Tuesday, May 3, 2016 (The Committee extends warm birthday wishes to committee member Ivy Missen)

Begin: 7:07 pm
Adjourn: 10:32 pm

Attendance: Max Freedman (Chair), Josh Savitt, Ivy Missen (Birthday Girl), Dimitri Vasilkov
Absent: James Crowe

- Chair: reads the complaint
  - Alleged rule violation committed under Article III § 8 of the Election Code
    - Mike Viola alleges that the recording collected by Eric Holmberg during the College Council Meeting of April 12 violated state eavesdropping law because of a reasonable expectation of privacy established at that meeting. Mr. Viola claims the reasonable expectation existed because:
      - Eric Holmberg, in consultation with CLI prohibited recording at the meeting.
      - Mr. Viola acknowledges that minutes are collected
        - However, he claims that they are neither a transcript nor a complete recording of what was said thereby establishing a reasonable expectation of some privacy.
          - College Council reserves the ability to redact the minutes prior to their approval for publication
      - Candidates were present and their names were not included in the minutes
      - One UofC Divest member is on Eric’s slate and Sara Zubi’s name was not included in the minutes. She is a member of another slate, and this exclusion could have been damaging to her slate’s campaign.
        - Custom referring to non-SG members by initial in minutes
  - Eric Holmberg: Responding to allegations
    - The complaint is unfounded
      - No clear benefit or detriment to any campaign
      - Surface level question versus in-depth question
      - Sarah Cunningham at CLI and legal team at UChicago News Office said it was legal

- Cody Jones:
  - This occurred prior to the campaign because there were no slates to attack; candidates had not yet turned in signatures.

- Mike Viola
  - People knew who was running
- Cody Jones
  o I didn’t

- Mike Viola
  o Two members of your slate did
  o There was public knowledge at the time
  o In the advisory opinion E&R issued, you mentioned that a similar mistake might have happened with a Secretary instead of a recording
    ▪ We do not know what the recording was that the secretary received
    ▪ Sara Zubi said her name during the meeting
      ▪ Violation of custom leaves open the question of what happened to the recording in between the time the recording was taken and delivered to the secretary
    ▪ We don’t know what happened to the recording by the time Molly knew about it
    ▪ Error in named attribution isn’t necessarily attributable to Molly
    ▪ Eric took the recording against people’s will

- Ivy Missen
  o If the recording was tampered with, how does this pertain to the election?
    ▪ Mike Viola:
      ▪ Allows them to tailor the minutes in a way that harms opponents or tailor the description of the amendments
      ▪ Effect was giving Eric the only recording prior to the minutes being released, thus giving him essentially sole power to tailor the minutes.
    ▪ Eric Holmberg:
      ▪ Asya Akça followed through on deleting the recording

- Josh Savitt
  o Minutes of each College Council meeting need to be approved by the Council.

- Mike Viola
  o Not sure why the minutes were not redacted
  o But the point is we had nothing to compare our recollections with Eric’s recording.
  o Advantage given by recording and telling others not to
    ▪ Normally anyone can record any meeting
    ▪ But here College Council members could not
  o Eric was the only one recording against others’ knowledge

- Chair:
  o Was there precedent for a Secretary leaving a meeting and using a recording to transcribe afterwards?

- Mike Viola:
  o There was a prior meeting where Eric announced that he would record because the Secretary was not present
  o That recording was eventually accepted by CC for that purpose
  o No by-law was ever passed establishing this practice
  o But for this meeting everything was openly banned in advance
• Cody Jones:
  o Lawyers cleared Eric of any wrongdoing
  o So why are we here?
• Mike Viola:
  o Slates were already formed
• Cody Jones:
  o I didn’t know who I was running against
• Mike Viola:
  o What does it matter how CLI feels about the recording?
    ▪ Supposedly Jamila knew that recording was banned
    ▪ She may not have known about Eric’s recording
    ▪ No one else knew about Eric’s recording
• Cody Jones:
  o Good luck with the rest of the hearing. I’m going to leave.
  o I don’t think there’s a hurt feelings law, but the language of the complaint is mean spirited
• Mike Viola:
  o To what extent does the University saying it was okay with recording trump what other people say?
• Committee recesses for Chair to contact CLI for clarification:
• Chair:
  o CLI informed me that they advocated for banning recording at the CC meeting because there were no by-laws requiring it to be permitted, and they didn’t want to establish precedent for recording at meetings in the shadow of such a controversial issue.
  o CLI further informed me that they had no input on Eric’s decision to record in the absence of the Secretary.
  o CLI has no knowledge of contact between members of United Progress and either the University’s lawyers or the University of Chicago News legal team.
    ▪ CLI says that colleagues at University of Chicago News would have informed them of such contact.
• End public portion of the meeting; Committee moves into period of deliberation.
Motion: To issue the following decision
In Favor: 3
Opposed: 0
Abstaining: 2

