

Fall Term, 2018

**STUDENT COURT OF YESHIVA UNIVERSITY
WILF CAMPUS**

Opinion Of The Court

YESHIVA STUDENT UNION ET AL. *v.* CANVASSING COMMITTEE

No. 1. Submitted October 24th, 2018—Decided November 8th, 2018

The Court holds that Mr. Moshe Nissanoff did not win the Fall 2018 election for Yeshiva College Student Association Secretary/Treasurer, due to his clear ineligibility for the position based on the text of the Student Constitution (hereafter “the Constitution”). It further holds that the election and its results were legitimate, and bars the Canvassing Committee from holding a new, special election this semester for the position. The position shall remain unfilled until the Spring 2019 election, when it will be open for election again.

On Wednesday, October 17th, the Wilf Campus Canvassing Committee, which conducts the Wilf Campus undergraduate student government elections, held the Fall 2018 elections, which included an election for the position of Yeshiva College Student Association (hereafter “YCSA”) Secretary/Treasurer. Between the October 4th deadline for candidacy declaration and October 11th, the Canvassing Committee conferred with the Office of Student Life to determine whether students wishing to run for office fulfilled the constitutional requirements for running, which, depending on the race, included class, college, and/or Undergraduate Torah Studies Program registration status.¹ On October 11th, the Office of Student Life informed the Canvassing Committee that all declared candidates were eligible to run for office. On the same day, Mr. Moshe Nissanoff (hereafter, “the candidate”) was informed by the Canvassing Committee that he was eligible to run for the position he desired, the YCSA Secretary/Treasurer position (hereafter “the position”). On October 17th, the day of the election, the candidate received 82 votes, the plurality of votes cast in the election, followed by another candidate who garnered 60 votes; 35 students also cast write-in ballots, yet none of these write-in candidates received the 20 votes required for a write-in candidate to win. Soon after the election, it came to the attention of the Canvassing Committee that while the Constitution states that the YCSA Secretary/Treasurer must be a Junior, the candidate was only a Sophomore as of the

¹ The Student Constitution, in Article II, Section 10:4, states, “For any positions with qualifications based on class standing, the class standing of candidates or officers shall be determined by the Office of the Registrar and verified by the Canvassing Committee, through the Office of the Dean of Students.” In recent years, the Canvassing Committee has relied on the Office of Student Life to verify the eligibility of candidates, as the students comprising the Canvassing Committee do not have access to official registration information of other students.

election. The runner-up candidate was also deemed ineligible for office, as he was in Syms School of Business, and not Yeshiva College. On October 24th, Yeshiva Student Union (hereafter “YSU”) and YCSA submitted a petition to the Student Court against the Canvassing Committee, requesting the Court remove the disputed candidate from the position on the grounds of his ineligibility for the position and instruct the Canvassing Committee to hold a special election for the position so that eligible students might run for the position. The Court announced to the litigants and the candidate that it would be hearing the case and would be issuing summary judgement in place of holding a trial.²

Two questions were therefore placed before the Court. The first inquires whether the candidate is the legitimate holder of the position; that is, was he elected, despite his apparent ineligibility. The second asks whether, if he did not win the election, the Canvassing Committee may, should, or should not hold a new election. These two questions will be discussed in turn.

In Article II, Section 5:7, the Constitution states, “The YCSA Secretary/Treasurer must be at least a junior in good standing and a full-time student of the Yeshiva College for at least one semester prior to taking office.” According to the registration and class standing standards of Yeshiva College, which are based upon students’ credit totals, and as was confirmed by the Office of Student Life after the election, the candidate was not a Junior at the time of the election. Further, Article III, Section 6:4 reads, “All newly elected officers must meet all qualifications for their position, as defined in Article II of this Constitution, at the time they take office, and at all times during which they hold office, to be determined by the Canvassing Committee.” Pursuant to this clause, in order to be elected to, and hold, a position, a candidate must meet the qualifications delineated in the Constitution.³ The candidate did not meet the qualifications of the position, and he therefore did not win.

