



TRANSPARENCY, ACCESSIBILITY & ACCOUNTABILITY
Stellenbosch University

**STUDENT COURT
OF STELLENBOSCH UNIVERSITY**

REPUBLIC OF SOUTH AFRICA

IN THE MATTER BETWEEN:

BEN ANDERSON

Applicant

And

STUDENTS' REPRESENTATIVE COUNCIL

First Respondent

STUDENTS' ELECTORAL COMMISSION

Second Respondent

LIHLE BALEKA

Third Respondent

Neutral Citation: *Anderson v Students' Representative Council and Others*
21/11/25

Judgment: The Court (unanimous)

Decided on: 21 November 2025

JUDGEMENT

Introduction

[1] The Applicant is Ben Anderson, a registered student at the Faculty of Economic and Management Sciences at Stellenbosch University and a candidate in the 2025/2026 Student Representative ("SRC") elections. On 5 September 2025, the Applicant was disqualified from the SRC election by the Student Electoral Commission ("SEC"). He seeks a review of his disqualification in terms of section 85(3) of the Student Constitution 2021 (hereafter referred to as the "Student Constitution") and reinstatement to the SRC as an elected member.

Furthermore, he seeks a declaratory order stating that the SEC failed in its constitutional obligations which undermined the democratic SRC election process.

Locus standi

[2] The Applicant is a registered student at Stellenbosch University and thus satisfies the requirements imposed by section 86 of the Student Constitution, granting him the requisite locus standi to appear before this Court.

Jurisdiction

[3] Section 85 of the Student Constitution empowers the Court to grant an interdict or any interim relief, a declaratory order, and to set aside any decision that is inconsistent with the Student Constitution or a constitution, policy, regulation or any empowering provision of a student body. Importantly, section 85(4) empowers the Court to grant any order, inclusive of a combination of the above, that is fair and equitable. The Court therefore has jurisdiction to preside over the matter.

Urgency

[4] On 11 September 2025, this Court issued an interim order interdicting the first and second respondents from electing the executive committee of the 2025/26 SRC. At that stage, the Court accepted the matter as urgent due to the real risk of the Applicant's being excluded from those elections.¹

[5] The Applicant's prayer for review of the Student Electoral Commission's decision to disqualify him from the SRC elections must likewise be treated with urgency. As at the time of writing, the student community is concluding its academic year, and the third assessment period has commenced this week. Understandably, this demands a need for ongoing uncertainty to now come to a resolve.

[6] Following this Court's interim decision on 11 September 2025, the newly elected SRC for the 2025/26 period has been limited in its operations: there was no executive committee to steer the SRC body in its constitutional direction and portfolios have been unassigned.

¹ See *Anderson v Students' Representative Council and Others* 11/09/2025 para 3.

This has left a vacuum in the SRC's capacity to fulfil its constitutional obligations and rendered the student body's interests thereby unaddressed.

[7] For its part, the SEC is mandated to prepare for and facilitate the elections of the SRC Executive Committee. It, too, has an interest in the outcome of this Court's decision. Considering the interests of the Applicant, the newly elected SRC and the SEC, this application ought to be assigned urgent status accordingly.

Factual background

[8] It is common cause that on 1 August 2025, the Applicant submitted a completed nomination form for the 2025/26 SRC elections. In his manifesto, the Applicant attached a hyperlink to an external platform known as and hereafter referred to as "Substack." On this platform, the Applicant intended to publish a more detailed explanatory note for the plans he has for the SRC should he be successfully elected as a member. On 4 August, the SEC acknowledged receipt of the Applicant's nomination.

[9] On 8 August, the Applicant published an article titled "My plan to Rebuild our SRC" onto his public Substack account. The version of the article published on this date contained an endorsement of another SRC 2025/26 election candidate, Mr Johan Weideman.

