

# **Discipline, Interpretation, and Enforcement (DIE) Board**

## **Ruling of the Board**

### **HEARING DETAILS**

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<b>Style of Cause:</b>	Rao vs. C.R.O.
<b>Hearing Number:</b>	Ruling #8 2010/2011
<b>Hearing Date:</b>	March 21, 2011
<b>DIE Board Panel Members:</b>	Joanna Waldie, Associate Chief Tribune, Chair; Timothy Mallett, Tribune; John Devlin, Tribune.
<b>Appearing for the Applicant:</b>	Aditya Rao, Students United for Progressive Action
<b>Appearing for the Respondent:</b>	Alena Manera, Chief Returning Officer
<b>Intervener(s):</b>	Natalie Cox; Jeffrey Kochikuzhyil , Shared Science Platform; Petros Kusmu., Students United for Progressive Action.

### **BACKGROUND**

1. Following a request for interpretation from the Chief Returning Officer (C.R.O), D.I.E. Board issued an interpretation (Ruling #7) that § 39(1) prohibits independent candidates and slates within the same race from endorsing one another. "Race" was defined as all seats within a faculty. The D.I.E. Board found that slates are not exempt from this position due to the clarity of the legislative provision, and could find no inference or clear intent to make such an exception.
2. Following this interpretation, the C.R.O. issued Ruling #3 on March 21, 2011. The C.R.O. ruled that all intra-faculty branches of slates be disbanded by a stated deadline. Any affected candidates were asked to erase any mention of their slate from their campaign materials. The C.R.O. acknowledged that slates were permitted for this election prior to this interpretation, and as such, there would be no punitive actions against candidates for collusion prior to her deadline. The C.R.O.

also stated in her ruling that affected candidates would receive a renewed campaign budget. The affected slates included Students United for Progressive Action (SUPA) and Shared Science Platform (SSP).

3. The Applicant, Aditya Rao, appealed the ruling of the C.R.O. to the D.I.E. Board as per § 75(2) of Bylaw 2000. The Applicant asked that the C.R.O.'s ruling be quashed, and asked the D.I.E. Board to allow slates to run within the same race for the purposes of the 2011 S. U. Students' Council and G.F.C. Elections.

### **RELEVANT LEGISLATIVE PROVISIONS**

4. Excerpts from Bylaw 2000:

#### **39. Endorsements**

(1) No candidate shall

- a. act as a volunteer for another candidate; or
- b. endorse another candidate within his or her own race.

Excerpt from Bylaw 1500:

#### **29. General Powers of Enforcement**

If the Board finds an application for action or application for appeal requires action by the Board may make any order proscribing any remedy the Board considers appropriate and just in the circumstances.

### **POSITION OF THE APPLICANT, ADITYA RAO**

5. Mr. Rao wanted it noted that the attendance of former members of SUPA at this hearing does not constitute collusion in any manner. The D.I.E. Board echoes its statements from prior rulings that hearings do not constitute any form of campaign activity.

6. While acknowledging the correctness of the decision, Mr. Rao asked the D.I.E. Board to, on a one-time basis, overturn the C.R.O.'s ruling that any intra-faculty branches of slates be disbanded. The Applicant asked to be permitted to continue to run as a slate for the purposes of this election. Mr. Rao did not express any issue with the interpretation given in Ruling #7, and asked the panel to allow the interpretation to as guidance for Students' Council to clean up Bylaw 2000. However, the

Applicant urged D.I.E. Board to not allow this interpretation to impede the election in progress, and allow the election to proceed with intra-faculty portions of slates in tact.

7. The Applicant stated that SUPA candidates had complied with the relevant nomination provisions of Bylaw 2000 and had subsequently received approval from the C.R.O. to contest the election as a slate. They therefore had every reason to believe that their candidacy as a slate was in compliance with the relevant election bylaws.

