



AUDITORIAL MEMORANDUM

Date: 12/06/2018

Re: Patron Ayaz v. Executive Counselor

ISSUES

1. Whether the Executive Counselor constitutionally defined the phrase, “open interviews”
TSG V, v, i, a.

I. STATEMENT OF FACTS

According to the TSG Constitution, as amended and ratified on May 15, 2018, the Executive Office shall be responsible for nominating the student which is eventually appointed to the position of Student Liaison. As of November 8, the Executive Office had failed to fulfill this part of its role; to correct this issue, Executive Counselor Su Dam ruled in Executive Counselor v. Executive Branch, DM that the Executive Office is required to nominate a student to the position of subject, in accordance with a binding schedule: “[Monday, November 12, 2018: Have the application up and open for the public; Friday, November 17, 2018: Close the application and start the interviewing process; Monday, November 19, 2018: Have the position officially filled, await Parliament's confirmation]” Executive Counselor v. Executive Branch, DM. The Constitutionality Committee was alerted on November 21 that the Executive Office had made the nomination by the November 19 deadline. On November 26, the Executive Counselor received an email from Patron Almas Ayaz which was, in effect, an appeal of the Executive Office’s nomination, on the constitutional grounds that they failed to conduct an interview after her submission of an application. The same day, Executive Counselor Su Dam upheld the nomination via correspondence with the Patron before he authored Patron Almas Ayaz v. The Executive Office, DM, in which he reasoned his vindication of the nomination, ruling that “[t]he language of the constitution allows “open interviews” to happen, giving the Executive Office room to appoint positions quickly in times of need and move forward with their programs.” By 2:47 pm on November 26, the Constitutionality Committee received an email from the Patron in which she appealed that decision to this Committee. A Constitutionality

Hearing was scheduled for December 4, however, on December 3, the Patron declined her right to a public hearing. This Auditorial Memorandum ensues as a binding solution to these events.

II. CONSTITUTIONAL ANALYSIS

A.

According to the Temple Student Government Constitution, “[t]he Ethics Board[’s] function is to hold Temple Student Government accountable... and investigate all violations of governing documents” TSG V, i. Further, it states that the role of the Constitutionality Committee is to, “[b]y majority vote, adjudicate the potentially unconstitutional decisions of action or inaction by members of the Ethics Board.” These rules are supplemented by the Ethics Board By-laws, which state, “[t]he power of judicial review rests in the Ethics Board...” J I, i, i and “[t]he Constitutionality Committee must ensure the constitutional validity of the Ethics Board's actions” J I, i, iv. Still, it should be noted that Article One of the Ethics Board By-laws also includes this directive: “The Constitutionality Committee must give deference to the reasoning of the Ethics Board Staff when considering the potential unconstitutionality of their decisions” J I, 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 J III, 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.

The Temple Student Government Constitution dictates that “[t]he Executive Office shall hold open interviews and nominate the best fit candidates for the three positions of Ethics Board Judge and the positions of Executive Counselor, Parliamentary Counselor, and Student Liaison, respectively” TSG V, v, i, i. The ultimate conclusion of this memorandum rests upon this Committee’s interpretation of one phrase found in that quote: ‘open interviews.’ As this Committee seeks to define the phrase, we recognize our most important responsibility as the ultimate interpreter of TSG regulations, which is to defer to past decisions, in order to maintain consistency. This is essential to our role, since the Ethics Board is the only fully unelected branch of TSG.

In pursuit of that consistency, this Committee will first review our precedents where

phrases were defined, to replicate the process. Since recency is preferred among precedents, it is only necessary for us to consider Representative Okkerse v. Parliamentary Counselor, AM. In that unanimous decision, Ethics Judge Laslett upheld the reasoning of the Parliamentary Counselor, even if not the conclusion, when he posited, “The Constitutionality Committee considers the decisional memorandum issued by the Parliamentary Counselor to be an appropriate use of the Constitutional powers given to that position under TSG V, ii, ii. The Parliament’s lack of proposed resolutions is indeed in violation of their constitutional duties to the student body” Representative Okkerse v. Parliamentary Counselor, AM. Thus, this Committee turns to the procedures undertaken by the Parliamentary Counselor in Constitutionality Committee v. Parliament, DM, which was unanimously vindicated by this Committee in Representative Okkerse v. Parliamentary Counselor, AM. To define the terms of subject in that case, the Parliamentary Counselor quoted this Committee’s petition to her, in which Oxford Dictionaries was directly quoted.

