, saying this is exactly what you're going to vote on and allow students to read it and decide-

SH1: I would be using my allocated resources to do the thing that I'm not supposed to do.

DS: to execute-

SH1: but it's still not a referendum. Like if the referendum was my job, if it was something brought forth by me, if I were to bring forth a referendum, I would (inaudible) my duty to advertise it. My duty to make it publicly known. Because if I support it, I don't support the referendum because I am independent and I am unbiased. Now I understand that you're saying and just to make it generally known, in a factual sense, I understand, but that would be using our allocated resources, the resources allocated to the ERC to do something for the rest of student government. If that is the sense, then why couldn't have exec done it with their own allocated cash reserve? why could senate not have done it with the money they have? why could not have-judicial has money as well. By saying that it was the ERCs job, you are implying that we take precedent over this issue when we don't have-

BB: Mr. Hassouneh, let me just ask you this: I want to know, it seems that the question here is about whether it's your job to actively promote what you're doing... who is the one that does the promotional things for when-how do students know when there is an election going on?

SH1: when there is an election, it is the job of the ERC to notify people there is an election. It is not our job to notify people of candidates, it is not our job to notify people of who was running, what they're running; we don't-it's like saying that when we have an election it is my job to go tell people that Sham

Patel is running or I guess Abdool Aziz is running, that is not my job. It wasn't the ERCs job last year when SJP came about, and they had to publish their stuff. Let me just check real quick what it says so that I can get the verbatim wording and we can have some sort of analogy here. The initiative as well as the reasoning for bringing forth the initiative shall be made public and accessible to all students five business days prior to referendum election. That is 705.3.7 regarding student referendums.

DS: yes, but that's a student body referendum.

SH1: thank you. But it does not say who, so by the same implication you went about for constitutional amendments, you would be saying that it is also our job to do the constitutional amendment as well; which we were told last year was not our job.

DS: to publish it?

SH1: so you're telling me it is my job to publish student body referendums, even though I'm not a member of student government?

DS: if there are a multiplicity of student referendums, people should know what's on the ballot.

BB: just to clarify: so you're saying that it's the ERCs job to just promote that there is an election going on, and it is from what I'm getting out of this, it should just be the candidates to promote?

SH1: it is honestly not our duty to promote an election. It is something that we do to make sure that people understand what is happening; it's not something that is actually enumerated, it's something that we do because we believe it's right for the students to know what is happening. You can't have an election and not tell the students when.

DS: what would you say is the inherent purpose of the ERC?

SH1: we could just go back to the definition. I don't have to say anything when the statutes can say it. It's an official entity of student government created to oversee the execution and logistics of all student government elections. The commission is comprised of a supervisor of elections, an associate supervisor of elections, two deputy supervisor of elections, and assistant deputies. If an election is called prior to the formation of the elections rules commission, the full-time staff of the advising, training, and operations bureau shall assume the responsibility of the ERC. That is the verbatim definition.

DS: I'm not seeing there where you're given the power to rule on constitutional issues.

SH1: an official entity of student government created to oversee the execution and logistics of all student government elections

DS: execution-

SH1: but as a student government official I took an oath when I was actually confirmed by senate-

DS: so you're saying anybody could have ruled on this in student government. Any officer in student government could have ruled on it.

SH1: no, as it is my job to oversee the elections, their logistics and execution.

DS: logistics and execution.

BB: I think we're, you know, sailing off from what the original complaint was, and it was whether to know if you had the jurisdiction to hear the grievance or not, but what I'm getting is that you believe it was-

SH1: I do and that's because a grievance again, let me find the definition one more time: a grievance is any complaint brought forth via the grievance form-

DS: just because it's a grievance does not mean-

BB: let him finish please

SH1: thank you. And then it goes duties of the officers of the elections rules commission 701.2.4 is to assess violations. It doesn't say against candidates or not; it just says to assess violations. And through this I do believe that our referendum, if it violated statutes, must have a violation assessed against it. This violation was that it violated statutes. The assessment or the resolution to this assessment/the remedy as you guys would see in the court documents was to nullify it.

