Opinion on Fall 2021 Senate Elections Certification

Petitioned: September 19, 2021
Argued: September 22, 2021

CHIEF JUSTICE AGPOON DELIVERED THE OPINION OF THE JUDICIAL COUNCIL, WITH WHOM JUSTICES ABKEMEIER, CHRISMER, DOYLE, RAMIREZ, VASUDEVAN, AND WARD JOIN.

Petition
On September 19, 2021, Hunter Splain, a student and Student Association officer at the University of Tulsa, filed a petition with the Judicial Council of the Student Association (SA) of the University of Tulsa requesting a Writ of Election. The Plaintiff’s petition was filed against Director of Membership, Caroline Williams and claimed that the Defendant violated the Elections Code and Official Elections Results procedure within her capacity as Chief Elections Officer. The Judicial Council convened on September 22, 2021 to hear and deliberate this matter. Ultimately, the Judicial Council ruled to issue a Writ of Election to recount and certify the election, given the Judicial Council’s power under Section V, Subpart C, Paragraph 4 of the Elections Code that permits the Judicial Council to issue a Writ of Election providing “any other equitable remedy which would serve the purposes of the Elections Code.”

In his petition, the Plaintiff cited that Director Caroline Williams certified and signed the election results, and then released them to candidates as valid results. The Plaintiff claimed that the corrected results were null and void on the basis that the previously published results were already certified by Director Williams and Chief Justice Agpoon.

The first claim for relief was that Director Caroline Williams contradicted the Official Certified Election Results by publishing the newly certified election results. Director Caroline Williams violates this portion of the Official Election Results because she certified, signed and published the original results.

For this, the Plaintiff cited the Official Certified Election Results: “I, Caroline Williams, attest that the results of the 2021 Student Association Fall Senate Elections are accurate, and I, therefore, officially certify this election.”

The second claim for relief was that Director Caroline Williams violated the Official Election Results because she certified, signed and published the results.

For this, the Plaintiff cited that this action is in contradiction to the Elections Code, Section I, Subpart B, Paragraph 5, which states: “Certify election results after the close of polls and ensure the publication of the certified results.”
The third claim for relief was that Director Caroline Williams violated a portion of the Elections Code because herself and Chief Justice Agpoon certified, signed, and published the results. For this, the Plaintiff cited that this action is in contradiction to the Elections Code, Section IV, Subpart E, Paragraph 1, which states: “Ballots will be certified by the Chief Elections Officer. The Chief Justice of the Judicial Council shall witness the certification and provide a signature as verification of their presence at the certification.”

The fourth claim for relief was that Director Caroline Williams violated a portion of the Elections Code because a complaint challenging the validity of the election was not submitted and she certified, signed and published the results. For this, the Plaintiff cited that this action is in contradiction to the Elections Code, Section IV, Subpart E, Paragraph 2, which states: “The certified results will be posted in the Student Association offices and on the Student Association website, with the disclaimer that the results are subject to change pending consideration of any complaints challenging the validity of the election.”

In summary, the Plaintiff’s petition argued that Director Caroline Williams violated portions of the Elections Code and the Official Elections Results because she certified, signed, and published inaccurate elections results then proceeded to correct the error and certify the corrected results without a complaint challenging the validity of the results. The demand for relief was for the Judicial Council to hear this petition and rule that the Defendant, Director Caroline Williams, has violated the Elections Code and Official Election Results. Upon this ruling, it was requested for the Council to issue a Writ of Election to throw out the corrected results. The Plaintiff also demanded that Director Caroline Williams resign from her position as Chief Elections Officer while also issuing a public apology and explanation to both the candidates and voters.