[10] On 11 August, the SEC flagged the Substack hyperlink in the Applicant's manifesto. In email communication to the Applicant, the SEC averred that material exceeding the 300 word limit is only permissible as a standalone PDF or Word document that could be archived and distributed uniformly. In addition, the SEC stated that external links, such as those to Substack, are considered mass communication tools and thus fall foul of the Student Electoral Act's prohibition of mass communication.

[11] On 13 August, the Director of Election Regulations, Sibusiso Xulu, contacted the Applicant and requested he remove the Substack hyperlink from his manifesto. The Applicant obliged on condition that he be permitted to include his Instagram handle (or username) instead.

[12] On 14 August, the Applicant and the SEC convened an in-person meeting to continue their dialogue on the use of Substack as the Applicant was unconvinced that its use amounted to the mass communication contemplated in and prohibited by the Student Electoral Act. The Applicant stated that in this meeting, the SEC acknowledged they were

not acquainted with the platform and that they had failed to properly read the Applicant's lengthy article and as a result, had overlooked the endorsement of Mr Weideman. The SEC attributed this oversight to operational and administrative strain that will be addressed later in this judgement.

[13] On 15 August, the SEC provided regulation for the use of Substack in SRC election campaigns on condition that; candidates may only publish campaign related content on Substack once the official campaign period has commenced on 19 August, only one article approved by the Commission prior to publication may be published on the platform during the campaign period and, lastly, subscribers before or during the campaign period must be removed to prevent targeted or early campaigning. The SEC further obliged the Applicant to remove the already published article and re-publish it once the campaign period had officially commenced.

[14] The SEC provided this regulation on the strength of the Applicant's argument that the platform operated similarly to other social media platforms already approved for campaign use such as Facebook, Instagram, X formerly known as "Twitter", and TikTok. As such, the SEC concluded that the same campaign rules and restrictions that applied to those platforms may be applied to Substack.

[15] Notably prior to the approval of the use of Substack, the SEC expressed concern that the Applicant may be able to affect unilateral, unapproved changes to the article after its publication. The Applicant in turn addressed these concerns by querying whether the SEC would consider approval of Substack should he abide by a list of parameters, including undertaking not to edit any part of the named article. In subsequently approving Substack, it must be noted that the SEC did not explicitly bar the Applicant, or any other candidate, from editing their articles after publication. Whilst mentioned here, for the completeness of the factual background, the relevance of this note will be considered later in this judgement.

[16] On 19 August, the Applicant edited his Substack article to include an endorsement of another election candidate, Joshua Donald in the same paragraph that contained the endorsement of Johan Weideman. In the late evening of that day, the Director of Compliance and Oversight, Zybrian Anders, sent a message on a WhatsApp group with all the candidates (established to make the dissemination of electoral information more efficient) in which he

stated that candidates were prohibited from posting or tagging one another on any campaign-related content.

[17] In the early hours of 20 August, the Director of Electoral Regulations sent a follow-up message, citing Rule 3(8), stating that candidates may not use their influence to promote or endorse another candidate.

[18] At this point, the SEC had not raised any concerns or issues regarding the contents of the Applicant's Substack article.

[19] On 26 August, a caucus was held at Heemsteede Residence. At this caucus, Johan Wiedeman was questioned about his impartiality considering that he was affiliated with the Democratic Alliance Student Organisation (hereafter referred to as "DASO"). As a member of DASO, the Applicant requested and was allowed by the SEC to respond, to which he affirmed his belief in DASO's values and stated he would not let party allegiances infringe on the apolitical nature of the SRC. The Applicant was also asked about his Substack endorsement of Johan Wiedeman to no reprimand or intervention by the SEC.

[20] On 1 September, the SEC announced the newly elected 2025/26 SRC members.

[21] On 2 September, an anonymous complaint was lodged against the Applicant. This complaint accused the Applicant of endorsing candidates and promoting the values of DASO as opposed to those of the SRC. The complainant was later revealed to have been lodged by the third Respondent who, in the instance of the Applicant's disqualification, was the ninth generally elected SRC member.