In response to a complaint alleging damage done to the Unite & Support Slate by omitting named reference to Sara Zubi’s involvement in UofC Divest in the College Council Minutes from the meeting held on April 12, 2016 effectively minimizing Ms. Zubi’s involvement in favor of the involvement of United Progress slate members who were active supporters, the Committee found the following facts:

- CLI suggested a prohibition on recording at the meeting
  - Recording was not specifically required by the By-Laws, and they didn’t want to set precedent about public recording in the shadow of such a controversial issue.
  - University legal was consulted and concurred that prohibiting recording at the meeting was okay.
- At a certain point during the 4/12 meeting, the Secretary, Molly Imgruet, had to leave and recommended that Eric Holmberg make a recording for official use from which she could ex-post fact transcribe the minutes, and the recording would subsequently be deleted.
- Audience member noticed the absence of Ms. Imgruet.
- Mr. Holmberg revealed that he had been recording and made assurances that it would be disposed of after the Secretary completed the minutes.
  - Mr. Holmberg alleged this was standard operating procedure for College Council
  - CC Member alleged that in fact this only happened once, and then after a vote.
  - Audience member points out that an alternative Secretary, Jessica Law, was present and able to take minutes.
  - Jessica Law begins taking minutes for the remainder of the meeting; the recording was used to produce the minutes for the segment without a Secretary. We have no reason to believe that the recording was not destroyed.
- The Minutes were brought up for a vote of approval by College Council the following week.
  - Both audience and College Council members brought up the issue of name redaction and potential attribution of statements by potential candidates.
  - Ultimately, there was a unanimous vote that included members of the slate allegedly affected by name omission as a result of the recording to approve the minutes without the names.
  - Vote passed unanimously
- According to respondent, the legal team at the University of Chicago News Office deemed that the actions discussed in this case were above board.
- CLI is unaware of any specific opinions issued by legal professionals in the matter, and maintains it would have been contacted had one been issued, or had students consulted those offices.
Based on our factual findings E&R issues the following ruling:

- In order for there to be a violation under Article III § 8, three requirements need to be met.
  - The first requirement (named in Article III § 8 (a)), namely that it is an activity from which candidates would refrain despite that activity being advantageous was met. The Committee acknowledges that such a recording could be used to advantage a campaign. Ultimately, we find that no such advantage was conferred.
  - The second requirement (named in Article III § 8 (b)), namely that the action had to have been taken with the intent or effect of helping one’s own campaign, harming the campaign of another, or both, was not met.
    - There was no allegation of intent, and we find no intent. The Committee finds that the recording was made at the Secretary’s behest and not Mr. Holmberg’s.
    - We also find that there was no effect. The College Council—which included a member of the allegedly affected slate—specifically debated this topic and then voted unanimously to approve the minutes without attribution as a matter of policy. Therefore, whether the minutes came from the recording or from minutes taken by a Secretary in person, the outcome would have been the same; no attribution would have been given to audience members.
  - With respect to the third requirement named under Article III § 8 (c), we will make no finding on the legality of the action because the action in question fails to first violate Article III § 8 (b).
  - E&R had previously issued an advisory opinion that the complaint was not properly formulated because it failed to allege a violation under Article III § 8 (b), and this presumption must be overcome in order to find a violation.

Based on the foregoing, E&R finds that the presumption of correctness afforded to the defendants by E&R’s advisory opinion has not been successfully rebutted. Our advisory opinion was not in clear error, and E&R issues a final decision that United Progress did not violate Article III § 8 as per the complaint.

Appendix:
Advisory Opinion issued on Sunday, May 1, 2016:
Article III, Section 8 of the Election Code prohibits violations of University regulation, or local, state, or federal law when those violations are actions that may benefit one’s campaign or harm another campaign, but which candidates don’t do because of the legal prohibition; when the action is conducted with intent or effect to benefit the violator’s campaign at the expense of another’s, or to harm another’s campaign; AND when E&R can conclude prima facie that the law or regulation was violated.
In this case, you allege that an action (Mr. Holmberg’s recording during the Secretary’s absence on 4/12/2016) to be illegal. Whether or not that the act of recording was illegal, you do not allege that the benefit to one campaign or caused to another comes from the recording. Instead, you say the damage inflicted on a campaign is that the minutes referring to Sara Zubi as “Palestinian second year” thereby minimizing her role by not giving proper attribution. However, as you say, the custom of using the initials of non-CC members is just that: a custom. There is no rule requiring such attribution, and it is very possible that had the Secretary been there, the same attribution would have been used in the minutes. Because your allegations are discrete (you allege a recording was illegal, and you allege the minutes caused damage), we are unable to find your complaint to be properly formatted.

Per the House Rules, this is an advisory opinion, and should you be interested in pursuing your complaint, we do have to hold a hearing with your understanding that this is the Committee’s position at this time.