

Rules Violations and Complaints: Referendum 1 (Spring 2024)

Throughout the course of the elections cycle, UBE found two rules infractions related to Referendum 1:

1. **The original sponsor name “University of Virginia Apartheid Divest” is not an official student organization as defined by Student Affairs policy.**

Decision: While the UBE rules state that sponsors for referenda must be “student organizations,” they do not provide a definition for the term. We agreed with a complainant that despite this lack of clarity, UBE ought to conform itself to Student Affairs’ definition of the term: CIOs, FOs, SSOs, or Agency groups. Following our decision, the referendum’s proponents agreed to amend the sponsorship information to a list of CIOs. Given that this ruling relied on the application of a technical definition of a term which is not found in UBE’s Rules and Regulations document, we certainly would not have expected Referendum 1’s proponents to identify this issue in the petitioning process and feel that to penalize them for it would be inappropriate.

2. **Initial campaign flyers supporting the Referendum lacked a “paid-for-by-attribution.”**

Decision: After receiving a rules complaint, we contacted the referendum’s sponsors and asked them to remove the flyers and include a “paid-for-by” attribution on any additional campaign materials they distributed. We believe they complied with this request. To the best of our institutional knowledge, UBE has *never* considered taking an item off the ballot for a one-time violation of the “paid-for-by attribution” rule, and given this precedent, we feel that to do so here would have been unfairly punitive.

UBE also received complaints regarding Referendum 1 which the Rules Committee deemed were not rules violations:

1. **Complaint: The Referendum’s sponsors did not submit Exposure Reports.**

Decision: Referendum sponsors do not submit expenditure reports; only candidates and Endorsing Organizations for candidates are required to do so. Section III.B.6 states that “all candidates are required to comply with Section III.D (Campaign Expenditures).” Section III.D itself defines reporting procedure in the following manner: “Candidates and Endorsing Organizations submitting expenditure reports must detail personal expenditures, expenditures of donated funds, expenditures made by individuals or organizations working at the direction of a Candidate or Endorsing Organization, and the identity of the individual(s) and/or organization(s) who donated or spent money *on behalf of a candidate*.” Further, while the “Certification of Candidacy” (Section III.B.2) cites the requirement to submit an expenditure report, the “Certification of Referendum” (Section III.E.2) does not. To the best of the Rules Committee’s knowledge, UBE has never required sponsors for a referendum to submit expenditure reports in institutional history.

2. Complaint: Protestors carried Palestinian flags--which are banners--and a banner which read “Free Palestine” at a walkout held in support of the Referendum.

Decision: UBE has jurisdiction over “campaign materials” in its Rules and Regulations (ex. “Campaign materials” must have “paid-for-by” attributions under Section 2.b.1.a and must not be banners under Section 2.b.1.c). At the beginning of the campaign cycle and prior to the submission of this complaint, Referendum 1 sponsors asked UBE to provide a definition of “campaign material,” and the Rules Committee determined our best definition based on past precedent is “a material which makes explicit reference to the election, a referendum, a candidate, or voting.” We determined that Palestinian flags and a banner which reads “Free Palestine” do not qualify as “campaign materials” because they do not reference Referendum 1, the election, or ask students to vote. Thus, UBE cannot exert authority over them.

Note: UBE’s Rules and Regulations do not provide a definition for “campaign materials,” and we will incorporate one in our Rules update over the summer.

3. Complaint: Individuals tabling for Referendum 1 wore sunglasses and masks and thus violated Virginia Code 18.2-422.

Decision: Virginia Code 18.2-422 prohibits adults from concealing their identity in public space; we could not conclude that the sunglasses or disposable face masks were being worn in an attempt by the wearers to hide their identities. Further, UBE feels it does not have the authority to interpret real laws and find students in violation of them when the government itself has made no determination as to whether anything illegal has taken place. There are “unenforced laws” on the books in Virginia and other states which are not practically enforced. Based on the discourse regarding VC 18.2-422 during the COVID pandemic, it is our understanding that it is one such law. UBE was told that University administration had previously told opponents of the Referendum that this was not an enforceable issue. Thus, even if we had concluded the law was violated, we feel it would be inappropriate to penalize referendum sponsors on the basis of a statute which does not generate “de facto” legal consequences.

4. Complaint: A student spoke about Referendum 1 during an online class and characterized it in a way the complainant felt was misleading.

Decision: UBE rules are entirely agnostic to the veracity of campaigning messages. In short, we have no power to censor language on the basis that it is misleading or lacks context.

5. Complaint: A campaign material (1) constituted a banner and (2) lacked a “paid for by” attribution.

Decision 1: A picture of the material was submitted to us for review--a sign taped to the front of a folding table on the South Lawn sidewalk. (1) UBE rules define a banner as “a long strip of cloth or similar material with a design, hung in a public place or carried in a public event.” The material was not being hung on University property (which violates UVA Exterior posting policy)

or carried in a public event. Neither University nor UBE policies prohibit the general use of posters and other signs when tabling. Because it did not violate the aforementioned definition and because it is similar to other poster materials we have allowed for election tabling in previous years, we found the material not in violation of UBE Rules. (2) One of our members confirmed in-person that the material did have a “paid for by” attribution. Based on the violation message we received, it seems likely the complainant accidentally missed the attribution because they saw the material in a social media post, rather than in-person.