[22] On 3 September, the Applicant acknowledged the endorsement of the two candidates in his Substack article, defended his responses at the caucus that took place at Heemsteede Residence and additionally challenged the interpretation of Rule 3(8). In a meeting with the SEC on the same day, the SEC once more admitted that it had not properly read the Applicant's Substack article.

[23] On 4 September, the SEC informed the Applicant that upon the conclusion of their investigation, he was found to be in breach of the rules regarding the endorsement of fellow candidates, responsibility for campaign platform content, and improper caucus conduct. The sanction imposed was a deduction of 150 votes, a statement of apology and immediate removal of the Substack post. The Applicant acknowledged the outcome of the SEC's

investigation, disagreed with their interpretation of Rule 3(8) and refused to remove the Substack article.

[24] On 5 September, the SEC responded by affirming their interpretation of Rule 3(8) and further reprimanded the Applicant's unwillingness to remove the article. The SEC argued that the public availability of the article risks compromising the integrity of the entire election by influencing ongoing perceptions and voter behaviour. The SEC imposed a deadline for the Applicant to remove the article (11:00 on this day) and as the Applicant did not, he was then notified of his disqualification at 13:37 by the Chairperson and Chief Electoral Officer, Sibabalwe Manyifolo. Notably, the elections for the SRC Executive Committee were scheduled to take place on the evening of this day.

[25] In their decision to disqualify the Applicant, the SEC cited his refusal to comply with a lawful directive as a further infringement and that his conduct was seriously detrimental to the integrity of the election. The Applicant avers that he failed to comply with the directive as, according to his view, the directives were unlawful, irrational, and disproportionate to the alleged non-compliance.

[26] On the afternoon of 5 September the Applicant filed an urgent application to interdict the SRC Executive Committee elections that were scheduled to take place that evening. Before this Court could issue an interim order in response to the urgent application, the members of the newly elected SRC chose to postpone the Executive Committee elections.

[27] On 11 September, the Court issued an interim order in which the Executive Committee elections were interdicted pending the outcome of the review of the Applicant's disqualification by the SEC.

[28] On 11 September, this Court received an email from Mr Bester, a former Justice of this Court and a final year postgraduate LLB student, requesting to be joined to these proceedings as an *amicus curiae* and the Respondents were notified of this request. As the current Rules of Procedure did not provide for the procedure required to join individuals as *amicus curiae* to legal proceedings, the Court undertook to determine whether such a request could be permitted.

[29] Later this same day, Mr Bester filed a notice of motion and founding affidavit where he instead sought to be joined to the proceedings as an Applicant and not an *amicus curiae*.

Issues of law

[30] The Court must thus consider the SEC's interpretation of rule 3(8) of the Electoral Rules, the Applicant's alleged contravention thereof, the Applicant's refusal to comply with the sanction imposed and briefly, Mr Bester's application to be joined as *amicus curiae* in the proceedings.

Mr Bester's application to be joined and amicus curiae

[31] As it pertains to Mr Bester's application to be admitted to the proceedings as *amicus curiae*, it is firstly important to define and contextualise the meaning and role of an *amicus curiae* in proceedings before a court.

[32] *Amicus curiae*, a term loosely translated from Latin, means a 'friend of the court.' This has traditionally referred to a natural or juristic person who is admitted into litigation by a court, at its discretion, for the purposes of assisting the court on matters that are complex and usually beyond its field of expertise. In terms of the common law, such *amicus* may be requested by a court to participate in the legislation, whilst under a constitutional dispensation, an *amicus* is required to make an application to the court. Consequently, a person, natural or juristic, may make a request to a court for permission to intervene in the proceedings for purposes of furthering or advancing a particular legal position.

