



**University of South Florida  
Student Government  
Supreme Court  
2009 – 2010 Term**



**STUDENT GOVERNMENT SUPREME COURT**

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**Hernandez Campaign v. Election Rules Commission**

**CERTIORARI TO THE SUPREME COURT**

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Argued: February 24, 2010 --- Decided: February 24, 2010

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Two questions were placed before the court, by the plaintiff: 1) Did the “Election Rules Commission (ERC) overstep their authority by selecting the specific statute violated on Andrew Cohen’s behalf;” 2) and because of this can the points awarded to the Cesar Hernandez Campaign be mitigated, or reviewed by the court due to the lack of “proper due process?”

**Jurisdiction:** The case of The Hernandez Campaign v. Election Rules Commission falls under the purview of appellate jurisdiction, as outlined in SG statute 501.2.

**Relevant Facts:** On February 13, 2010 Presidential Candidate Andrew Cohen anonymously submitted six (6) Campaign Grievance Forms against the Hernandez/Montgomery Campaign. The Campaign Grievance Forms were filled out incorrectly as Mr. Cohen left the “Reported By” section blank as well as improperly filling out the “Statute Violated” section. The ERC took it upon itself to infer which statute had been violated, choosing to cite Statute 701.2.9. On February 16, 2010, Supervisor of Elections, Michael LeBlanc, held a General Staff Meeting that included the hearing of the six grievances against the Hernandez/Montgomery campaign. After the third grievance has been heard, Mr. LeBlanc received an email from general counsel stating Mr. Cohen may not remain anonymous on the Campaign Grievance Forms. Mr. LeBlanc called a recess and approached Mr. Cohen to inform him he can either publicly announce his name with the grievances or dismiss them and remain anonymous. Mr. Cohen choose to announce his name and the hearing continued. Ultimately, the ERC pointed the Hernandez/Montgomery Campaign five points.

**Verdict:** With a 7-2 ruling the court finds that the ERC did overstep their boundaries and because of this fact the points awarded to the Cesar Hernandez campaign are void.

**Justices:** Court members who voted that the ERC overstepped its boundaries are as follows: Kristen A. Corpion, Chelsea Crawford, Joseph Alvarez, Lynn Kuznitz, Susana Sanchez, Sean

McCarthy, and Christina Potter. Justices Lisa Schneider and Robert Then dissented on the first question.

Majority Opinion:

**I** In regards to the first question posed, the Court finds that the ERC did in fact overstep its boundaries. During the trial, Mr. LeBlanc testified that had someone filed the Campaign Grievance Form incorrectly by citing the wrong statute under the “Statute Violated” section that the case would have been thrown out. Based on this statement, the Court does not see the distinction between wrong statute cited and no statute cited and has determined that the ERC overstepped its bounds by seeking out a statute and attaching it to the grievance. Furthermore, the Court finds the ERC overstepped its boundaries by proceeding with a hearing that was based on improperly filed forms. The anonymous nature of the grievance was questionable to Mr. LeBlanc, who sought out counsel from the Student Government’s General Counsel. However, the ERC proceeded with the grievance hearing before they had heard back on whether or not it was legal to have the forms filed in this manner. Upon learning that it was not legal Mr. LeBlanc called a recess halfway through the proceedings. The Court has determined that the ERC should not have proceeded with that hearing until it had a clear answer on the legality of the anonymous nature of the grievance forms and furthermore should have called off the hearing all together upon learning that they were indeed filed incorrectly. Some may argue that filling a form incorrectly is not grounds for such a severe point mitigation. However, the severity of filling forms correctly in the ERC can be witnessed through the initial election/campaign application process. Should a student fail to turn in their form after a certain time or leave out vital information they can be disqualified from the election process altogether. To purport that some forms are more important than others, simply invalidates the process. For this reason the ERC must remain consistent in its requirement for full completion of all forms, including the grievance forms. To clarify ERC ROP 6.2.4, we have ruled that all ERC forms must be filled out in their entirety and a specific numerical violation must be cited by the complainant, in regards to grievances. The purpose of this ruling is to reduce the amount of interpretation required by the ERC; therefore, increasing the overall fairness of the system. Furthermore, it is not an overly burdensome request to require specific numerical violations to be indicated on the grievance form, considering that all candidates must attend at least one regularly scheduled meeting with the ERC prior to campaigning in accordance with statute 701.1.3. It is at that meeting where the ERC should, and to my knowledge does, make clear the seriousness of rules violations and the importance of following proper procedures. Additionally, all campaign managers are required, according to statute 701.2.5, to ensure that all campaign staff is familiar with the rules, statutes and regulations.

**II** Based on the Court’s aforementioned decision, it becomes clear that the five points allotted to the Cesar/Hernandez campaign were based off of an improperly filled grievance form. The Court considers this situational in a conditional manner. Because the proper procedure was not followed, in detail, points cannot be awarded to the Cesar/ Hernandez campaign. This technicality therefore necessitated the mitigation of points from five to zero.

Dissenting Opinion:

Opinion of Ranking Justice L. Schneider and Associate Justice L.R. Then

**SUPREME COURT OF  
THE UNIVERSITY OF SOUTH FLORIDA**

The Hernandez-Montgomery Campaign v. Election Rules Commission

[February 24, 2010]

While we uphold that the Campaign Grievance Form filed by Mr. Cohen was filled out poorly, we do not feel that it was filled out inadequately, at least not to a point where in which it warranted overturning point assessment. Statute 701.4.2 states that “...*The burden of proof, beyond reasonable doubt, in point assessment lies with the person who filed the grievance. Grievances filed without any proof of the allegations shall be discarded.*” Evidence submitted to the ERC was filed in an appropriate and timely manner. We feel that the Hernandez-Montgomery Campaign's violations (usage of USF logos and trademarks) outweigh being overturned on a vague technicality concerning the form. We also hold that the ERC did not overstep their bounds, considering that only a single statute, 702.2.4, makes mention of the specific violations, which states as follows: “*Campaigns may not use University and Student Government logos or trademarks.*” Considering that this is the only statute in the ERC's Rules of Procedure that concerns the matter, we believe that points assessed should have remained in effect.