

Spring Term, 2020

STUDENT COURT OF YESHIVA UNIVERSITY WILF CAMPUS

Syllabus

Akiva Poppers v Yeshiva University Canvassing Committee

Submitted May 6, 2020- Decided May 13, 2020

Syllabus: On the 6th of May, 2020, Akiva Poppers, hereafter "Petitioner" submitted a petition to the Student Court of the Wilf Campus against Yeshiva University Canvassing Committee, hereafter "Respondents." Petitioner asked this Court to decide whether he is eligible to be seated for an electoral position if he will only have the requisite number of credits after completing summer courses and not by graduation day, as allegedly mandated by the Constitution in Article III, Section 6 (2). The Court agreed to hear the case and all Justices partook in deliberations about the Petitioner's claim.

Held: Since Mr. Poppers will have the requisite credits, either filed or in progress, Mr. Poppers is eligible for the position of Student Organization of Yeshiva President and is the winner of the Spring 2020 election for said position.

LAVI, J., SOSNOWIK, J., BURG, J., delivered the opinion of the Court. DOLITSKY, C.J., filed a dissenting opinion in which STERN, J., joined.

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Opinion of the Court

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Associate Justices Lavi, Sosnowik and Burg delivered the opinion for the majority

On May 6, 2020, Mr. Akiva Poppers, current student in the Sy Syms School of Business, sent a Writ of Petition to this Court requesting this Court to overrule the Yeshiva University Canvassing Committee and declare him the winner of the Spring 2020 race for Student Organization of Yeshiva, hereafter 'SOY,' President. The Canvassing Committee refused to seat Mr. Poppers despite his getting the majority of votes since they determined that he was not, and would not be, an upper junior or senior as the Constitution requires the SOY President to be as detailed in Article II Section 7 (3). Instead, the Canvassing Committee declared Mr. Zachary Lent the winner as he garnered the second highest number of votes. Mr. Poppers argued that since he will be taking summer courses, which will raise his status to upper junior, he should be seated as SOY President.

In a number of briefs the Court received, it was claimed that there is precedent for Mr. Poppers' position from a previous election where the then Canvassing Committee allowed a candidate to fill the position of Senior Representative even though the candidate would only be a senior after taking summer courses. This is not precedent. If the Constitution did distinguish between Summer semester courses and Spring semester courses, then evidence of a case where

the Canvassing Committee acted incorrectly does establish precedent. To the Court's knowledge, there was no suit filed, no case heard, and no opinion written by the Court at that time. Actions taken by the Canvassing Committee do not establish judicial precedent for the Court to adhere to. An additional claim made in a brief received by the Court was that the Canvassing committee should have complete discretion based on the majority opinion in the *Michael Stark v OSL and Yeshiva University Canvassing Committee (2020)*. The Court did not find that case law to be applicable in this case due to the fact that the constitution deals with the matters that are relevant in this case.

Additionally, in some briefs that the Court received, it was claimed that Mr. Poppers should be seated as SOY President since he will have enough credits by the Fall and it should not matter how many credits he has now. This reasoning runs counter to an explicit line in Article III Section 6 (2) which states, "Official duties of the incoming officers shall be assumed upon graduation day of the outgoing senior class". The issue at hand is whether Mr. Poppers can be considered to have upper junior status on the day of graduation, which this year is June 14th. The Court answers this question in the affirmative as Mr. Poppers will have the requisite credits in progress.

There is no doubt that the Canvassing Committee accepts it on faith that the credits in progress that candidates have during the Spring semester will become accredited by the institution. They say this themselves in their brief to the Court. The only claim they can make is that there is a significant distinction between Spring semester courses and Summer semester courses. The Court's first thoughts as to what this distinction may be is that perhaps students' Spring semester grades are really supposed to be filed before the students take office, if that is the case the students would indeed hold the proper status to fill their position. However, upon

requesting further clarification from the Office of the Registrar and Dean Sugarman's office on if grades have to be filed before commencement, when students take office, the Court found that this is simply false. Professors are not required to have students' grades filed before graduation. That being the case, the suggested distinction does not hold.

The next possible distinction that the Court considered is that perhaps there is some significant difference between courses pending a grade where all the coursework is completed and courses in progress. The majority sees no significance in the distinction between coursework completed and uncompleted. It is the passing grade in a course that allows a student to obtain the credits from said course; not the completion of the final exam. In addition, the Court sees no distinction between a course in progress and a course with a grade pending in terms of the Canvassing Committee's assumption that the student will pass. The Court also considered the Canvassing Committee's argument that Spring courses can no longer be dropped at time of graduation, compared to Summer courses that can be dropped. The Court does not recognize this as a distinction between credits since both courses are in progress. In the event the Mr. Poppers drops his summer course, and no longer has the requisite number of credits to be considered an Upper Junior, he will be immediately removed from office as defined in Article I, Section 10 (5).

In summary, the Court sees no distinction between Spring credits in progress and Summer credits in progress. As long as the candidate will have the necessary credits, either filed or in progress, by the date of graduation he may assume office on graduation day. Given that Mr. Poppers currently has sixty credits filed, fourteen in progress for the Spring semester, and will have six in progress for Summer session I by June 14th, he is eligible for the position of, and can be seated as, SOY President as per winning the majority of votes for said position in the Spring 2020 election.

It is so ordered.

Lavi, J., Sosnowik, J., Burg, J., delivered the opinion for the majority of the Court.