[33] To allow persons to request to intervene in legal proceedings as an *amicus curiae*, courts adopt a set of rules or procedures that set out the process to be followed. An example is Rule 10 of the Rules of the Constitutional Court, which provides guidelines pertaining to an *amicus curiae* within the Constitutional Court. Notably, in the Student Court Rules of Procedure 2024, there is no such rule or procedure which provides guidelines regarding how one may apply to be an *amicus curiae* before this Court. This *lacuna* in the rules and procedures may exist as this may be the first instance in which a student has made such a written request to the Court.

[34] Whilst it is true that Mr Bester withdrew his request to be joined as an *amicus curiae* and later, withdrew from the matter entirely, it is for the benefit of future litigants that the Court comments on the *lacuna* in its Rules of Procedure.

[35] The use of an *amicus curiae* is a practice that is endorsed by various courts including the highest in the Republic. An absence of a rule should not mean that the Student Court

must be the forum that denies students the opportunity to express their experience and expertise where it is relevant to a current matter. Thus, until the Rules of Procedure are developed to make provision for procedures to allow students to join proceedings as amici curiae, the Court must be prepared to accept such requests from students in a manner that is fair, equitable and mindful of all the parties involved. Similarly, students who may have particular experience or expertise that may benefit the Court must be encouraged and allowed to request to be joined as amici curiae even where the procedure for such requests is still to be developed.

The relevance of administrative law

[36] Section 14 of the Student Constitution confers on every student the right to just administrative action which is procedurally and substantively fair. This is governed by The Promotion of Administrative Justice Act (“PAJA”).² For these sections to apply, an act must first be determined to be an administrative action.

[37] To determine whether an action is administrative for the purposes of section 14 of the Constitution and PAJA, one must consider the elements laid down by Khampepe J in *Minister of Defence and Military Veterans v Motau*.³ These elements are namely;

1. Is the decision Administrative in nature;
2. Is the deciding body an organ of state, creature of statute or natural person;
3. Is the administrator exercising public power;
4. Is the administrator acting in terms of an empowering provision;
5. Are a person's rights adversely affected;
6. Does the action hold direct legal effect; and
7. Is the action excluded by PAJA in terms of section 1.

[38] The actions that are to be scrutinised in terms of the abovementioned elements are the SEC’s decisions to; approve the Applicant’s inclusion of the Substack platform linked in his manifesto, their interpretation and enforcement of rule 3(8) of the Electoral Rules, find the Applicant in breach of the rules regarding endorsement and the sanction imposed,

² Act 3 of 2000.

³ 2014 ZACC 18 para 35.

demand that the Applicant remove the Substack post and issue an apology, and subsequently disqualify him as a candidate for non-compliance.

[39] The SEC, as a creature of the Constitution, exercised the power so granted by it and in terms of Chapter 14, particularly sections 118 to 128. Their decisions do have a direct, adverse and legal effect on the Applicant insofar as denying him his statutory entitlement to serve as a generally elected member having received the requisite votes to qualify. Lastly, there are no exclusions that preclude the application of PAJA in terms of section 1. Thus, the abovementioned decisions fall uncontroversially within the ambit of administrative law and consequently, within the reach of PAJA.

[40] For this reason, per section 33(1) of the Constitution of the Republic of South Africa, 1996 and Section 14 of the Student Constitution, all of these decisions must be lawful, reasonable, and procedurally fair.

The misinterpretation of rule 3(8) of the student election rules

[41] The main issue before the Court centres around the SEC's interpretation of rule 3(8) which reads as follows:

“Refrain from any attempt at misusing power or resorting to privileges or influence or using any form of coercion intended to persuade someone to vote for any candidate.”

(The Court's discussion of this rule is confined to the misuse of power, resorting to privileges or influence as there are no allegations or averments pertaining to coercion).

[42] The SEC have interpreted this rule to prohibit candidate-to-candidate endorsements where candidates within the same election cycle endorse each other to the voting population. Such an interpretation, as written, is deduced from the WhatsApp message sent by the Director of Electoral Regulations on 20 August and the SEC's papers in which they aver that the message where they prohibited candidate-to-candidate endorsement was not the promulgation of a new rule but the interpretation of rule 3(8).