² In Article XI, Section 3:2, the Wilf Campus Undergraduate Student Constitution states, “Upon reception of a suit filed, the Student Court must, by majority vote of the Justices, within 5 days, beginning with the day filed, decide whether to hear the case.” Pursuant to this clause, the Court conferred on the case of *YSU v. Canvassing Committee* upon receipt of the Petition. After deliberation, the Court decided to hear the case; it would, however, not be holding a public trial. The Court would be releasing a summary judgement on the matter of *YSU v. Canvassing Committee* within the Constitutionally mandated 15-day period for hearing and releasing an opinion on a case heard.

³ The final words of this quote, “to be determined by the Canvassing Committee,” may, at first glance, seem to deny the Court the power to judge the eligibility of candidates, determine legitimate holders of positions, or remove ineligible candidates from office. Article II, Section 10:4 further states, “For any positions with qualifications based on class standing, the class standing of candidates or officers shall be determined by the Office of the Registrar and verified by the Canvassing Committee, through the Office of the Dean of Students.” These clauses, however vest responsibility for these determinations in the Canvassing Committee; they do not strip the Court of the powers to determine candidacy itself.

One might also point to Article II, 10:5, which reads, “The Student Court shall verify the qualifications, as defined in Article II, of each elected officer during the first academic week of the school year. Ineligible officers shall be immediately removed from office.” On the basis of this text, some have argued that the Court may therefore only remove students from office in the first week of the semester. However, in Article XI, Section 2:1, the Constitution clearly affirms, “The Student Court shall have jurisdiction over disputes with regard to the interpretation of the Student Government Constitution or its By-Laws; the determination of the legitimate holder of Student Government positions, or other positions subject to Student Government oversight.”

The second question turns on the very legitimacy of the election and its results. If the election was not legitimate, it may be argued, the results of the election are null, and the Canvassing Committee may, or perhaps must, hold a new, special election for the position. One could claim that the candidate, as well as the runner-up, were misinformed by the Canvassing Committee of their eligibility for the position. Were they not misinformed in this way, they might have run for other positions, and perhaps won. Other students, who may have decided against running for the position after learning that two other students already declared their candidacy, may have instead decided to run, if the candidate and the runner-up never decided to run. Most importantly, for a write-in candidate to win a position, they must garner a plurality of the votes cast, as well as over twenty votes (See Article III, Section 5:3). Because students are not able to submit their digital ballots unless they vote in all the elections on their ballot, including the election for YCSA Secretary/Treasurer, one might posit that dozens of students would have voted for write-in candidates had the two candidates on the ballot been properly deemed ineligible before the election. It is therefore plausible that another eligible student would have fairly won the election, either through candidacy or write-in status, were it not for the Office of Student Life's determination, and the Canvassing Committee's subsequent statement, that the two candidates were eligible for office.

However, it is the belief of the Court that the election was legitimate nonetheless. The Canvassing Committee publicized the candidacy declaration information and deadlines to students, students who so desired had the opportunity to declare and run for the position, and students were able to vote, and have their votes count, in the election. Regardless of the inaccuracy of the information provided to the Canvassing Committee and the candidates, and any potential actions students would have taken were the Canvassing Committee not been provided with this information, the election was legitimate and its results must stand.

As both of the candidates for the position are ineligible to hold the position, and no write-in candidate garnered the necessary votes, the Court holds that no eligible candidates won the position in this legitimate election. Therefore, the results of the election must be honored and the position must therefore remain unfilled until the Spring elections; any new election for the position held before the regularly scheduled Spring 2019 Election would be invalid and unconstitutional.

BENJAMIN STRACHMAN delivered the opinion of the Court, in which BENJAMIN ATWOOD, SAMUEL GELMAN, and DANIEL YELLIN joined. DOVID SCHWARTZ filed a dissenting opinion, appearing hereafter.

**STUDENT COURT OF YESHIVA UNIVERSITY
WILF CAMPUS**

DOVID SCHWARTZ, Dissenting

YESHIVA STUDENT UNION ET AL. *v.* CANVASSING COMMITTEE

The Student Constitution (Article II, Section 5:7) reads:

“The YCSA Secretary/Treasurer must be at least a junior in good standing and a full-time student of the Yeshiva College for at least one semester prior to taking office.”