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Chief Justice Dolitsky, with whom Justice Stern joins, dissenting

When Justice Scalia was asked about the most contentious case he dealt with on the bench, he remarked that *Bush v Gore* held that coveted title. Who would reside in 1600 Pennsylvania Ave was decided by the High Court. Of course, every court case will have a winner and loser, but the stakes in election cases are more personal; there's something visceral about them. I have no doubt that this case was by far the most contentious case this Court has heard this year.

The majority has committed a grievous error in its decision. It has taken the Constitution and spun it on a lathe, whirling it around until it magically appears to say, or not say, what they wish. Democracy doesn't allow for the law to be molded by the hands of unelected judges. Democracy can only flourish if the law's integrity is maintained and upheld by its courts. That wasn't done today.

Today's case was easy for a textualist. Petitioner claims that his registration for summer courses should propel him to the requisite class standing necessary to become SOY President. Respondents claim that since the Constitution mandates that incoming officers assume their role at the time of commencement, and at that time, petitioner won't have completed the requisite amount of credits, he cannot assume office. Any onlooker can realize how simple this really is;

petitioner will remain a lower Junior at the time of the 2020 Commencement, thus deeming him ineligible to become SOY President. So what went wrong?

It should be noted from the outset that this dissent is not an application of this Court's wrong decision in *Michael Stark v Yeshiva University Canvassing Committee*, which gave deference to the Canvassing Committee to interpret vague statutes. Indeed, I dissented in that case. A Constitution founded on separation of powers leaves deciding law to an independent Judiciary, not to the Executive and its administrations. Interestingly, two members of the majority who wrote the *Stark* decision upholding deference to the Canvassing Committee are the same two members who've decided that they get to decide the law in this case. In defense of flip-flopping, they cite Article III Section 1 (9) of the Wilf Constitution. What this has to do with their decision to violate the principle of *stare decisis* I have no idea and the majority offers no explanation of its significance.

The majority grants Petitioner the presidency because it sees no meaningful distinction between Spring and Summer classes. The majority writes that because Petitioner will have "credits in progress" at the time of graduation, he can assume the presidency. The majority, however, incorrectly understands the role that credits play in the election process.

Nowhere in the Wilf Constitution is "summer" mentioned. That is because the Wilf Constitution recognizes only two semesters; Fall and Spring. During the Spring elections, members of the student body vote for their representatives who will serve them in the fall. However, the Constitution requires that the newly elected representatives assume their respective offices on graduation day of the outgoing senior class¹. However quirky that rule may be, it is

¹ Some have argued that the word "shall" used in this context isn't obligatory but rather connotes "ability to assume." Although "shall" is rarely used nowadays because of its ambiguity, US courts have understood "shall" to be mandatory in statutes and contracts. See *Independent School Dist. v. Independent School Dist.*, 170 N.W.2d 433, 440 (Minn. 1969)

nonetheless a rule. The Constitution requires that the candidate meet all the necessary qualifications at the time they take office, which, again, is graduation day. As such, the Canvassing Committee rightfully looks at any particular candidate's Spring semester courses. It cannot look prospectively. Of what significance is the Constitution's requirement to assume on graduation day if a candidate's eligibility requirement can be fulfilled after graduation day?

The majority argues that in a normal year, since graduation is normally within days of the completion of finals, and final grades are almost never submitted before graduation, it must be that we allow candidates to assume their respective offices because the Constitution recognizes "credits in progress." Since any candidate with the proper number of credits from the Spring semester hasn't had their grades filed by the time graduation rolls around, the majority views their status as having "credits in progress." Petitioner would also have "credits in progress" at the time of this year's graduation. The majority, therefore, sees no difference between the two. The majority thinks that this must follow, since it is the *grade* which allows students to access to their credits. But this is a fallacy. The administrative process of inputting grades is beyond the control of any candidate. Professors are notorious for inputting grades well into the summer. What gives a candidate the ability to assume office at graduation day is that he's completed his required coursework. He has completed the requisite amount of credits to assume office. It is the *completion of coursework* that the Constitution recognizes, not a notion of "credits in progress."

If indeed the Court recognized "credits in process," would the majority allow a student in the Spring semester *who has already registered for the upcoming Fall semester*, run for a position only offered to him by the "credits in progress" the Fall semester will afford him? Indeed, he'll have no grade for the Fall semester, but he's registered for classes, just like Petitioner is registered for Summer classes. Why stop at Summer registration? Of course this is

nonsense; it's laughable. Because the Constitution requires elected officers take their respective offices at graduation date, the Constitution must only look at the Spring semester and determine if, by graduation, courses have been completed. Should an elected official who assumed office at graduation were to have failed a course, he would be removed from office.

Perhaps an analogy. Article II, Section 1, Clause 5 of the United States Constitution requires, among other things, that the President of the United States be 35 years old. But *when* must he be 35: Election Day or Inauguration Day? Although the Supreme Court hasn't explicitly dealt with the question, it would seem that Inauguration Day is the key date. Indeed, then Senator Joe Biden was elected to office when he was 29, but turned 30, the required age, well before Inauguration Day. Now, suppose the President Elect of the United States would turn 35 on January 21, the day after Inauguration Day. Would we allow him to reside in the White House? Surely not! Will the President Elect likely live to see his 35th birthday the day after Inauguration Day? Most likely. But prospective concerns cannot be applied when there is a given day that a requirement must be fulfilled. The same is true here.

I have no doubt that Petitioner will serve this University in good faith and I hope he celebrates his win in Court. But there should be no celebration of the Constitution. It had nothing to do with it.

I respectfully dissent.