

The Office of the
ATTORNEY GENERAL

To: Hannah Fraher, Supervisor of Elections
Matthew McCann, Student Body President
Alan Hardman, Speaker of the Senate
Erica Desanti, Pro Tempore
Ashley Tinstman, Public Relations Coordinator
Michael Preston, SGA Advisor
Shane Juntunen, SGA Advisor

From: Attorney General Whatley

Date: September 27, 2011

Subject: Official Opinion Regarding Write-In Candidates & Informational Sessions.

I, Attorney General Whatley, in accordance with the Constitution and Statutes of the Student Body of the University of Central Florida hereby refer the following opinion to Supervisor of Elections Fraher, and all other interested parties:

Inquiry:

Accordingly, the following questions are to be examined:

1. Are “write- in” candidates required to attend the informational sessions hosted by the Election Commission?

Considerations:

Title IV, Chapter 402.1 of the Student Body Statutes:

- I. “The Attorney General shall be the legal advisor to the President, and shall hand down opinions of the Constitution of the Student Body, Student Body Statutes, and rights and responsibilities to any member of the student body who shall, in writing, request such opinion.”

Title VI, Chapter 600 Definitions (E) of the Student Body Statutes:

- II. Candidate- “An Individual seeking election to any Student Government position.”

Title VI, Chapter 603.2 (F) of the Student Body Statutes:

- III. “Each candidate is required to attend one informational session hosted by the Election Commission. If they are unable to attend such as session, the candidate must make an appointment and meet individually with an Election Commissioner before the Thursday prior to the beginning of the voting period.”

Title VI, Chapter 604.7 (C) of the Student Body Statutes:

- IV. “Any individual who wishes to be a write-in candidate must file a write-in Declaration Form with the Student Government Advisor designee by 5:00 PM on the final day of primary voting. Their eligibility shall be verified by 5:00 PM on the day following primary voting. If a write-in is not eligible for any reason, the votes toward that candidate shall be discarded and shall not count toward the total number of votes cast.”

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Examination:

The question under examination is in regards to the subset of candidates properly identified as “write-in” candidates. Traditionally write-in candidates are those candidates that choose to run for an elected position by establishing themselves as such after the declaration of candidacy period and during the primary voting phase. Only a small minority of write-in candidates deviate from this pattern, and establish themselves as write-ins before primary voting begins.

The aforementioned is important in this consideration, because it illustrates a critical flaw in the application of Statutes regarding write in candidates. Student Body Statute 604.7 (C) states, “Any individual who wishes to be a write-in candidate must file a write-in Declaration Form with the Student Government Advisor designee by **5:00 PM on the final day of primary voting**...” This clause gives a potential write-in candidate the leniency to wait until the last day of primary voting to become a candidate if they so choose. The issue is the apparent contradiction stated in Student Body Statute 603.2 (F). It states that, “Each candidate is required to attend one informational session hosted by the Election Commission. If they are unable to attend such a session, the candidate must make an appointment and meet individually with an Election Commissioner before the **Thursday prior to the beginning of the voting period**.” Whether or not the clause stated in 603.2 (F) applies to write in candidates will be answered in this opinion.

The process for which a student can become a declared candidate is very detailed and rigid. In order to be declared, an individual must collect a certain amount of signatures, and meet numerous deadlines. It is a very formal process that has its benefits and can put the candidate in an advantageous position to obtain their desired seat. The people who choose this more traditional way of contending for an elected seat have usually planned ahead and thought out this choice. In contrast, typical write in candidates have either failed to act on their choice to contend for a seat, or decide to contend spur of the moment. It is this probability of spontaneity that differentiates the write in candidate from the declared one. And it is this spontaneity during an election period that is an enjoyed privilege by students and should be kept alive.

Since write-in candidates are a subset of candidates, it is appropriate to require them to follow all of the guidelines and restrictions placed on other candidates as enumerated in Statutes. However, this is a requirement that would be temporally impossible for the vast majority of write-in candidates to fulfill. Furthermore, restricting individuals to adhere to these guidelines, thus inhibiting individuals from becoming write-in candidates during the primary voting period, would be considered an infringement of a privilege clearly outlined in Statutes. It is in the preservation of student privileges that is the concern of this opinion.

In addition, Statutes, by separating the clauses by chapters, also suggest that there are two types of provisions in regards to candidates: general and specific. Chapter 603 can be regarded as specifically catering to potential declared non write-in candidates, while Chapter 604 lists general provisions that all candidates must adhere to; guidelines for write-in candidates being specifically outlined within that chapter. All other chapters mentioning candidates are regarded as general provisions intended to apply to all candidates. With this being the case, write-in candidates are not subjected to the provisions stated in 603.2 (F).

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Official Opinion:

It is the opinion of the Office of Attorney General that write in candidates are not required to attend the information sessions as mandated in Student Body Statutes 603.2 (F).

Cortez Whatley
Attorney General
University of Central Florida