DS: so would you not say that was a contest of elections?

SH1: I would say one more time that it is a case and controversy involving the elections rules commission

DS: no, that's if

BB: would you agree that this term needs to be further defined in statutes?

SH1: I definitely do, and I would definitely agree that there needs to be some sort of ad-hoc committee, definitely consisting of judicial, senate, exec, and members of the ERC, that would go over title 7 and go over, pretty much title 5 I guess, and find a way to make them be more, I guess, congruent. Make them more coherent when they're together.

BB: and again, you feel that you're confident as the supervisor of elections that what you did was within the ERCs right.

SH1: I would never have done it if I wasn't confident that it was within our right.

BB: and even though it doesn't specifically state in the ERC ROPs that the ERC has-

SH1: you guys are all well-versed in law, almost everybody in here understands that there is implied rule, that there's implied powers; I mean I learned this back in seventh grade when I was learning the US government. And through that notion, as was stated earlier during Mr. Brown's I guess would it-

BB: oral argument

SH1: during his argument, there are actually implied powers

DS: are there implied hearing procedures though?

SH1: It just says we are allowed to assess violations. It tells us in ROPs how we can handle an official meeting of the elections rules commission.

BB: if you can, if you want to choose to wrap up the last bit of questions here, we're about to move to closing statements.

SH1: I'm just going to answer that one last question: it says how we can hold official meetings, it says we can assess violations, it states what a grievance is; I don't see the issue with it.

BB: okay. Do you have anything further for us?

SH1: I don't believe so, and I don't have time.

BB: okay, you can save that for closing statements then.

SH1: oh, I close first?

BB: no, he's going to close. So you can sit down. And Senator Brown, you may proceed for your closing statements; you have five minutes.

EB: thank you your honor. In closing, I'd like to leave the court with a restatement of my earlier argument in the definition. In the, in 700.25 governing documents it states that any documents may be created or adopted by elections rules commission, but shall not conflict with the governing documents. That and regardless of the precedent, student government statutes title 7 does not give the ERC power to rule on cases and controversies of constitutional amendments. The complaint clearly contests the very legitimacy of the amendment portion of the ballot and has nothing to do with the election of a student government member, therefore the elections rules commission should have allowed this case to be tried under the supreme court's original jurisdiction instead of hearing it themselves. Thank you.

BB: thank you Mr. Brown. Mr. Hassouneh, you may step up and give your five minute closing statement.

SH1: I personally didn't see a conflict between what I did and statutes. Again, I believe that appellate jurisdiction granted the court dealing with the ERC meant they could not also maintain original jurisdiction so I'm not necessarily sure where this conflict happened that was stated in 702.5. Also I do believe it was an implied power just because it wasn't necessarily enumerated that that's how you deal with it, but it was stated that you can assess violations as the supervisor of the elections rules

commission, and the grievances weren't necessarily two candidates; grievances were actually as I will recapitulate, any-nope wrong page-any complaint brought forth via the grievance form, and honestly like I said, the precedent was just set with the resolution, the way it was-the way the referendum was voided. We didn't follow the same investigation tactics that they did, we made ours much more public, much more open, excuse me, and we allowed people to bring forth the evidence just to make sure we don't make the wrong decision based off of a very little information; because a little bit of information is never a good thing. So that's really all I have to say, and I don't think the ERC, myself or my associate supervisor of elections, would have done anything we thought conflicted with statutes; because like I said, we took the oath to uphold statutes and the constitution, and that's what we were doing: we were doing our job, we were doing what we took our oath to do. That is all.

BB: alright, thank you, you may sit down. Just hold on a second. Okay, at this time, the trial is now adjourned at 6:50, and the court is recessed for deliberations; we'll be providing a decision which will be available to the public once it is rendered. Until all justices-until then, all justices must refrain from discussing the matters with this case with anyone outside of the court. And with that said, court is now adjourned.