



AUDITORIAL MEMORANDUM

Date: 4/22/2019

Re: RiseTU v. Executive Counselor; BecomingTU v. Elections Committee

ISSUES

- Whether the Executive Counselor properly concluded as to the motivation behind the removal of Alexander Rosenberg from the TSG website
- Whether the Elections Committee properly concluded as to the involvement of BecomingTU, in regards to the removal of Alexander Rosenberg from the TSG website

I. STATEMENT OF FACTS

On March 20, 2019, I received an email from Patron Alexandra Gordon, on behalf of the campaign team, RiseTU, which included a complaint originally addressed to Elections Commissioner Rofiat Oseni. In the complaint, Patron Gordon averred that her running-mate, former-Representative Alexander Rosenberg was removed from the Temple Student Government website's personnel page without proper cause. This fact is uncontested. The complaint further implicitly suggested that the motivation behind the removal was malicious. Upon receipt, I, as Chief Judge, determined that this was a matter primarily of the jurisdiction of the Executive Counselor. So, Acting-Executive Counselor Jordan Laslett investigated the matter and delivered an informal decision to RiseTU on April 3, which absolved all involved of any malicious intent. On the same day, Alexander Rosenberg, on behalf of RiseTU, formally appealed that informal decision to this Constitutionality Council. Then, on the same day, Alexander Rosenberg brought the matter to Elections Commissioner Rofiat Oseni, on new constitutional grounds: the Elections Code forbids current Campaign Members "from using the

Temple Student Government office for any campaigning activity...” EC II, i, i. In response, Commissioner Oseni published Elections Committee v. BecomingTU 2, which penalized BecomingTU. Soon after, BecomingTU formally appealed Elections Committee v. BecomingTU 2 to this Constitutionality Council. About both aforementioned appeals, this Council conducted an investigation, which included thorough debriefs of the original adjudgers and questioning of members of the Executive Branch whom were parts to the improper removal of Alexander Rosenberg from the TSG website’s personnel page. Those members included Deputy Chief of Staff Kate Lyn Broom, who directed Director of Communications Hailey McCormack to remove “Alex and Dimo” from the personnel page, Hailey McCormack, who then directed Webmaster Salman Tahir to remove “Alexander Rosenberg” and “Dimo” from the TSG website’s personnel page, and finally Salman Tahir, the most directly involved. These averments are uncontested. The investigatory and litigatory components of Elections Committee v. BecomingTU 2 and the informal decision of Acting-Executive Counselor Laslett, regarding the same incident, concerning separate constitutional regulations from the former, culminated with public hearings before this Constitutionality Council on April 15, where Patron Alexandra Gordon, representing RiseTU, argued for the reversal of the informal decision of the Executive Counselor, and on April 16, where Chief of Staff Marissa Martini argued for BecomingTU’s Elections Code violation to be repealed, for the sole purpose of precedence. These appeals are merged and resolved by this Auditorial Memorandum.

II. CONSTITUTIONAL ANALYSIS

A.

According to the Temple Student Government Constitution, “[t]he Ethics Board shall operate as the authoritative judicial branch of [Temple Student Government]” TSG IV, ii, i. Further, it states that the role of the Constitutionality Council is to, “oversee the actions of the Ethics Board [Staff]” TSG IV, ii, viii. These rules are supplemented by the Ethics Board By-laws, which state, “[t]he power of judicial review rests in the Ethics Board...” JI, i, i and “[t]he Constitutionality Co[uncil] must ensure the constitutional validity of the Ethics Board’s actions” JI, i, iv. Still, it should be noted that Article One of the Ethics Board By-laws also includes this directive: “The Constitutionality Co[uncil] must give deference to the reasoning of the Ethics Board Staff when considering the potential unconstitutionality of their decisions” JI, ii, v. The form of this deference is predefined: it must “involve[...] a strong consideration of the text in light of the reasoning posed by the officer whose decision is being reviewed JIII, i[...]” IgniteTU v. EC, AM. It is pursuant to these governing rules that in order to limit conflict surrounding this case and that may arise in future cases, this precedential evaluation, which is Constitutionally, and statutorily authorized, must occur.

