The Student Supreme Court Reporter
In And For Florida State University

Academic Year of 2022-23

SUPREME COURT REPORTER
OF THE STUDENT GOVERNMENT ASSOCIATION
IN AND FOR FLORIDA STATE UNIVERSITY
ACADEMIC YEAR OF 2022-23

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THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

CALVIN BOOLE,
DIEGO FERMIN,
And JOEL WEEKS,

22-FA-SC-01

Petitioners,

v.

SPENCER GREENWOOD,
Supervisor of Elections,
in his Official Capacity,

Respondent.

_____/

Counsels of record: Jack Rowan for Petitioner and Student Body Attorney General Khamisi Thorpe for Respondent.

ASSOCIATE JUSTICE LUNDE, sitting by designation, delivered the majority opinion of the Court.

SYLLABUS

This action was brought before this court claiming that Defendant was in violation of Florida State University Student Body Statutes ("SBS") § 705.5(C) by proposing an apportionment plan to the Student Body Senate and incorrectly limiting the apportionment numbers to a net change of plus or minus 1 seat from the previous apportionment in Fall of 2021.

This Court dismissed, with prejudice, Counts I and II of the complaint alleging violations of the United States and Florida State University Student Body Constitutions. The 1st District Court of Appeal has found that, although Student Government is a statutorily created program by the Florida legislature, procedural violations of Student Body Statutes cannot rise to the level of violation of a student's constitutional due process rights, because "student government is an extracurricular activity – not real government." *Fla. A&M Univ. Bd. Of Trs. v. Bruno*, 198 So. 3d 1040 (Fla. 1st DCA 2016). This is also the case when extended to the 14th Amendment arguments as made by Plaintiffs.

Therefore, the error alleged in the present case do not rise to a constitutional issue regarding due process and therefore Counts I and II are inapplicable.

ISSUE

I. Did the Supervisor of Elections violate SBS § 705.5(C) in his presentation of Resolution 52 to the Senate?

FACTUAL BACKGROUND

Defendant, the Supervisor of Elections proposes an apportionment plan to the

Student Senate every fall after SGA advising prepares a statistical spreadsheet showing each divisions population relative to the University as a whole. Those percentages are then translated into the number of seats that each division is entitled and to ensure that the requirements of the Student Body Statutes are met.

When Defendant proposed this plan to the Senate on August 31, 2022, the Senate was told that SBS § 705(D)(1) limits the change in seats apportioned to plus or minus one per division. This hindered Plaintiff's respective divisions, as well as others, from gaining seats and losing the proper number of seats based on the student populations in those divisions.

OPINION

SBS § 705.5(C) mandates that seats are to be apportioned based on the student populations provided by the student data base numbers as provided by SGA advising. The plan proposed by Defendant was explained to have capped any seat changes by one in either direction because of an understanding of a subsequent provisions of SBS § 705.5(D)(1) and misapplying that section to § 705.5(C) and informing the Senate that it was statutorily controlled in that manner.

This Court finds that SBS § 705.5(C) does not say that the seats apportioned every fall are to be capped by a change of plus or minus one from the previous year. Rather, where SBS § 705.5(C) governs *how many* Senate seats each division is to be allocated on an annual basis, SBS § 705.5(D)(1) governs how those seats, as determined by SBS § 705.5(C), are to be allocated from semester to semester within the annual Senate session.

Further, the application of SBS § § 705.5(D)(1) to control § 705.5(C) in a proposal to the Student Body Senate without an alternative for the Senate to rely upon is a violation of § 705.5(C). SBS § 705.5(D)(1) contains language about a difference in seats being within one from semester to semester, again, § 705.5(D)(1) controls § 705.5(D), which outlines the Senate's duty to designate those seats apportioned by the separate and distinct process outlined in § 705.5(C) as Fall or Spring seats. Hence, SBS § 705.5(D)(1) is applicable only to "which seats shall be designated as Fall and Spring seats, respectively." Fla. St. U. Student Body Stat. § 705.5(D).