**Background**

On September 15 and September 16, 2021, the Fall 2021 Senate Elections were held on Harvey. After the elections, the raw data from Harvey was provided by the Graduate Assistant, and the votes for each Senate seat were counted from an Excel spreadsheet. Chief Justice Agpoon and the Defendant, Director Williams, met to count the votes and to certify the election results on September 17, 2021 at 9:30AM. The results were finalized and certified at 6:18PM on September 18, 2021. On the same day, at 11:32PM, another candidate emailed the Defendant inquiring about the omission of their name on the certified results. The votes related to the candidate’s name were visible in the raw results but did not appear on the certification form. Chief Justice Agpoon alerted the Defendant of this issue, and the Defendant proceeded to respond to the candidates involved, assess the alleged error with Chief Justice Agpoon, and post the newly certified results. On September 19 at 12:43AM, the Defendant emailed the three candidates who received the most votes for the Commuter Senate seat to notify them of the error. The Plaintiff inquired about the error via email at 12:47AM. The Defendant apologized for the error, noted the
The disclaimer states that results may be subject to change pending consideration of any elections-related complaints, and subsequently informed the Plaintiff that he could file an appeal regarding the elections results within the 24-hour time frame of certification (per the Elections Code) by September 19 at 6:18PM. At 2:52PM on September 19, the Plaintiff submitted a petition to Chief Justice Agpoon highlighting the claims for relief and the grounds for the appeal of the election results and certification. Chief Justice Agpoon contacted the parties involved and used her power under the Judicial Code Section VIII, Subpart D to grant a continuance for the hearing to be held a few hours after the 72-hour timeline related to the filing of the petition, because the Judicial Council appointees had to be interviewed by members of GOC, approved by the Senate, and sworn in at the approximate time of 9PM on September 21, 2021.

**Judicial Hearing**

At 7:45PM on September 22, 2021, Chief Justice Agpoon held a pre-trial conference with the two parties involved to explain the order of proceedings and to inform them that she would preside over the hearing to ensure that procedural order was followed. However, Chief Justice Agpoon chose to abstain from voting and recused herself from asking the parties questions during the case in order to allow the justices to form their own conclusions on the case.

At 8:10PM the same day, the Judicial Council convened in the SA Conference room to hear the Plaintiff’s petition against the Defendant. The Judicial Council heard arguments from both parties, gathered witness testimony, and reviewed submitted evidence. As per Section XI, Subpart A, Paragraph 3 of the Judicial Code, which states “In all cases the burden of proof shall be on the party bringing the petition before the Judicial Council,” the Plaintiff had the burden of proof to provide clear and convincing evidence as well as testimony and as per Section XI, Subpart A, Paragraph 2 of the Judicial Code, which states, “In such cases where a Writ of Election is petitioned, cases shall be decided based on clear and convincing evidence,”

the Plaintiff, as the petitioning party, was required to provide the Judicial Council with sufficient evidence to prove that the Defendant violated the Elections Code and the Official Elections Results. The Plaintiff presented his argument with the petition, the certification document from September 18, 2021, an email from the Defendant after the initial results were posted, the correction and apology emails from the Defendant, and the email from Chief Justice Agpoon acknowledging the receipt of the Plaintiff’s petition as well as other evidence submitted, and answered questions from the Judicial Council. While the Plaintiff agreed that the vote count was not adjusted by the Defendant and no action was taken to corruptly affect the outcome of the election based on the raw data vote totals, the Plaintiff argued that the Defendant violated the Elections Code and the Certified Elections Results upon publishing the second certified document after the previous omission of the name of one of the candidates on the original
certified document. Because the Defendant had already published the initial certification, the Plaintiff believed that the Defendant should be held to that. The Plaintiff cited Elections Code, Section IV, Subpart E, Paragraph 1, which states: “Ballots will be certified by the Chief Elections Officer. The Chief Justice of the Judicial Council shall witness the certification and provide a signature as verification of their presence at the certification.”

The Plaintiff stated that the possible “saving grace” of the Defendant was the disclaimer posted with the certified results. The plaintiff also highlighted the Elections Code, Section IV, Subpart E, Paragraph 2, which states: “The certified results will be posted in the Student Association offices and on the Student Association website, with the disclaimer that the results are subject to change pending consideration of any complaints challenging the validity of the election.” The Plaintiff claimed that the Defendant violated this portion of the Elections Code because a complaint challenging the validity of the election was not submitted and she certified, signed and published the results. The Plaintiff also noted that he was unaware of the other candidate’s email inquiring about the omission of their name on the initial certified results, but noted that he, as well as the other candidates, should not be subjected to the miscalculations of the Defendant.