B.

In this matter, it is unquestioned whether the improper removal of former-Representative Alexander Rosenberg from the TSG Website’s personnel page occurred. In this case, it is the character of the aforementioned happening which is being reviewed for potential errors on behalf of the Executive Counselor and Elections Commissioner. In this memorandum, we will review the informal decision of the Executive Counselor and Elections Committee v. BecomingTU 2

separately.

- **Whether the Executive Counselor properly concluded as to the motivation behind the removal of Alex Rosenberg from the TSG website:**

Upon receipt of the informal decision of the Executive Counselor, regarding the improper removal of former-Representative Alexander Rosenberg from the TSG Website's personnel page, RiseTU appealed to this Constitutionality Council, on the grounds that the Executive Counselor incorrectly concluded that there was no wrongdoing on behalf of members of the Executive Branch. After conducting our own investigation, this Council has concluded the improper removal was no clerical error. Our conclusion rests on a few main factors:

1. *The error was caused by the Director of Communications, Hailey McCormack, and not the webmaster.*

According to the Executive Bylaws, the Director of Communications supervises the Webmaster E 10, and thus, oversees the TSG website. Further, the Director of Communications is a member of the Executive Leadership Team, meaning she is no clerical worker, but instead an Executive decision-maker. Consequently, we cannot find this to be a clerical error, at best, this is a case of negligence.

2. *Other former members of the Executive Branch were not removed from the website.*

Testimony from some of those involved in the improper removal posited that this was a clerical error. However, these same individuals failed to reconcile this averment with the fact that only two people were removed from the website--one gratuitously--while there were no less than three other former members who were not removed. This supports the contention that former-Representative Alexander Rosenberg was purposely removed from the website.

3. *At their public hearing, BecomingTU failed to assert the innocence of Executive Branch members.*

The purpose of public appellate hearings before the Constitutionality Council is not for new facts to be brought to the fore. The purpose is for the Constitutionality Council to hear and consider alternative interpretations of the facts. At BecomingTU's public hearing, guilt or innocence of Executive Branch members was not mentioned. Because of this, this Council has only its own understandings of the facts to contemplate.

- **Whether the Elections Committee properly concluded as to the involvement of BecomingTU, in regards to the removal of Alex Rosenberg from the TSG website**

According to the Temple Student Government Elections Code, "A Campaign consists of all Campaign Members working officially on behalf of any Candidate(s)..." EC I, i, i. It is unquestioned by anyone whether Director of Communications Hailey McCormack was a member of BecomingTU. That being so, it is clear that BecomingTU was directly involved in the improper removal, whether it was a clerical error or not. Further, since no one has contested the Elections Commissioner's finding that the improper removal was a form of campaigning activity, this Council will show deference and not review that unappealed portion of Elections Committee v. BecomingTU 2.

III. CONCLUSION

For the foregoing reasons, this Constitutionality Council reverses the informal decision of the Executive Counselor while upholding Elections Committee v. BecomingTU 2. Pursuant to this appellate decision, it is hereby ordered that the Executive Counselor review the Executive Bylaws to find the proper course of action for disciplining the Director of Communications Hailey McCormack for her error, caused by either malintentions or negligence. Upon our glossary review of those Bylaws, it seems as though there is no relevant directive. If this is the

case, then it is the duty of the Executive Counselor to, after determining whether the error was caused by negligence or malice, either craft their own rule or to direct the Executive Office to do so by amending their Executive Bylaws.



Morrease Leftwich, Jr., *Chief Judge*

Joined by,

Matthew Diamond, *Vice Chief Judge*

Jordan Laslett, *Constitutionality Judge*