Hence, we hold and declare that SBS § 705.5(D)(1) does not have any controlling

effect on the guidelines set forth in § 705.5(C). SBS § 705.5(D) and its subsections have a distinct subject matter as to what they require that does not relate to the apportionment process described above it.

Further, Respondent argued that the limiting of apportioned seats by one was a historical practice, this Court finds that this was not the case. After a review of the previous 4 years of apportionment plans, this Court finds that there has not been any strict historical practice of limiting seats by one during the apportionment process in the Fall.

SBS § 705.5(C) mandates that apportionment be "based on" percentages of students in each respective division as shown in the student database. SBS § 705.5(C). Defendant argued that the "based on" language only required that the data be looked at before apportioning seats. This interpretation is incorrect because it gives far more discretion to the Supervisor of Elections to apportion seats as they see fit, instead of allowing the database to dictate the apportionment per the statute's plain language. This requires that apportioned seats be as strictly correlated with those percentages as is practicable. The method used by the Supervisor of Elections, at least as to apportioned seats for Fall 2022, was a direct violation of the requirements set forth in SBS § 705.5(C).

CONCLUSION

In conclusion, this Court rejects the arguments advanced by Defendant, and declares that SBS § 705.5(C) is not controlled by the mandates of § 705.5(D)(1) or the application of § 705.5(D)(1) to the determination of how many Senate seats each division is entitled to, as it occurred prior to the passage of Resolution 52, constitutes an improper and unlawful apportionment pursuant to our Student Body Statutes, and that because the practice of capping the net change in apportioned seats per division is unlawful, a new plan should be proposed in line with this opinion.

DONE and ORDERED, this the 13th day of September 2022, in Tallahassee, Florida.

_____

ASSOCIATE JUSTICE GARCIA MARRERO, concurring in part and dissenting in part:

I write today to explain that I agree with the majority in their resolution of the specific dispute before the Court—whether the Supervisor of Elections violated SBS § 705.5(C) by misapplying § 705.5(D)(1) to the apportionment governed by § 705.5(C); however, to the extent our ruling today constitutes a declaratory judgment as described in section 86.011, Florida Statutes (2022), I dissent.

Section 86.011, Florida Statutes, states, in part,

> The ***circuit and county courts have jurisdiction*** within their respective jurisdictional amounts ***to declare rights, status, and other equitable or legal relations*** whether or not further relief is or could be claimed. . . . The court may render declaratory judgments on the existence, or nonexistence:
>
> (1) Of any immunity, power, privilege, or right; or
>
> (2) Of any fact upon which the existence or nonexistence of such immunity, power, privilege, or right does or may depend, whether such immunity, power, privilege, or right now exists or will arise in the future. Any person seeking a declaratory judgment may also demand additional, alternative, coercive, subsequent, or supplemental relief in the same action.

F.S. § 86.011(1)–(2) (emphasis added).

Based on the plain ordinary language of section 86.011, declaratory judgments can **only** be issued by circuit and county courts of the state of Florida. Nowhere in the text of the statute does the Florida legislature give this Court the power to issue a declaratory judgment of any degree, much less when an opinion purports to disguise judicial fiat as an equitable remedy—as the majority attempts to do, here, today.

This clear understanding of section 86.011 is undisputed—mainly because no other Florida statute can say otherwise. Looking at the enabling Florida statute for all Florida university student government, section 1004.26, Florida Statutes (2022), it becomes clear that this Court has no authority or jurisdiction to issue declaratory judgments. Section 1004.26, states in part, "A student government is created on the main campus of each state university[,]" and that "[e]ach student government shall be organized and maintained by students and shall be composed of at least a student body president, a student legislative body, and a

student judiciary. § 1004.26(1)–(2). Nowhere in section 1004.26 does the Florida legislature grant a student judiciary the full authority or power of a circuit or county court of Florida.