8. Mr. Rao pointed to this approval and the few remaining campaign days as reasons to overturn the C.R.O.'s ruling. There would be approximately two days remaining to campaign as independents. Rao noted that informing voters that these candidates were now running as independents would prove to be difficult. Mr. Rao also expressed concern that their nomination packages would be effectively null and void, since they solicited nominations on the premise that they would be running as a slate rather than as independent candidates. The Applicant was also concerned that voter re-education would prove to be a disadvantage to their independent campaigns, and believed that overturning the C.R.O.'s ruling would restore any fairness lost by this disadvantage. The Applicant frequently stated that allowing the C.R.O.'s ruling to stand would have undesirable consequences for our democracy

9. Mr. Rao cited D.I.E. Board's Ruling #5, and asked the panel to come to a similar conclusion. Effectively disqualifying the intra-faculty portion of a slate would be unjust when the slate candidates believed they were following the relevant bylaws, and had received approval from the C.R.O. Such an action would be unjust when there was no wrongdoing on the part of the candidates. Similarly, the Applicant pointed D.I.E. Board's attention to § 29 of Bylaw 1500, and asked the panel to look at the surrounding circumstances to proscribe a just remedy. Mr. Rao contended that following the strict guidance of the bylaw would lead to more injustice in this case than choosing not to enforce the bylaw.

**POSITION OF THE RESPONDENT, THE CHIEF RETURNING OFFICER**

10. Ms. Manera clarified that the members of the intra-faculty portion of SUPA were not disqualified, merely disbanded. Though the Applicant believed their nomination packages were effectively null and void, this was not so in practice as their nominations still stood, and they were able to run as independents.

11. The Respondent stated that she went to D.I.E. Board for an interpretation of § 39(1) of Bylaw 2000 after noticing a gap in the provision. She felt it would be outside the scope of her powers as Chief Returning Officer to make a ruling without an interpretation. Similarly, once the D.I.E. Board issued Ruling #7, Ms. Manera felt it would be outside the purview of her powers to ignore the interpretation, and thus issued C.R.O. Ruling #3 in compliance with the interpretation. Ms. Manera stated that she felt the omission of intra-faculty slates from Bylaw 2000 was an oversight, but that she had to abide by the interpretation given by the Board.

12. Ms. Manera was asked if running on similar campaign platforms, or with similar campaign points would constitute collusion. Ms. Manera responded that it would not, and pointed to the example of using “accountability” as a campaign point in executive elections. The major change for the new independent candidates would be changes to their poster to remove any indication of affiliation with a slate. Their campaign ideas could remain the same.

13. Ms. Manera made it clear that she would enforce whatever decision the D.I.E. Board made in regards to this application.

**SUBMISSIONS OF NATALIE COX, INTERVENOR**

14. Ms. Cox acknowledged the inconvenient timing of this hearing, and noted that the C.R.O. was not able to ask for the appropriate interpretations prior to the General Council Election as she was recently hired after the resignation of the former C.R.O. Ms. Cox noted that the C.R.O. did not

take any punitive measures against the slate candidates, and stated that any consequences of the ruling for the slate were “inconvenient” but not punitive.

15. Ms. Cox presented several options for the D.I.E. Board to consider, including allowing the C.R.O.’s ruling to stand, disqualifying the candidates because of collusion, stating the election is tainted and ordering a new election or allowing the candidates to run as a slate. She preferred the first option. Ms. Cox urged the panel to abide by Bylaw 2000, and not disregard rules in order to suit the situation. She stated it would be poor practice to not follow the rules because of the inconvenience experienced by some candidates. Ms. Cox pointed to § 2 of Bylaw 1500:

**2. Mandate:**

The Board is the organ of the Students’ Union responsible for the interpretation and enforcement of Students’ Union legislation.

Ms. Cox stated that it would be outside the mandate of the panel to begin to enforce new rules and urged the Board to abide by the rule of law.

**SUBMISSIONS OF JEFFREY KOCHIKUZHIL, INTERVENOR**

16. Mr. Kochikuzhyil is a former member of Shared Science Platform (SSP), a slate independent of SUPA. Mr. Kochikuzhyil stated that he decided to join a slate for moral support and shared ideas. Following the C.R.O.’s ruling, his slate was forced to split materials or ideas in half, or to disregard these ideas altogether in order to avoid collusion.

