



Judgment of the USC Appeals Board in the matter of:

Rizvi v Elections Governance Committee, 2023:3 Election

Hearing Date: January 26, 2023

Judgment Released: January 26, 2023, with written reasons delivered January 31, 2023

Panel: William Fawcett (Chair), Stephen Warner, David Vallillee

Reasons: Warner (Fawcett, Vallillee)

PART I: INTRODUCTION

1. This is an appeal from a decision by the Elections Governance Committee (“**EGC**”) to disqualify Mr. Syed Rizvi as a candidate for election for failing to meet the nomination requirements found at sections 2.2.9 and 2.3.4 of the Elections Governance Committee Nomination Policy (“**Nomination Policy**”).

2. For the reasons below, this Board finds that the appeal should be dismissed. Based on the information available to it at the time of its decision, the EGC’s decision to disqualify Mr. Rizvi was reasonable.

3. However, the Board notes that, in the course of hearing this appeal, it was determined for the first time that there may have been two clerical errors on Mr. Rizvi’s nomination form. Correction of those clerical errors could potentially result in his verification as a candidate. Section 5.4.1 of the Nomination Policy provides that the Chief Returning Officer (“**CRO**”) has discretion,

in cases where the nomination form cannot be verified due to a clerical error, to verify the information contained in the nomination form based on the advice of the prospective candidate.

4. The Board takes no position as to whether the CRO should or should not exercise the discretion available to him with respect to Mr. Rizvi's nomination form, but it did communicate the availability of section 5.4.1 to the CRO when its initial decision was delivered on January 26, 2023.

5. Additionally, the Board notes that the wording of the Nomination Policy created numerous issues in making a decision on this appeal, about which more will be said below.

PART II: FACTS

6. Mr. Rizvi is a prospective candidate for USC Faculty Council (Social Sciences).

7. Mr. Rizvi submitted a nomination form on Friday, January 20th, the final day of the nomination period for the 2023 elections. His nomination form included six nominators.

8. Section 2.2.9 of the Nomination Policy requires that candidates for USC Faculty Councilor positions must submit five valid and unique nominators. Section 2.3.4 further requires that the nominators be students enrolled in the same constituency that the candidate is running for. In other words, Mr. Rizvi required five social science students to serve as nominators.

9. The EGC reviewed Mr. Rizvi's submitted nomination form in order to verify his nomination as a candidate and, on Wednesday January 25th, informed Mr. Rizvi that his nomination form did not meet the requirements of Section 2.3.4 of the Nomination Policy.

10. Mr. Rizvi appeals.

PART III: ISSUE

11. The issue is whether the EGC's decision to disqualify Mr. Rizvi as a candidate was reasonable.

PART IV: SUBMISSIONS

12. In defence of his nomination form, Mr. Rizvi submitted that, at minimum, five of his six nominators were valid and unique.

13. In support of his submission, Mr. Rizvi provided the names, UWO email addresses, student numbers, and copies of the students' timetables as evidence of their status as valid nominators.

14. The Board is unable to, and indeed does not need to, make any findings regarding the credibility of the information provided by Mr. Rizvi. Whether the Board now believes the nominators to be valid is of no import to the question of whether the EGC, at the time it made its decision, was reasonable in disqualifying Mr. Rizvi.

15. Mr. Rizvi further submitted that the EGC failed to inform him of his disqualification or their reasons for his disqualification in a timely manner, and, if they had, he would have been able to correct any misunderstandings between himself and the EGC.

16. In oral submissions, the EGC indicated that USC staff with access to the University's list of student electors verified Mr. Rizvi's nomination form (as well as all other nomination forms) against the list, in accordance with Section 5.2 of the Nomination Policy. The EGC submitted that, following Mr. Rizvi's appeal to this Board, the EGC further contacted the Secretariat's office to

verify the information in Mr. Rizvi's nomination form against the list of student electors for a second time.

17. In respect of the privacy of students' personal information, the EGC rightly did not submit as evidence the specific student information provided to it. However, the Board has no reason to doubt the credibility of the information used by the EGC.

18. The EGC faced extensive questioning regarding the processes it follows in verifying prospective candidates' nomination forms. The EGC indicated that, while it attempts to verify prospective candidates' nominations as soon as possible, and indeed are generally able to inform prospective candidates of their status prior to the close of nominations if the candidate submits their nomination form prior to the close of nominations, it faced delays in verifying Mr. Rizvi's nomination form and were unable to verify it until Wednesday, January 25th.

PART V: ANALYSIS

I. The EGC's Decision to Disqualify Mr. Rizvi was Reasonable Based on the Information Before the EGC

19. Based solely on the criteria relied on by the EGC (Section 2.3.4), Mr. Rizvi's nomination form is not verifiable because it fails to contain five valid and unique nominators from his constituency.

20. Specifically, based on the six student numbers submitted, three of the nominators are clearly members of his constituency. It appears that the EGC was aware that one of the remaining three is likely to be a member of Mr. Rizvi's constituency. While the student number provided does not match any member of Mr. Rizvi's constituency, it has been informed that another student

number, differing only by one digit from that which was provided, appears to correspond to the named nominator and that different student number indicates the individual is part of the correct constituency.

21. During oral submissions, it became clear that the student number provided to the EGC by a second of these three disputed nominators did not match the student number shown by Mr. Rizvi. The EGC indicated that two digits differed. When the EGC checked the student number provided to it by the nominator, the records associated with that student number indicated that the student was no longer enrolled. This student shall be referred to below as Nominator X.

22. At the hearing, Mr. Rizvi did not provide any evidence with respect to the third of the disputed nominators.

23. Based on the information available to the EGC at the time of its decision, Mr. Rizvi did not have the necessary five signatures from members of his constituency. Accordingly, its decision was reasonable.