The majority is correct in pointing out how the First District Court of Appeal described collegiate student government as "not real government." *See ante* at 1 (quoting *Fla. A&M Univ. Bd. Of Trs. v. Bruno*, 198 So. 3d 1040, 1044–45 (Fla. 1st DCA 2016)). One is not hard pressed to understand why the First DCA came to this conclusion. Looking to section 1004.26(3) it is clear why the First DCA came to the conclusion that collegiate student government is not real government.

Section 1004.26(3) states that, "Each student government ***shall adopt internal procedures governing***: (a) The ***operation and administration*** of the student government. (b) The ***execution of all other duties as prescribed*** to the student government ***by law***." § 1004.26(3) (emphasis added). The Florida legislature made it clear in section 1004.26(3) that collegiate student governments were (1) only to produce constitutions and/or statutes that governed the operations and administration of the government, and (2) that allowed them to execute their duties, but only so long as those duties were prescribed by law. That is the key distinction, section 1004.26(3) enables collegiate student governments to enact governing procedures, such as constitutions and statutes, that are bound by state law.

That main point brings us back to section 86.011. Section 86.011 only grants the authority to issue declaratory judgments to circuit and county courts of the state, nowhere in the statute does it grant that same power to collegiate courts—which are quasi-judicial in nature, as described by the First DCA in *Bruno*.

Therefore, given the plain ordinary language of this Court's enabling statute with the jurisdictional statute of the Declaratory Judgment Act, this Court has no jurisdiction to construe any request or plea for relief as a declaratory judgment.

Even so, assuming the plain ordinary language of the statutes that govern are not as described herein, the issuance of a declaratory judgment in this case is a

misapplication of the Declaratory Judgment Act.

First, we must look to the Plaintiffs' Complaint to discern whether they made a proper request for declaratory judgment. The Complaint begins by stating that Plaintiff's "bring this civil action for *declaratory judgment*, injunctive, and other relief, and alleges the following" Pl.'s Compl. at p. 1 (emphasis added). Further, Plaintiffs invoked this Court's jurisdiction under Article IV, Section 3, FSU Student Constitution. Section 3, Article IV 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.
>
> **2.** Over ***violations of the Student Body Constitution and Statutes.***
>
> 3. Over conflicts between student groups.
>
> 4. To issue writs of mandamus, prohibition, and quo warranto when a Student Body officer is named as a respondent, or such other writs necessary and proper to the complete exercise of its jurisdiction.
>
> 5. To ***issue advisory opinions concerning student rights*** under the Student Body Constitution upon request of the Student Body President or any Senator.
>
> 6. Over cases and controversies involving student conduct as provided in Article IV, Section 4.

FLA. ST. U. STUDENT CONST. ART. IV, § 3, CLS. 1–6 (emphasis added).

Section 3 of Article IV is clear in detailing this Court's jurisdiction. The plain ordinary language of our Student Constitution controls, and nowhere in that language did the founders of our Student Government—whose authority derived from the Florida legislature, as detailed in section 1004.26, Florida Statutes, grant this Court with the jurisdiction or power to issue declaratory judgments.

However, further still, assuming such a power was conferred on this Court, Plaintiffs made no effort to mention their request for declaratory relief again in their Complaint. In fact, Plaintiff's prayer for relief also lacked any language that would ask this Court to issue a declaratory judgment, or to establish what relationship exists between the Plaintiffs and the statutes. Thus, to the extent that

Plaintiffs wished to seek a declaratory judgment from this Court, assuming we have the power to grant such relief, Plaintiffs failed to properly plead such request. Therefore, this Court cannot grant a relief for declaratory judgment.

The analysis above notwithstanding, this Court was asked to determine if the apportionment plan, proposed by the Supervisor of Elections and passed in Student Senate Resolution 52, violated SBS § 705.5(C). Nothing more, nothing less. Therefore, I am of the opinion that the majority's decision, with which I agree, is not a declaratory judgment and is only a resolution of the dispute before the Court on a matter of statutory interpretation.