17. Mr. Kochikuzhyil feels that § 39(1) of the bylaw is contradictory as it stands, and stated that people would be “disgusted by the bureaucracy of the Students’ Union” if they were to lose their slate. He again stated concerns for democracy if the C.R.O.’s ruling were to stand.

**SUBMISSIONS OF PETROS KUSMU, INTERVENOR**

18. Mr. Kusmu’s position is that allowing the C.R.O.’s ruling to stand would be more detrimental to the student population than to the candidates. The disadvantaged party is the student body. He stated that uninformed voters are a potential risk of this ruling, and stated that uninformed votes

are undemocratic. SUPA would be losing an advantage of soliciting votes based on electing individuals with common goals if the slate was disbanded.

19. Mr. Kusmu made it clear he has no issue with the bylaw as it stands, but that the onus for fixing the bylaw is on council. It would be unfair to punish candidates that felt they were acting in compliance with bylaw, and unfair to punish voters that would have to be re-educated.

**DECISION:**

20. The D.I.E. Board finds that the C.R.O.'s ruling, that intra-faculty portions of slates must be disbanded, should stand. The D.I.E. Board does not find a sufficiently compelling reason to proscribe a remedy under § 29 of Bylaw 1500.

**ANALYSIS:**

**THE FOLLOWING ARE THE REASONS OF WALDIE, ASSOCIATE CHIEF TRIBUNE:**

21. The Board agrees with the interpretation given by the panel in D.I.E. Board Ruling #7. The issue presented to the panel is the enforcement of the C.R.O.'s ruling #3.

22. The Applicant submits that the C.R.O.'s ruling is fair given the interpretation from the D.I.E. Board. The panel agrees that the ruling is appropriate and sees no reason to overturn this ruling. Therefore the Board must decide if these circumstances warrant a remedy under § 29 of Bylaw 1500.

23. There are many considerations in favor of proscribing the remedy sought by the Applicants, including third party prejudice. That is, the confusion and re-education of the student body and the risk of uninformed votes. There is also unfairness to the candidates that relied on a decision of the C.R.O. to approve intra-faculty slates. Finally, it is important to note that the C.R.O. expressed no objection to the panel proscribing such a remedy.

24. While the panel is sympathetic to the position of the Applicant, the Board does not believe that proscribing the remedy he recommends is appropriate or just in these circumstances. The remedy would not mitigate any damage that has already occurred by the slate being disbanded.

There is no proportionate remedy for the inconvenience caused to the candidates. While it is within our jurisdiction to order a new election, we feel that such a remedy would be substantially disproportionate to the slight inconvenience experienced by the candidates.

25. Allow us to explain:

It is the position of the board that the candidates have not lost a great deal as a result of the intra-faculty portions of their slates being disbanded. It is proper that we have regard for concerns of proportionality in these circumstances, as § 29 of Bylaw 1500 is an open-textured and highly discretionary provision of the Bylaws. All candidates concerned have been allowed to continue in the election as independents. Their names remain on the ballot, albeit minus a slate designation. There will be no implications of collusion for the candidates if they continue to use similar platforms. The C.R.O. has already mitigated some of the damage caused by her ruling in allowing the candidates to receive renewed budgets as independent candidates. The substantive inconvenience caused to the candidates was to remove any slate affiliation on their campaign materials, and put up new independent materials. While the Board takes democratic concerns very seriously, it is the position of the panel that the Applicant's argument failed to provide sufficient rationale to accord these concerns the amount of weight required to invoke S.29.

26. Prescribing the remedy of allowing the slates to continue to stand for the purposes of this election would also be disproportionate as such relief would entail the Board's re-writing bylaw in a situation in which no party has been substantially inconvenienced. Though not including an exception for slates may have been an oversight, Students' Council has made a clear rule in § 39(1). The Board does not wish to re-write legislation, as the existing legislation is clear. Though the panel is not bound by precedent, consistency is desirable, and we regard Ruling #7, and the interpretation of the panel therein, as persuasive.

27. In addition, the Board finds a compelling reason to abide by our mandate proscribed in § 2 of Bylaw 1500. We have to take the bylaw at its clear meaning. There is no compelling reason to step around the bylaw with a remedy proscribed under § 29.

