

Advisory Opinion 2015-2

On the Constitutionality of the Election's Code.

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C.J. Cox,

Upon certified request from the Student Body President, the Court issues this advisory opinion weighing the constitutionality of the election code's restrictions on student speech. Initially this Court will reaffirm and echo the holding already provided by the Court in Ignite Party v. Vitality Party v. Supervisor of Elections, February 23, 2015. The Student Body President has requested further explanation on the scope of speech the supervisor of elections can control. This Court declines to issue an opinion creating an exhaustive list of what is and what is not protected speech. Instead, this Court recognizes that speech is complex and must be addressed on a case by case basis. The Supervisor of Election's jurisdiction is limited to those parties and candidates who have chosen to run in the election and those acting on the direction of a party or candidate. To hold otherwise would be an unjust result. The parties and candidates cannot be held financially liable for unauthorized actions made by third parties.

This opinion will be limited but will attempt to shed some guidance on how the Court may rule in future matters. This advisory opinion is meant to serve as guidance and not an advance ruling on any cases that may be brought before the Court in the upcoming or any other election.

First, the Court will look at the definition of "campaigning." Currently "campaigning" is defined as "[t]he

distribution or use of campaign materials, the publicizing or solicitation of support for or against a ballot item, political party, or candidate for an elected office of the Student Body, and calling forth the action to vote or support." The Court will emphasize the use of the conjunction "and" in the statute. This word choice indicates that the "campaigning" is either: (a) the distribution or use of campaign materials, (b) the publicizing or solicitation of support for or against a ballot item, political party, or candidate for an elected office of the Student body; as well as (c) calling for the action to vote or support. To constitute "campaigning" the conduct must include either (a) or (b) and (c), or (a) and (b) and (c). There can be no campaigning without "calling forth the action to vote or support." Unfortunately this definition provides little guidance. However, this is an issue that must be addressed on a case-by-case basis. The election's commission and later Court will have to determine in each instance what is "calling forth the action to vote." The Court will not create an exhaustive list of what is and what is not permissible. That power is reserved to the legislative branch.

Second, the Court will address campaign materials. The Court would again decline to create an exhaustive list of what is and what is not a campaign material. However, the Court will add that, pursuant to the Court's holding in the above case, the supervisor of elections may only control speech made by registered parties, candidates, and speech clearly authorized by parties or candidates. Therefore, the only materials that would fall under the Supervisor of Election's jurisdiction is that which is disbursed by, or on behalf of, a registered party or candidate. Again, the election's commission will have to determine when materials are distributed by or on behalf of a candidate or party. The reasoning is that the

parties and candidates cannot be held responsible for possible third party actions. If the party or candidate was not responsible for the distribution, then it would be unjust to penalize them for the distribution. Thus by definition the only items which must be cleared by the supervisor of elections are those which are used by parties, candidates, or are clearly authorized for distribution by the parties or candidates.

The Court's position is summed up well in the above case. "The Elections code can constitutionally restrict conduct of students involved in the election and as a whole." SGA Reporter Ignite Party v. Vitality Party v. Supervisor of Elections, February 23, 2015. To be a permissible regulation, the effect must be limited to policing conduct of those persons or parties who voluntarily chose to be a part of the elections process.