[43] There may be a valid reason underpinning the SEC's interpretation of rule 3(8), in that it would undermine the freeness and fairness of elections if candidates with larger platforms and influence could reach their audience and persuade them to vote for particular candidates through candidate-to-candidate endorsements. However, reading rule 3(8) as a blanket

provision with no exception or caveat is a reading that demonstrates a misunderstanding of the context, purpose, and language of the provision.

[44] This provision *ex facie* appears as a catch all to prevent the misuse of power, privilege, influence or coercion by students or third parties who have platforms that may influence voter behaviour. These platforms may be a result of holding an office in student leadership or through established student political organisations. This understanding is in line with other provisions of the rules which prohibit the use of financial support and other platforms to endorse candidates, as illustrated in *Februarie v Electoral Commission and Another* 05/10/2. This provision, as a caveat, may then find application to candidates who have platforms that are disproportionately larger than those of other candidates and which may be used to significantly influence voter behaviour.

[45] It becomes relevant to address the SEC's averment that the Applicant misused influence gained through the election period to improperly endorse another candidate through the impugned Substack article formally addressed below. On 25 August, the Applicant posted an Instagram reel which contained a link to the Substack article containing the candidate-to-candidate endorsement in its description. This reel amassed 90 000 views. Here, the SEC contends that the Applicant was also in contravention of rule 3(8).

[46] The Court however, cannot agree with this finding. Whilst it is true that the Applicant posted a reel that amassed a large amount of views and which directed viewers to the Substack article, the reel was not posted to an established audience of 90 000 people but rather to the Applicant's own Instagram followers of a significantly lesser amount. The virality of the reel is neither here nor there as that cannot be predicted and it cannot be said, factually, that the Applicant posted the reel with the Substack article linked in the description with the understanding and intention that it will reach 90 000 people.

[47] If the Applicant already had a disproportionately larger platform than the other candidates and had used such a platform to coerce or persuade students to vote for particular candidates through the candidate-to-candidate endorsement, rule 3(8) may have found application. However, a blanket prohibition on all candidates for all endorsements cannot flow from a valid and sensible interpretation of rule 3(8).⁴

⁴ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 2 All SA 262 (SCA) para 18.

[48] Furthermore, it must be stated that there is a lack of causal connection between the Applicant's reel, the link to the Substack post, and his alleged contravention of Rule 3(8): by allowing social media campaigning, which by its very nature allows for posts to go suddenly and unexpectedly "viral", the SEC accepts this as a possibility, and a candidate's mere use of their platform does not constitute the misuse of influence – however, as noted above, a different situation may arise where the candidate already has "influencer" status. On these facts, this is not the case. The Applicant's viral post contained a link to his Substack article in which he endorsed another candidate, a link which is not clickable on Instagram but must be manually typed in on an internet browser, and containing a paragraph near the end in which he endorsed Mr Weideman. The link between the post and any alleged "influence" he exerted through the post to successfully have Mr Weideman appointed is too tenuous to constitute any type of legal causation.

[49] Importantly, the language of the provision must also inform its interpretation. As seen in the case of *Vousvoukis v Queen Ace CC t/a Ace Motors*, where the legislature would have intended a certain state of affairs to be, it would have said so.⁵ Similarly, had the drafters of the Electoral Rules or the Code of Conduct intended for candidate-to-candidate endorsements to be prohibited, a provision declaring such would have been included. As such, the Court cannot endorse an interpretation inclusive of a prohibition that is not expressly written and that is incongruent with the purpose and context of the provision itself.

[50] Consequently, it must be stated that such an interpretation of rule 3(8) is invalid, and any decisions made thereon are set aside.