The case brought before the Court concerns the ineligibility of Moshe Nissanoff to hold the Office of Yeshiva College Student Association (YCSA) Secretary/Treasurer. The question here is:

(*) Does the failure to fulfill (II:5:7) result in nullity of the election?

If the Court finds that Mr. Nissanoff’s ineligibility is insufficient to nullify the election results, Mr. Nissanoff will retain his Office. Now, had the appropriate bodies been informed of Mr. Nissanoff ineligibility prior to the election, and had they disqualified him, the Court would not be hearing this case at all. This is because Mr. Nissanoff would simply have not run. The question before the Court, however, addresses an impropriety which evaded the eyes, ears, and other relevant senses of the relevant body — the Student Canvassing Committee.

It is my own view that Mr. Nissanoff ought to retain his position. I dissent with the Majority in the pages that follow.

To address (*), we must consider and determine which of the following two principles explain (II:5:7):⁴

- (1) Ineligibility due to incompetence
- (2) Ineligibility due to non-desert

On (1), the purpose of rule the ineligibility is to preclude candidates who would not serve effectively from running. This law would serve to weed out candidates who either would have or should have lost the election due to their inability to carry out the duties of the office effectively. Had (II:5:7) stipulated that the Secretary/Treasurer need to pass a

⁴ The rationale behind this proceeding is simple and concrete. We ascertain firstly the principle behind the law and eo ipso the law’s purpose. Only after ascertaining the law’s purpose can we correctly determine whether the failure to fulfill the requirements set out in the law results in a nullity of the election.

literacy test, the purpose of the law would be obvious: to ensure that all candidates be able to read, as the duties of the Secretary/Treasurer require literacy for performance.

However, there is a good reason to suppose that this is not in fact the purpose of (II:5:7). I find it unlikely that such a law would ever be passed in the first place. The question of capacity to perform in office is indeed an important question, but a question left to the voters to decide. Those who wrote the Student Constitution have no business ordaining which issues voters ought to consider in determination of competence.

Note our formulation above: “This law would serve to weed out candidates who either would have or should have lost the election due to their inability to carry out the duties of the office effectively.”

The writers of our Constitution have no business prophesying about what will happen in future elections, nor have they authority to deciding the standards of competence. Prophesying is an important business, and it should be left to the prophets. Deciding the standards of competence is also an important business, and it should be left to the voters.

In my view, the writers of the Student Constitution wrote the Student Constitution correctly. This is to say, they did not write a law for any improper purpose. To suppose that the purpose of (II:5:7) would accord with (1) would have the Constitution encroach upon the theatre of the prophets and the arena of democracy. These improprieties cannot be imputed onto the writers of the Constitution. I, therefore, reject (1) as a plausible reading.

On the view of (2), the law has a different purpose. The purpose is to exclude candidates who do not deserve the position from running. An astute reader may point out: But did I not, a moment ago, stipulate that the writers of the Constitution have no business ordaining who is competent, but rather leave this question to the voters? Surely, the same holds with dessert. The Constitution should not ordain who and who is not deserving of the office, but leave such things up to the voters.

I distinguish here between questions of competence, which are to be left exclusively to voters, and questions of desert which can (but need not) be determined by the writers of the Constitution. This is because, the office of the Secretary/Treasurer is invested with legal validity and authority by the Constitution. Consequently, the Constitution must determine, therefore, the sort of office that the Office of the Secretary/Treasurer must be. By “sort of office,” I do not mean that the Constitution must set out the agenda of the Secretary/Treasurer, stipulating which monies be handed out where at to whom, or how to balance the budget, or how to prioritize one fund over another. These questions — “agenda questions” — are for the voters to decide. Consequently, questions of competence — questions about the candidate’s likelihood of executing his agenda — are, in the same way, for the voters to decide.

