Context

The Governance Committee was contacted on April 6th by the PGSS Chief Returning Officer, Colby Briggs, regarding a difference of interpretation of the Society Activities Manual between himself and a candidate. This dispute hinges on the discretion of the CRO to institute elections regulations that are not specifically enumerated in the SAM.

Mandate

The Governance Committee serves a mandate of constitutional interpretation as defined in the Society Activities Manual, which charges the committee with its jurisdiction. Most particularly for this case is the role of the Governance Committee in the oversight of elections, set out in Chapter 5, section 2.1, which reads (emphasis added):

1. Purpose
   1.1. Without limiting the generality of the list below, the Governance Committee may exercise jurisdiction regarding:
      1.1.1. Any question of constitutional interpretation, which is brought forward by Council, or any regular member of the PGSS;
      1.1.2. The overseeing of all PGSS elections and referenda to ensure that they are being run in accordance with all PGSS rules and regulations set out in governing documents;
      1.1.3. Any question regarding any amendment to the Society Activities Manual. Accordingly, the GC must examine all proposed amendments before they are given final approval. In this regard, the GC shall endeavour to ensure that the proposed amendments do not contradict any other part of the Manual, to explain what effect the proposed amendment may have, and, if necessary, to recommend changes or further amendments.

While the Appeals Board hears appeals of the rulings of the CRO, and the Elections Committee is responsible for developing strategies to increase electoral turnout, the Governance Committee offers oversight and guidance to the CRO and candidates in the adherence of the elections to the relevant PGSS regulations.

Subject
The CRO provided a guide to candidates outlining his expectations of their conduct and activities during the election campaign. Candidate Mooney objected to the authority of the CRO to set out regulations to which the candidates would be bound that were not specifically stated in the SAM. His objection to these requirements is based on the preamble to SAM chapter on elections, referenda, and petitions, which reads:

9.1.1 There shall be a chief returning officer (CRO) who is responsible for the implementation and oversight of all PGSS petitions, elections and referenda. The CRO will have discretion over enforcing rules and regulations pertaining to elections, referenda and petitions contained within this Manual. The CRO shall be responsible for all aspects of the administration of PGSS elections and referenda.

CRO Colby stands by his ability to create such electoral regulations as are required, basing his authority on the same section. He further notes that the SAM does not specify many aspects of the management of the elections that are necessary, and thus a broad interpretation of the powers of the CRO is necessary to permit him the ability to function without Council oversight of elections minutiae.

Explanation

Neither party in the disagreement is wholly correct. Candidate Mooney’s assertion that the CRO lacks the ability to create new regulations, based on the phrase “contained within this Manual” is incorrect. CRO Colby’s assertion that the authority to create additional regulations is based in a lack of limitations, based on the phrase “the implementation and oversight of all PGSS petitions, elections and referenda”, and a fundamental necessity based on the ambiguity of the bylaw, is somewhat inaccurate.

Section 9.1.1 not only sets out the authority of the CRO, but does so with an inherently broad intent. To discern this, the full clause must be read.

- **There shall be a chief returning officer (CRO) who is responsible for the implementation and oversight of all PGSS petitions, elections and referenda.**
  - The opening phrase establishes the office of the CRO and the mandate that falls to them, specifying that all electoral matters are their purview.
- **The CRO will have discretion over enforcing rules and regulations pertaining to elections, referenda and petitions contained within this Manual.**
  - The second phrase is the key point of disagreement.
  - The second phrase does not say that the CRO is to enforce only the rules and regulations pertaining to the elections such as are found in the manual.
  - The second phrase says the CRO will have discretion over enforcing the rules that are found in the manual.
- **The CRO shall be responsible for all aspects of the administration of PGSS elections and referenda.**
  - The third phrase reiterates the opening phrase, and clarifies that the CRO is responsible not only for the oversight of the elections but the fundamental administration. Their authority is over both the policy and the daily matters.
The CRO is given the freedom to decide what should be done in a given situation. Had the wording of 9.1.1 been different (for example, “The CRO will have responsibility for the enforcement” rather than “The CRO will have discretion over”), the restriction to rules within the manual would be present and clear.

Instead, they are given broad suggestions as to the management of the election based on the subsequent sections of Chapter 9, but these points are secondary to the discretion of the CRO in the application of such rules and regulations.

The authority is not without its limitations, however. The Governance Committee exists to offer oversight and guidance to the CRO in managing the balance between strict adherence to the SAM and other pragmatic options. Furthermore, the Appeals Board retains the ability to overrule rulings of the CRO in a period of short delay.

In short: It is the opinion of the Governance Committee that the CRO does have the authority to create such rules and regulations for the election has they see fit, based on the guidance of the Society’s principles, precedents, and governing documents.

It should be further noted for the issue of banning endorsements that while the CRO has the ability to make such rules as govern the behaviour of candidates, they evidently cannot control the behaviour of external organizations. Candidates can be prohibited from soliciting endorsements, but section 9.10.10 explains the position of the bylaws vis-à-vis the actions of third parties.

Candidates cannot be held responsible for campaigning or the distribution of campaign materials not done or produced by the candidate or due to the suasion of the candidate.

On behalf of the Governance Committee,

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