The Applicant's DASO membership

[51] The 2025 Code of Conduct for candidates provides that 'no political party [...] may endorse or campaign for a candidate'. Candidates may not solicit or accept endorsements from these third-parties, and where there has been an unsolicited endorsement, candidates must disavow them.⁶

[52] There is no explicit prohibition on candidates to not be part of a political party; though they may not run as part of the political party nor accept endorsements from existing political

⁵ 2016 (3) SA 188 (ECG).

⁶ Art 10(3).

parties, whether registered or unregistered – this prohibition flows from article 10 and is a natural extension of the rule against using undue influence to gain favour with the electorate. It can therefore not be said that the Applicant has contravened a rule by declaring himself a DA member; on the contrary, it would be an impermissible infringement on the Applicant's freedom of association and expression to be prohibited from being part of a political party nor following his political beliefs.

[53] As such, by declaring himself a 'proud DASO member', the Applicant has not contravened any rules. However, as a caveat, it must be noted that this is a unique case where the Applicant was not campaigning as a DA member nor visibly donning any of their memorabilia; his declaration that he was a "proud DASO member" was in response to a caucus question raised, and the Applicant cannot be expected to be dishonest by lying about his political affiliation and beliefs in light of such a direct question; not only would it lack integrity and reflect poorly on the calibre of SRC candidates, but it would also infringe unjustly on his right to association and expression.

[54] The SEC contends that the Applicant had failed to distance himself from DASO because he declared his beliefs in response to Mr Baleka's "baiting" question about the Applicant's affiliation with DASO, which they did not deny occurred.⁷ This is unsustainable. What they are in effect stating, when they contend that he contradicted himself because he averred, on one hand, that he had "publicly distanced himself" from [...] DASO", despite on the other hand answering the question by declaring his affiliation, is that the Applicant should have lied about his political beliefs. What SRC could require its candidates to tell such bald-faced lies?

[55] In conclusion, there was no contravention of the rules when the Applicant declared his affiliation with the DASO. As long as he had not gained undue favour by using the DA – whether through endorsements, funding, or using DA memorabilia, for example – it cannot be said that his honest response to a question raised during caucus constituted an infringement of any rule.

[56] It must be noted, however, that there may easily arise a slippery slope when concerning political affiliations – and each case must be judged on its own merits,

⁷ Para 39 of the Respondents' Answering Affidavit.

considering the type of undue influence that may be present. Do not let the above findings constitute blanket permission to run openly as members of political parties; this may likely breach the rule against undue influence, but should such a case arise, it is for that Bench to determine it on its own facts.

Reasonableness of the SEC

[57] Section 6(2)(f)(ii) and section 6(2)(h) of PAJA mandates that all administrative actions ought to be rational and reasonable, respectively. Section 6(2)(f)(ii) of PAJA reads:

“A court or tribunal has the power to judicially review an administrative action if the action itself is not rationally connected to-

- (aa) the purpose for which it was taken;
- (bb) the purpose of the empowering provision;
- (cc) the information before the administrator; or
- (dd) the reasons given for it by the administrator”.

[58] The Applicant had refused to adhere to what he had felt was an irrational and disproportionate sanction imposed on him, being the sanction imposed on 4 September to issue an apology and remove his Substack article in its totality.

[59] On 4 September, the SEC, as a sanction for their finding of non-compliance with rule 3(8), obliged the Applicant to remove the entirety of his Substack article and to issue an apology statement. The Applicant refused on the basis that he understood the sanction to be irrational and disproportionate to the alleged contravention. As a result of this refusal to remove the article, the Applicant was disqualified for refusal to comply with a lawful directive of the SEC.

[60] The Application’s allegation of irrationality and unreasonableness rests on two grounds:

1. The elections had concluded and thus a removal would serve no purpose other than to hide the criticisms he had levied against what he felt was a dysfunctional SRC;
2. The decision itself was disproportionate, as if the SEC took so much issue with his endorsement in the article an appropriate/proportionate sanction would be to request him to edit out/remove that particular paragraph.