Instead, by “sort of office” the Court means something evaluative. Because the Constitution invests in the Office of the Secretary/Treasurer the status of Representative of

the Student Body, the Constitution sees the Office as one of a statutorial,⁵ in addition to a performative, sort. The Holder of the Office ought to be fully integrated into the body which he represents and enjoy some level of seniority in that body. These requirements are not in place to affirm or demonstrate the Secretary/Treasurer's competence. Rather, they measure the standing of the man who seeks the Office. The significance of the Office requires that the man who occupy it enjoy significance himself.⁶

It seems prudent and sensible to draw a distinction. A student may have a quality which *eo ipso* renders him undeserving to hold office. On the other hand, a student also may *lack* a quality, which would normally be regarded as necessary to deserve the office. In the former case, the student is undeserving — i.e. he deserves to not hold the office. In the latter, he is simply not deserving, but not undeserving — i.e. it is not the case that he deserves to not hold the office. The principle is thus: if it is found upon election that a student lacking requisite qualities has taken office, the election is not null. If, however, it is found upon election that a student suffering from negative qualities has taken office, the election is null.

The reason for this distinction is intuitive. Precluding a man from running necessitates a lower standard than the court rendering the election null. Precluding a man from running preemptively does not change the status quo — he simply is never granted permission. Nullifying elections, however, entails overturning a previously binding legal status. It is, jurisprudentially, a more hefty maneuver, and, *ipso facto*, requires a higher standard.

We ought distinguish between the three standards in (II:5:7). The first standard is the requirement of being a full-time student. A full-time student self-evidently and obviously enjoys a higher student stature than part-time students. It seems to the court, that this ineligibility is sufficient to result in a nullity of the election. Had it been discovered upon his victory that Mr. Nissanoff was currently a part-time student, the court would rule the election results null. Being a full-time student appears necessary to achieve the requisite stature to hold the Office. For, the stature of concern is the stature of the student *qua* student,⁷ a part-time student has less stature as a student than does a full-time student, and indeed, enrollment itself is the most basic⁸ constitutive element of the student's stature.

The second standard is the requirement that the candidate be “in good standing.” Clearly, the writers of the Constitution chose an ambiguous phrase. Why? The writers did so intentionally in order to allow for discretion of the Canvassing Committee and/or the Court in certain circumstances. Although it is an absolute requirement for the Secretary/Treasurer to be “in good standing,” the sorts of behaviors which make for good standing vary; consequently, the sorts of “good standings” vary as well. Consider the

⁵ I.e. having to do with stature.

⁶ In this way, these requirements are parallel to the minimum-age laws for the Presidency of the United States. This age requirement is likewise not to affirm or demonstrate competence, but instead measures the stature and standing of the Holder of the Office.

⁷ Henceforth, the Court uses the term stature in this sense.

⁸ The Court uses the word “basic” in two senses. Basic in that it does not supervene on another statutorial fact; and, basic in the sense that it constitutes foundation for the other statutorial facts.

following illustration. The Student Canvassing Committee has determined that to qualify as being “in good standing,” a candidate must have succeeded in making the Dean’s List. The Committee would enjoy this legal prerogative, although to do so would be, obviously, imprudent, presumptuous, and condescending. Had a prospective candidate been elected, and, subsequently, been revealed to have not made the Dean’s List, it is clear to the Court that although he would have been ineligible to run, this ineligibility would not result in a nullity of the election results.

Consider, however, another illustration. Suppose another prospective candidate been elected, and subsequently, been revealed to be selling heroin in the dormitory. This failure to be “in good standing” is sufficient to nullify election results. What principle explains the distinction? It seems that failure to be “in good standing” simpliciter does not result in a nullity of election results; however, behavior which results in “poor standing” does nullify election results.

The intentional ambiguity in the Constitution invests the authority to the Canvassing Committee and to the Court to determine, ad hoc or a priori, which behaviors result in failure to be in good standing, and which behaviors as result in being in poor standing. A student can still enjoy sufficient stature to not result in a nullity of the election even if he does not qualify to run initially. This is because, the lack of stature required to nullify election results must meet a higher threshold than the lack of stature required to disqualify a candidate from running in the first place.

The question then before us concerns the third standard. Does being a sophomore result in nullity of the election results? In my dissenting view, it does not. The reason for this is, that while juniors and seniors may be more deserving of the position than sophomores and freshmen, due to their higher seniority as students, this lack of seniority is more similar to failure to be in good standing than it is similar to failure to be a full time student or being in poor standing. This constitutes a lack of a statutory virtue, rather than the having of a statutory vice. Therefore, by the schematic I argued for above, the election results ought to hold. I respectfully dissent.