Decisions of the Constitutionality Committee are binding on the Ethics Board Staff, whether those be original decisions or certified decisions of the Ethics Board Staff. Though the ultimate mandate of Constitutionality Committee v. Parliament, DM was overturned by Representative Okkerse v. Parliamentary Counselor, AM, its reasoning and process was indeed certified. Therefore, since the present appeal is essentially a contention of the definition created by Patron Almas Ayaz v. The Executive Office, DM, the proper way to approach our conclusion here, is to understand this as an assessment of whether the Executive Counselor has abided by the procedures which have been certified by the Constitutionality Committee.

Simply stated, when it comes to defining previously undefined terms, the process which has been certified by the Constitutionality Committee is to look it up in the dictionary. In Patron Almas Ayaz v. The Executive Office, DM, it is unclear whether the Executive Counselor looked up the phrase or not, but it seems as though he has formed a two-pronged definition, with one of which being a dictionary definition and the other one being extra-textually manufactured. He first properly defines ‘open interviews’ as “on-the-spot interviews, the type of interview that would not require the candidate or the hiring entity to schedule an interview and would process the application as well as the interview immediately” Patron Almas Ayaz v. The Executive Office, DM. But then, in the concluding section of that memorandum, the Executive Counselor adds another component to the definition, one which apparently allows for unconventionality:

“The use of application questions as interview questions is unconventional, but fair since it still allows candidates applying for positions to express themselves as the questions were parallel to questions that would occur in an in-person interview. The language of the constitution allows “open interviews” to happen, giving the Executive Office room to appoint positions quickly in times of need and move forward with their programs” Patron Almas Ayaz v. The Executive Office, DM.

As this Committee now moves to define the phrase, we note that we will make use of Oxford Dictionaries, which was certified by this Committee in Representative Okkerse v. Parliamentary Counselor, AM. That dictionary defines ‘interview’ as “[a] meeting of people face to face” Oxford English Dictionary. Instead of restrictively defining the entire phrase, this Committee ends its endeavor here, since what has already been defined is sufficient to supplant the erroneous interpretation in Patron Almas Ayaz v. The Executive Office, DM. ‘Open’ is a vague term with many definitions, but none of those definitions have the effect of negation. Thus, regardless of the definition of the term, ‘open,’ the definition of the term, ‘interview,’ cannot possibly be negated by it, meaning that face to face interviews are required by TSG V, v, i, a.

In Patron Almas Ayaz v. The Executive Office, DM, the Executive Counselor seems to recognize this requirement, while going on to carve out an exception to it for the Executive Office. Some exceptions certainly are constitutional, but they are those which are expressly defined by the TSG Constitution or other applicable regulations. In this case, there are no exceptions which apply.

III. CONCLUSION

For the foregoing reasons, the decision expressed by Patron Almas Ayaz v. The Executive Office, DM is overturned and supplanted by this auditorial memorandum, because it failed to abide by precedential definitional procedures. In accordance with this Committee’s

partial definition of the term, 'open interview,' the Executive Office's nomination of Patron Brian Raudenbush is hereby rescinded, and the Executive Office must hold interviews with all applicants to the position of Student Liaison, before submitting a nomination to the Parliament prior to the start of the Spring 2019 semester.

A handwritten signature in black ink, appearing to read "Morrease Leftwich Jr.", is written over a horizontal line.

Morrease Leftwich Jr., Chief Judge

Joined by,

Matthew Diamond, Vice Chief Judge

Jordan D. Laslett, Ethics Judge