[61] Pertaining to the second of the abovementioned grounds, it is worth repeating that the Applicant's original Substack article containing the endorsement of one other candidate was approved by the SEC who later admitted, even after the announcement of the successful candidates, that they had not read the article in its entirety.

[62] In this respect it is important to distinguish the specific action that is the subject of scrutiny. It is not the decision to disqualify the Applicant that is under consideration here, it is the decision to impose on him a sanction to remove the entire Substack article. It is that decision, that the Court favours the Applicant's position, in that the purpose for which the decision was taken, cannot be said to be rationally connected to the decision.

[63] Even if this Court favours the SEC's misinterpretation of Rule 3(8), the purpose of such a misinterpretation would be to disallow persons in positions of power or influence from coercing the voting body into voting for a candidate. The removal of the whole Substack article, after the elections had come and gone, serves no function in preventing the student body from being manipulated or coerced.

[64] Furthermore, the timing of such a sanction is irrational. The SEC's purpose is to facilitate free and fair elections, and imposing such a sanction the day before executive elections, a sanction with the potential to result in a disqualification if not followed, with a single day's notice to the Applicant, not only serves to be at cross purposes with rule 3(8), but it is not rationally connected to the purpose of the SEC's function of facilitating free and fair elections in the first place.

[65] Moreover, even if the sanction itself had a rational link to its purpose, based on the SEC's already explained misinterpretation of rule 3(8), that sanction in and of itself is disproportionate. Section 6(2)(h) of PAJA establishes that actions that are unreasonable are judicially reviewable. To determine what is unreasonable, O'Regan J in *Bato Star* had established 6 factors to consider if an action is reasonable, with the final two factors innately including proportionality into the analysis, those factors being:

1. The nature of the decision;
2. Identity and expertise of the decision maker;
3. Range of factors relevant to the decision;
4. Reasons given for the decision;
5. Nature of competing interests; and

6. Impact of the decision on lives of those affected.⁸

[66] The SEC's decision is one that would necessitate proportionality, as the decision comes off the contextual backdrop of 'accidentally' approving the Applicant's article, and thus a sanction requiring its removal in its entirety, cannot be justified if it is a single paragraph that the SEC takes issue with. Such a sanction would be to use a sledgehammer to break open a nut. With the potential of having this 4 September sanction serve as a basis for a subsequent disqualification (of which did occur on 5 September), it is furthermore necessary that the sanction imposed be one that is rational, reasonable, and proportional.

[67] Such an interpretation of PAJA and these facts must be underscored with a purposive constitutional interpretation. Section 16 of the Constitution protects a person's freedom of expression, a right that South African jurisprudence holds a jealous regard for protecting.⁹ It cannot go unspoken that the vast majority of the Applicant's Substack article contained harsh and direct critique on the current SRC, and previous SRC bodies. It would not be speculation to say that this very rhetoric is responsible for the Applicant amassing the vast majority of votes, and serves as a valuable and essential part of political discourse, not only at a university level, but at a national level. Such a sanction imposed by the SEC to remove the whole article of critique, merely for the purpose of a single paragraph being at cross purposes with a dubious interpretation of rule 3(8), has the disproportionate effect of removing what could be seen as valuable student political discourse that serves a purpose beyond elections.

Final remarks

[68] It must be noted that the Court is not oblivious to the SEC's undertaking to ensure that all candidates in an election can participate within the same level playing field. This means making a concerted effort to safeguard the elections against any undue power, influence or financial support that may influence voter behaviour improperly towards or against any running candidates. This undertaking must, however, be balanced against the candidates' constitutional freedoms of expression and association. Within reason, it is not objectionable to suggest that candidates should be afforded the opportunity to identify others

⁸ 2004 4 SA 490 (CC) para 45.