**THE FOLLOWING ARE THE REASONS OF DEVLIN, TRIBUNE:**

28. **I concur in the majority opinion.** I write separately because I feel, in light of the submissions of the parties at the hearing, that some discussion is warranted of the distinctions between the instant decision and Ruling #5, wherein the Board elected to exercise its s. 29 jurisdiction to terminate and reschedule an election in progress.

29. Astute followers of the reported opinions of this tribunal will note that I concurred in Ruling #5. I must confess that my decision to append separate reasons here stems in part from a personal, and, I hope, understandable, desire not to appear inconsistent. Exercise in vanity though this may be, however, I would like to think that in doing so I can also put to bed any sense that the Board itself has reasoned inconsistently.

30. To be sure, the D.I.E. Board is not bound by its own authority. Nevertheless, predictable reasoning is desirable, and, even without a law of precedent to bind us, a degree of consistency should ideally emerge from an honest, reasonable, and impartial exercise of our judicial mandate.

31. So, then. why do we stay our § 29 hand today?

32. While § 29 confers a broad remedial jurisdiction on the D.I.E. Board, it is not an invitation to rewrite Student Union legislation at every opportunity. Ruling #5 strenuously expressed the view that while the language of § 29 is broad, it is to be wielded as a scalpel, not, if the reader will forgive the mixed metaphor, as a howitzer. Judicial minimalism is dictated by the language of the provision, which authorizes only such intervention as is appropriate and just in the circumstances.

33. As a first principle, D.I.E. Board Tribunals must be conscious of the fact that *Council* is the legislative arm of the Students' Union. As judicial usurpation of that function is inherently "inappropriate," *substantial* factors must make it just. That is to say that although we are

empowered by § 29 to ignore or circumvent express provisions of the Bylaws, we must only do so as an absolute last resort.

34. That is what confronted us in Ruling #5. That matter concerned an illicit campaign email circulated on the eve of an election by one candidate in a Vice-Presidential race to 600 likely supporters. This action was authorized by the C.R.O., albeit erroneously. By the time the matter reached D.I.E. Board for determination, the election was already underway and there was *literally* no way, short of ordering a new election, to restore procedural fairness. We do not find ourselves in the same circumstances today.

35. The facts here, as we discuss above, are not on all fours with those that underpinned Ruling #5. For one thing, the only substantial prejudice the C.R.O. decision under appeal occasioned the Applicant (*viz.* the requirement, already complied with, that they remove their campaign posters) simply *cannot* be remedied by a § 29 order. More importantly, though, the Applicant in Ruling #5 did not ask relief, as the Applicant does here, while in the very *teeth* of the Bylaws. On the contrary! The Applicant in that matter asked that the Board remedy the *C.R.O.*'s violation of the Bylaws.

36. Here, the C.R.O. did not act in violation of Students' Union legislation. Rather, and by his own admission, the *Applicant* did. We are asked, in short, to rewrite the very provision upon which the C.R.O. relied in ordering the Applicant's slate disbanded.

37. Providing such relief would take us far closer than did Ruling #5 to the exercise of a legislative function, and to little real effect as regards the fairness of this election.

**THE FOLLOWING ARE THE REASONS OF MALLET, TRIBUNE:**

38. I concur with the decisions of Waldie and Devlin and would uphold the ruling of the C.R.O. I wish only to address the slate disbandment that occurred just prior to this hearing. I am of the opinion that even if those actions had been postponed until after the hearing, the circumstances would not have resulted in a different finding.

39. The Applicant suggested to the panel that a finding, which would allow the slates to continue, would act as a form of “damage control”, minimizing the harm already occasioned to the slate candidates by the C.R.O. ruling and the subsequent disbandment.

40. The degree of disbandment that occurred prior to the hearing is not essential to our decision. If the result of upholding the C.R.O. ruling amounted to the full execution of the disbandment order, the change in degree of possible harm resulting from candidate inconvenience and voter confusion would not have warranted a different outcome. There was no compelling harm raised by the Applicant to justify an invocation of § 29. A change in degree of the required disbandment would not have affected this decision.