IN THE FLORIDA STATE UNIVERSITY SUPREME COURT

IGNITE PARTY,
v.

VITALITY PARTY,
v.

SUPERVISOR OF ELECTIONS

Published: February 23, 2015

SUMMARY

The issue before us is a remand from Dr. Coburn of multiple decision by our Court over the past week regarding the interpretation and application of the definition of Campaigning and linked statutory language. The Supervisor of Elections, Elections Commission and this Court have all had difficulty in trying to define the bounds of what behavior constitutes campaigning under the Elections Code, resulting in conflicting and inconsistent interpretations. This has occurred because of the varying adjudicating bodies trying to balance the actual language of the statute with the seemingly absurd results that come from such a reading.

When looking at the language as a whole it has become apparent to this Court that Campaigning suffers from overbreadth in that it clearly prevents and restricts speech by students that represents a violation of their First Amendment rights under the U.S. Constitution. It is evident to the Court that it is manifestly clear that the statutes prohibits a large amount of protected expression for reasons discussed herein. While it is true that a 'canon' of statutory constructions, known as the 'constitutional avoidance' canon comes into play only when the statute, given its most natural reading, would in fact be unconstitutional. But here the campaigning definition is so broad it is impossible for this Court to constitutionally limit the language without becoming a pseudo legislature.

STATUTORY AUTHORITY

The FSU Supreme Court has the authority to rule a statute in the FSU Student Constitution as unconstitutional in light of U.S. Constitutional Law. Article I Section 6 of the FSU Constitution of the Student Body, titled STUDENTS RIGHTS affords that "Each student shall be subject to the rules of the courts and the University but these rules shall at no time and in no way abridge the student's rights as citizen under the United States Constitution or the Constitution of the State of Florida." Article IV, Section 3 Part C of the FSU Constitution of the Student Body states that "The Supreme Court shall have jurisdiction: 1. Over cases and controversies involving questions of the constitutionality of actions by student governing groups, organizations and their representatives."

OPINION

CJ. Rozanski delivers the opinion of the Court joined by J. Schmidt, J. Hebb and J. Gibbs.

The 1st Amendment of the U.S. Constitution is not an absolute right to freedom of speech. The Court recognizes that FSU can have legislation that effectively limits speech by the students who attend the University. The Court does not need to address what level of scrutiny is required in analyzing such

statutes because the statute at hand is manifestly clear to be an impermissible restriction of student speech.

The outcome is not apparent at first but the unconstitutional effects are clear when the statutes are read in conjunction the way they are written.

The problematic statues are:

701.1 A. Campaigning – The 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. Campaigning shall begin the Wednesday at 12 a.m., one week prior to the Election Day.

701.1 E. Campaign Materials - any material, including but not limited to social media, electronic communication, videos, posters, placards, signs, signboards, leaflets, folders, handbills, fliers, banners, tee shirts, buttons, paint, University owned walls that may be painted on, handwritten announcements or circulars of any size and consistency that publicize a political party or candidate

701.1 B. Electronic Communication – campaigning through any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, digital, radio, computer, cellular or wireless device.

714.1A. All campaign materials must be approved by the Supervisor of Elections or his/her deputy 24 hours prior to distribution or use. AND

714.1J Calling the action to vote shall be defined as publicizing the name of likeness of any candidate, publicizing the place, time, or manner of voting, or the use of the word “vote.”

The issue lies within the broad language found in 701.1A which covers any solicitation or publicizing of a political party or candidate by any person. The lack of limiting language amounts to an unconstitutional restriction. 714.1J covers broadly any and all references to any candidate by simply requiring that the mention of the name or the use of the likeliness of a candidate is sufficient to satisfy the “calling to action to vote” element of the Campaigning statute. The broad construction of campaign materials to include anything on social media (a facebook post) and in electronic communications (including text messages between two parties) engulfs an unreasonable amount of speech by students on campus at any time. Finally, such speech would be a schedule II violation outside of one week prior to the election resulting in a monetary deprivation from students found in violation of the statute. Within one week the broad range of speech captured by these provisions is required to get approval from the Supervisor of elections 24 hours before use as required by 714.1A, or else a schedule I violation will be levied and monetary deprivation occurs. The requirement of preapproval or else monetary sanctions is impermissible when applied to the entire

student body for the wide range of speech that is captured by the statues.

The issue is best conveyed by the following example:

John Doe FSU student could not tweet, text or facebook post "Vote for my friend Jane Doe for student body president" without proper 24 hour approval from the Supervisor of elections (since it is now under the Court's definition of campaigning and it is a campaign material). Further, outside of the one week campaign period, John Doe could not publish a picture of Jane Doe for fear of falling within the "calling forth the action to vote" because he is publicizing a candidate for the student body and the picture is the likeness of a candidate. This result is absurd and more importantly unconstitutional.

As with any overbreadth claim, while the activity may be impermissible under the intent of the statute, the fact that the statute unquestionably restricts permissible and protected speech renders the language invalid and everyone is free from liability under it. Thus the Court has no choice but to vacate all previously levied violations and fines against the Ignite and Vitality party as well as extinguish the pending claims of both parties in regards to claims[1] involving Campaigning one week prior to the election and for any future claims[2] regarding the failure of **individuals** (emphasis added) to get 'campaign materials' approved.

We do not have a stance on the Supervisor of Elections, who is in charge of registration of political parties, from requiring some form of pre-clearance for messages posted directly by the political party. There is some concern that non-person entities may be afforded first amendment rights to some extent after the Supreme Courts Ruling in *Citizens United*, but a requirement of civility and preclearance for certain obvious 'campaign materials' (such as videos or widely disseminated images to constitutions) is probably permissible on a grand scale, but this Court knows that if there was ever an election to push the bounds of the feeble elections code this is one where factual circumstances may present themselves to find that such restrictions are impermissible.

This ruling does not get rid of the elections code as a whole, just that which clearly involves the restriction of positive speech. The Elections code can constitutionally restrict conduct of students involved in the election and as a whole. Malicious statements in videos or posts as well as bad acts are still impermissible. Destruction of campaign material, use of SGA resources, or the use of power or influence to get an "official" stance taken by the SGA to support a party or candidate, are all proper restrictions. In summation the restriction and subsequent punishment for acts, not speech, in the elections code still exist and are enforceable.

The Court feels that both parties were'harmed' equally in the process, and

[1] This includes all facebook post violations for Ignite and Vitality, as well as the wall painting for Vitality and Ignite videos.

[2] 715.6(A)(9) and 715.7(D) are effectively barred from being a basis for a violation

notes that no previous applications of the election code in the Supreme Court's precedent (as found in the Reporter) displays a factual circumstance or alleged complaint that there was an infringement or over broad application of the statutes that placed a restriction on the 1st amendment rights of the student body as a whole.

SO ORDERED