⁹ *Print Media South Africa v Minister of Home Affairs* 2012 6 SA 443 (CC) para 47-52.

who are running on similar ideas, goals or missions for the SRC and to inform the voting population that likeminded candidates are in the running. This would not, simply, constitute a misuse of power or influence to persuade voters in contravention of rule 3(8).

[69] That being said, the Court reiterates that the SEC's interpretation of rule 3(8) remains in conflict with the language of the provision, its context and its purpose. Where it may see value in prohibiting candidates from endorsing one another, such value must be reflected in an amendment to the challenged rule and not in an interpretation of the rule as it remains.

[70] Returning to the facts and the averments made on the papers of both parties, any averments regarding selective compliance with the SEC's interpretation of the rule are inconsequential to the question before the Court. As demonstrated above, irrespective of which interpretation of the rule is applied, the SEC's sanctioning and disqualification of the Applicant cannot be upheld.

[71] Despite their interpretation of rule 3(8), the SEC engaged in extensive dialogue with the Applicant, as a gesture of good faith, to manoeuvre the approval of Substack as a platform for candidates to use. Whilst it does not appear that the SEC explicitly barred the Applicant from editing the article after it had been re-published upon the formal commencement of the elections, the Applicant did not act in good faith by editing the article to include the second endorsement, especially considering that the ability to edit articles post-publication was a concern vocalised by the SEC.

[72] However, the SEC was disingenuous, and possibly negligent, in approving an article that they had not read in its entirety. Whilst the Court may be emphatic to the administrative burden and constraints that the SEC was under at the time, it cannot excuse the fact that the SEC failed to do the necessary due diligence prior to their approval of the Applicant's article.

[73] The Court's finding is set against the backdrop of the back and forth communications between the Applicant and the SEC where the use of Substack was ultimately approved, to the elections having concluded, to the sanction being imposed on the Applicant the day before the Executive Committee elections were scheduled to take place, and where non-compliance with the abovementioned sanction would result in disqualification.

[74] Considering these facts together with the constitutional imperative to protect the freedom of expression, particularly where such expression critiques authority and the political status quo, the Court finds that the imposition of the sanction by the SEC requiring the Applicant to remove the entirety of his article is irrational, unreasonable and disproportionate.

[75] Therefore, any sanction handed down against the Applicant for his refusal to comply with the order to remove his Substack article must be set aside. This includes the Applicant's disqualification on 5 September.

The order

[76] The Court makes the following order:

1. The SEC's interpretation of rule 3(8) is at cross purpose with its purpose, context, and language.
2. The sanction imposed on the Applicant on 4 September to remove the entirety of his Substack article is accordingly irrational, unreasonable and disproportionate.
3. The SEC's decision to disqualify the Applicant is set aside.



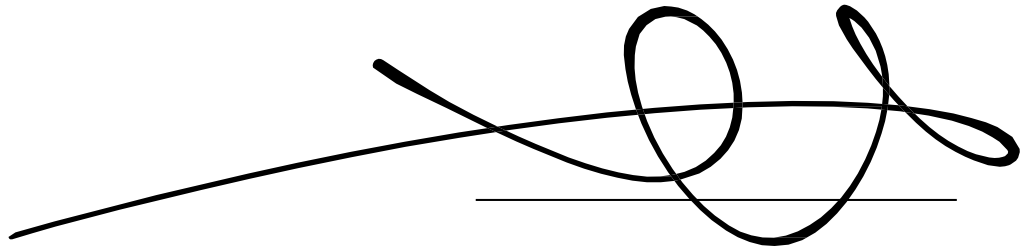
RISIMATI CJ



MÜLKE DCJ



LAKER J

A stylized, cursive handwritten signature in black ink. It features a long horizontal stroke on the left that curves upwards and loops into two large, overlapping ovals on the right.

VAN DER WATT J

A cursive handwritten signature in black ink. It starts with a large, sweeping loop on the left, followed by several smaller loops and a long horizontal stroke extending to the right.

ZIMRI J