CHIEF JUSTICE LINSKY, specially concurring with the judgment, joined by ASSOCIATE JUSTICE GOBIN:

We believe this Court intended to issue declaratory judgment in this instance, as it was properly requested by Petitioner over a bona fide controversy of fact and statutory interpretation. *See generally* Alan S. Wachs, *Declaratory Relief*, FLORIDA CIVIL PRACTICE BEFORE TRIAL, 14th Ed. THE FLORIDA BAR (2022).

Petitioner's original complaint requested relief in the form of declaratory judgment. *See* Petitioners' Compl. ("CALVIN BOOLE, DIEGO FERMIN and JOEL WEEKS, bring this civil action for declaratory judgment, injunctive, and other relief"). Likewise, Petitioners' original complaint contains properly plead prayers for relief asking the Court to clarify the relationship between our Student Body Statutes, the Petitioners, the Respondent in his capacity as Supervisor of Elections, and any rights, duties, mandates, privileges, and/or powers impacted therein:

> 45. Petitioners ask this Court to find the Senate apportionment plan, as approved by Senate Resolution 52, violates the procedures laid out in SBS § 705.5(C) and is unlawful.
>
> 46. Petitioners ask this Court to find that SBS § 705.5(D)(1) relates to the designation of which seats are Fall seats and which seats are Spring seats, rather than limiting how many seats can be added/removed from each division per year.

Id. at ¶¶ 45-46.

Having read the original complaint, Respondent correctly deduced that the complaint was for declaratory judgment. *See* Respondent's Answer to Plaintiff's First Complaint for Declaratory Judgment ("Spencer Greenwood … answers the Complaint for Declaratory Judgment"). All parties went into the hearing on the merits with the understanding that this matter concerned an action for declaratory judgment. This was further clarified upon the order granting Petitioners' motion to amend their complaint, which retained Petitioners' prayers for relief for declaratory judgment and even added language to these paragraphs.

> 45. Petitioners ask this Court to find the Senate apportionment plan, as presented … by Respondent GREENWOOD and approved by Senate Resolution 52 violates the procedures laid out in SBS § 705.5(C) and is unlawful.
>
> 46. Petitioners ask this Court to find that SBS § 705.5(D)(1) relates to the designation of which seats are Fall seats and which seats are Spring seats, rather than limiting how many seats can be added/removed from each division per year.

See Petitioners' Am. Compl. at ¶¶ 45-46.

Moreover, during oral arguments Petitioners repeatedly requested that the Court issue a ruling which would adjudicate, with finality, the statutory interpretation dispute which had become the primary issue at trial. Specifically, Petitioners requested this Court to adopt their position. Conversely, and as should be expected in a trial setting, Respondent made arguments to the contrary and urged the court to adopt their preferred position. Ultimately, the Court unanimously decided that the mandate of SBS § 705.5(D)(1) neither controls nor should be applied to the apportionment obligations as contained in SBS § 705.5(C), which closely aligns with Petitioners' arguments. However, the Court's position does not completely align with the Petitioners'.

To wit, Petitioners requested an extensive array of remedies. Notably, Petitioners' amended complaint requested the issuance of a writ of prohibition to enjoin the Fall elections from occurring until four weeks after a lawful apportionment resolution is presented to and passed by the Senate. *Id.* at ¶ 47. Alternatively, Petitioners requested the Court to issue a writ of mandamus ordering Respondent to take specific and detailed actions to remediate the unlawful apportionment. *Id.* At ¶ 48.

This Court would have been justified to issue any of the relief requested by

Petitioner had it chosen fit to do so. FLA. ST. U. STUDENT BODY CONST. ART. IV § 2 ("The Supreme Court shall have jurisdiction over … violations of the Student Body Constitution and Statutes"); FLA. ST. U. STUDENT BODY CONST. ART. IV § 4 ("The Supreme Court shall have jurisdiction … [t]o issue writs of mandamus, prohibition, and quo warranto when a Student Body officer is named as a respondent, or such other writs necessary and proper to the complete exercise of its jurisdiction").