In sum, the Plaintiff argued that the Defendant should be held to the initial certified results and requested that the Judicial Council issue a Writ of Election to throw out the corrected election results, making them null and void. He further claimed that Director Williams is incompetent in her position and should resign immediately and issue a formal written public apology to the voters, candidates, and the Plaintiff. Additionally, it was requested for Director Williams to explain how this blunder occurred, and for the Elections Committee to ensure this mishap does not happen again.

The Defendant presented arguments, referenced evidence submitted, and answered questions from the Judicial Council. The Defendant argued that the disclaimer stating, “The results of this election are subject to change pending consideration of any complaints challenging the validity of the election,” addresses any concerns that may arise within 24-hours of the certification of results. The Defendant referenced the email she received at 11:32PM on September 18 from the other candidate. She viewed this as a complaint from the candidate inquiring about the omission of their name, and she proceeded to rectify the situation by notifying the necessary Commuter Senate seat candidates, issuing an apology via email to said candidates, communicating with the Chief Justice regarding the error, re-counting then certifying the corrected results, and then posting them on the SA Office doors and requesting that the corrected results be posted on the SA website. The Defendant noted that none of the candidate’s votes were altered, but rather, the candidate’s name was accidentally omitted when transferring the vote totals to the certification document. The Defendant emphasized that this was most likely due to an deletion error and was not intentional in any fashion. The Defendant also stated that the disclaimer that results are subject to change was posted with the certified results on the SA Office doors, and this claim was
supplemented with a picture that was submitted as evidence. Additionally, the Defendant stated that this disclaimer was mentioned in emails related to the elections and during the training sessions with the candidates.

In sum, the Defendant argued that the email from the candidate whose name was omitted could constitute a complaint regarding the validity of the results which would fall under the 24-hour timeline mentioned in the Elections Code. Thus, the second certification could occur because of the disclaimers, the 24-hour timeline allotted for candidates to submit a complaint challenging the validity of results in the Elections Code, and the fact that the vote totals were not altered.

**Judicial Ruling**
The Judicial Council voted unanimously to uphold all four of the Plaintiff’s claims for relief:

- **Claim 1**: Election inaccuracies and miscalculations which stand in contradiction of the Official Certified Election Results as Director Caroline Williams certified, signed and published the results.

- **Claim 2**: Director Caroline Williams violated the Official Election Results because she certified, signed and published the results in contradiction to the Elections Code, Section I, Subpart B, Paragraph 5, which states: “Certify election results after the close of polls and ensure the publication of the certified results.”

- **Claim 3**: Director Caroline Williams violated a portion of the Elections Code because herself and Chief Justice Agpoon certified, signed and published the results in contradiction to the Elections Code, Section IV, Subpart E, Paragraph 1, which states: “Ballots will be certified by the Chief Elections Officer. The Chief Justice of the Judicial Council shall witness the certification and provide a signature as verification of their presence at the certification.”

- **Claim 4**: Director Caroline Williams violated a portion of the Elections Code because a complaint challenging the validity of the election was not submitted and she certified, signed and published the results in contradiction to the Elections Code, Section IV, Subpart E, Paragraph 2, which states: “The certified results will be posted in the Student Association offices and on the Student Association website, with the disclaimer that the results are subject to change pending consideration of any complaints challenging the validity of the election.”

The Plaintiff’s first three claims were considered and interpreted as a block. In response to the Plaintiff’s first three claims for relief regarding the election inaccuracies and miscalculations that stand in contradiction of the official certified election results followed by the certification of
different results, the Judicial Council interprets that inaccurate results were indeed certified by Director Caroline Williams and Chief Justice of the Judicial Council. Furthermore, the Judicial Council interprets that Director Caroline Williams certified different election results based on the inclusion of another candidate who was unintentionally excluded from the final tally. In response to the Plaintiff’s fourth claim for relief regarding the lack of a complaint challenging the validity of the election, the Judicial Council interprets that Director Caroline Williams treated an inquiry as a complaint. The Judicial Council views that it was in fact not an official complaint, and there should have been clarification on the inquiry’s status as a complaint. The Judicial Council also acknowledges that the vague language surrounding what constitutes a valid complaint in the Elections Code complicated the process for the Defendant. If the inquiry was a complaint, the candidate should have been instructed to file a petition with the Judicial Council per the Elections Code. The results that were then certified were thus interpreted as null and void.