II. Further Considerations Arising from Section 5.4 of the Nomination Policy

24. Section 5.4 of the Nomination Policy provides additional obligations on the EGC and rights to prospective candidates during the process of verifying nomination forms. Section 5.4 is reproduced in its entirety for ease of reference:

5.4. The CRO shall work towards contacting all prospective candidates prior to the start of the campaign to inform them that their nomination form has been verified; however, there may be delays in confirming nomination forms that are submitted on the final day of the nomination period. Should the form not be verified, the CRO shall inform the prospective candidate of this fact and the reasoning why the form cannot be verified.

5.4.1. Should a nomination form be unable to be verified due a clerical error, the CRO may verify the nomination form on the advice of the prospective candidate.

5.4.2. There will be a 12 hour grace period for students after the close of nominations to amend any clerical errors on forms that have already been submitted prior to the close of nominations.

25. The impact of section 5.4 is addressed in the three sections below.

i. Was the EGC unreasonably delayed in informing Mr. Rizvi of his disqualification?

26. Mr. Rizvi submitted his nomination form on the last day of nominations, Friday, January 20th, and received a disqualification email from the EGC on Wednesday, January 25th.

27. Given unrelated operational challenges that arose following the close of nominations due to the unexpected illness of the CRO, the EGC submitted that its email to Mr. Rizvi on January 25, 2023 was the earliest opportunity it was able to communicate to him regarding the verification of his nomination form.

28. Although Section 5.4 requires that the CRO “work towards” verifying nomination forms prior to the start of the campaign period (i.e. over the weekend of January 21st-22nd), it clearly contemplates a scenario in which a candidate such as Mr. Rizvi submits their nomination form later in the nomination period. The EGC is not required to verify nomination forms prior to the start of the campaign period, especially those that are submitted later in the nomination period.

29. However, there is no evidence that the EGC failed to meet its obligation to “work towards” verifying Mr. Rizvi’s nomination form prior to the start of the campaign period.

30. As such, the EGC was not unreasonably delayed in informing Mr. Rizvi of his disqualification.

ii. Was Mr. Rizvi adequately informed of the reason for his disqualification?

31. Section 5.4 provides that, in the event that a nomination form is unable to be verified, the prospective candidate is to be informed of the reason why it cannot be verified.

32. The EGC informed Mr. Rizvi that his nomination form was unable to be verified as it did not contain enough valid nominators from his constituency.

33. Although it might be preferable if the EGC were able to inform prospective candidates which specific nominators were the reason why their nomination form could not be verified, Section 5.4 does not provide any further requirements regarding what information is to be provided to the prospective candidate regarding their disqualification.

34. Therefore, we find that the EGC informing Mr. Rizvi that his nomination form was invalid for failure to comply with Section 2.3.4 of the Nomination Policy was reasonable.

iii. Was Mr. Rizvi owed a grace period?

35. Section 5.4.2 provides candidates with the right to a 12-hour grace period after the close of nominations to correct any clerical errors on submitted nomination forms. Since nominations closed at midnight on Friday, January 20th, the grace period extended until noon on Saturday, January 21st.

36. The grace period obliges the EGC to accept a prospective candidate's corrections to clerical errors within the 12 hour period, but only if the prospective candidate informs the EGC of their

intention to exercise their right under 5.4.2. We discuss the limitations of this Section later in these reasons.

37. Mr. Rizvi did not exercise his right to the grace period, and there is no evidence that he would have been unable to exercise it had he chose to.

III. Challenges arising from Section 5.4 of the Nomination Policy

38. This case brought to light some difficulties with respect to the wording and implementation of section 5.4 of the Election Governance Committee Nomination Procedure. Some of those difficulties follow.

39. First, the 12 hour grace period provided in section 5.4.2 presents prospective candidates with an opportunity to correct clerical errors on their nomination forms. However, it is unclear what access candidates have with respect to information provided by their nominators to the EGC. Given this, it is unclear how a candidate would be able to determine, within the grace period, whether a nominator has made a clerical error with respect to information provided that nominator.

40. Second, while section 5.4.1 permits a CRO to verify a nomination form on the advice of a candidate if a nomination form cannot be verified due to a clerical error, it is unclear how a candidate is to determine if there has been a clerical error so as to be able to seek the remedy afforded by that section.

41. In this case, an apparent clerical error did not come to light until Mr. Rizvi presented, in oral submissions before this Board, the student number Nominator X provided to him. Only then was the EGC in a position to realize that two digits of the student number Nominator X provided to the EGC did not match.

42. The manner in which an apparent clerical error came to light in this case is not desirable, as both parties were put through the effort of preparing written and oral submissions, and the Board prepared for, and held, a full hearing. That represents a significant amount of effort on the part of all involved.

43. Even more, once the apparent clerical error came to light through this process, the Board was not in a position to address that error, as section 5.4.1 affords the CRO the discretion to verify a nomination form on the advice of a candidate if there has been a clerical error. It may be open to this Board to review such a decision. However, in this case, when the CRO had not had the opportunity to make such a decision in the first place, the Board necessarily referred the matter back to the CRO for that decision to be made.

44. The duration afforded for campaigning is limited. During that time, candidates are devoting considerable energy to that campaign, and the EGC is devoting considerable energy to running the election process. While this appeal was heard on an expedited basis, it nevertheless took time to resolve, and it required both Mr. Rizvi and the EGC to divert their energies. The Board hopes that its comments in this section, which arise from its observations in this case and the resulting need to grapple with section 5.4 of the Nomination Policy, may assist in addressing similar cases that may arise without the need for an appeal.

S. Warner

D. Vallillee

W. Fawcett