Given these circumstances, the Judicial Council agrees with the Plaintiff’s claims for relief. To this degree, the Judicial Council unanimously approves the Plaintiff’s demand for a Writ of Election to discard the corrected results, making them null and void.

Based on obligations stated under Section V, Subpart C, Paragraph 4 of the Elections Code of The Student Association of the University of Tulsa: “In the case of an appeal, the Judicial Council shall issue a Writ of Election, either affirming the election, affirming the decision of the Elections Committee, adjusting the results of the election as if the candidate were not in the election, declaring the election void and calling for a new election of the position(s) protested, or any other equitable remedy which would serve the purposes of the Elections Code,” the Judicial Council agrees that the power to decertify elections implicitly exists. Using the phrase, “declaring the election void and calling for a new election of the position(s) protested” as a framework, it can be said that by declaring elections null and void, the necessary certifications for those elections would also be null and void.

Conversely, the Judicial Council contends that, implicit in its ability to “call...for a new election,” is the idea that, as a consequence of new elections, it also has the ability to call for new certifications of those elections. Per the original abstract of judicial review found in the landmark Marbury v. Madison case, and with some more relevant phrasing, “it is emphatically the duty of the Judicial [Council] to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret the rule. If two laws conflict with each other, the [Council] must decide on the operation of each.”

Furthermore, under the structure provided in the clause “or any other equitable remedy which would serve the purposes of the Elections Code,” the Judicial Council asserts that the only equitable remedy that can be achieved, using the aforementioned powers, would be to first discard both the original certification of the election results (which were invalidated due to
clerical errors) and the subsequent updated certification (which was invalidated due to procedural errors). After this process has been completed, the Judicial Council calls for a new certification of the original results for the Commuter Senate seat. Once the original results are made clear, pending certification from the Chief Elections Officer and the Chief Justice of the Judicial Council, the final results will be posted and all subsequent policies regarding the election will be carried out in accordance with the Elections Code of the Student Association of the University of Tulsa.

Finally, this ruling does not reflect the personal views of any justice on the Plaintiff and Defendant themselves, the other content related to the Fall 2021 Senate Elections, or any of the campaigns. This judicial body serves to protect the integrity of Student Association and its members, and to do this, the SA Constitution and supporting documents must be upheld to the highest standard.

**Recommendations**

The Judicial Council recommends that if there are any vacant seats for the Fall 2021 Senate Elections, the Vice President should appoint the Plaintiff, Hunter Splain, to a seat, given the circumstances of this past election, his years of his experience as a senator for Student Association, and his experience as chairperson of the Monetary Allocations Committee.

The Judicial Council recommends that the disclaimer related to the results of the election is listed at the bottom of the certification document as well as attached to all emails alerting candidates that the election results are certified and posted.

The Judicial Council recommends that the disclaimer include the terms, “To the best of my knowledge” in order to account for human error.

The Judicial Council recommends that the language is standardized between the disclaimer, the certification document, and the Elections Code, regarding the terms “accuracy” and “validity” because those terms are used interchangeably. The certification document uses the term “accurate,” whereas the Elections Code and the disclaimer use “validity.” It would be better for clarification purposes if the terms were the same.

The Judicial Council recommends that the Defendant, with the Chief Justice’s signature included, provide an explanation of the certification process and the error that occurred to all candidates for the Commuter Senate seat.

The Judicial Council recommends that the procedure for registering a complaint be further defined and/or clarified within the Elections Code, following this process or one similar to it:
1. A clause should be included that, if candidates have any concerns with the elections, they have the opportunity to contact the Chief Elections Officer or Chief Justice to inquire about the elections

2. If there are any inquiries about the results, the Chief Elections Officer or Chief Justice should verify if the inquiry is a complaint challenging the validity of the elections

3. If it is a complaint challenging the validity of the elections, the Chief Elections Officer should notify the candidate about their ability to appeal the election results to Judicial Council via the process as outlined in the Elections Code

4. If it is deemed that an error has occurred related to a mistype, omission, or any other related error, an explanation of how the error occurred should be sent to all candidates involved, and they should be notified immediately

The Judicial Council recommends that, per the process stated above, the timeline be extended another 24 hours (to 48 hours) after results are certified in order to give candidates adequate time to decide if they want to appeal and to prepare their petition.