However, rather than barging into the fray with writs of mandamus, prohibition, or even quo warranto, the Court elected for the less invasive option of declaratory judgment which is intended to afford Petitioners "relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations." *Cintron v. Edison Ins. Co.*, 339 So. 3d 459, 461 (Fla. 2d DCA 2022) (quoting *Coal. for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 680 So. 2d 400, 404 (Fla. 1996) (quoting *Santa Rosa Cnty. v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1192 (Fla. 1995))).

This matter involved a controversy over Student Body Statutes, namely: 1) the relationships between Petitioners' right to proportional representation of their division in the SGA Senate as codified by SBS § 705.5(C); 2) Respondent's ministerial obligations pursuant to SBS § 705.5(D)(1); and 3) Respondent's discretion to prepare the apportionment resolution for Senate approval as held forth by the totality of SBS §705.5. That the Petitioners' specifically requested declaratory relief from their original complaint to their closing oral arguments, and the Respondent's recognition of Petitioners' complaint as one for declaratory relief as evidenced by their pleadings, oral arguments by counsel, and Respondent's own testimony taken at the hearing, declaratory judgment was well-known by all parties to be a proper remedy herein.

Even if Petitioners did not specifically plead their request for Declaratory Relief, this Court would have the discretion to grant such relief on the merits of the extant case and controversy.

It is a well-settled premise that Florida's Declaratory Judgment Act - F.S. § 86.011 - should be construed liberally. *X Corp. v. Y Pers.*, 622 So. 2d 1098, 1100 (Fla. 2d DCA 1993). The underpinning motivation of

F.S. § 86.011 is "to relieve litigants of the common law rule that a declaration of rights cannot be adjudicated unless a right has been violated." *Ribaya v. Bd. of Trustees of City Pension Fund for Firefighters & Police Officers in City of Tampa*, 162 So. 3d 348, 353 (Fla. 2d DCA 2015). To further this goal, our Courts posit that the liberal construal of declaratory judgments goes so far as to say that "its 'boundaries' should be 'elastic.'" *Id.* (quoting *Bell v. Associated Indeps., Inc.*, 143 So. 2d 904, 908 (Fla. 2d DCA 1962) ("Within the sphere of anticipatory and preventative justice the use of declaratory judgments should be extended, their scope kept wide and liberal, and their boundaries elastic").

As one would expect based on how Florida courts treat declaratory judgment, the scope of F.S. Ch 86 is quite broad:

> Construction of law - This chapter is declared to be substantive and remedial. Its purpose is to settle and to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations and is to be liberally administered and construed.

See F.S. § 86.101.

> Jurisdiction of the trial court. - The circuit and county courts have jurisdiction within their respective jurisdictional amounts to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.

See F.S. § 86.011.

Despite the statewide and longstanding call for elasticity in the application of Declaratory Judgment by not only the Courts, but explicitly by our statutes, our rogue Justice has strictly narrowed his lens of analysis to the idea that because F.S. § 86.011 does not explicitly empower this Court to issue declaratory relief, this Court lacks the jurisdiction to issue declaratory relief to settle a bona fide controversies of law and fact regarding the interpretation of our Student Body Statutes.

Yet, our Student Body Constitution explicitly grants this Court jurisdiction over cases and controversies regarding the violation of our Student Body Statutes. FLA. ST. U. STUDENT BODY CONST. ART. IV § 2. Hence, determination and declaration of the construal of our Student Body Statutes over bona fide controversies is indeed an action that this Court may undertake.

Further, whereas declaratory relief is

intended to resolve ambiguity through F.S. § 86.021's grant of power to resolve questions of "construction or validity" of any rights, privileges, duties, and discretionary acts, resolving questions of statutory interpretation is not the only purpose of declaratory relief. *See Higgins v. State Farm Fire & Casualty Co.*, 894 So.2d 5, 12 (Fla. 2004). Rather, declaratory relief is available in suits seeking a determination of *any fact* affecting the applicability of an immunity, power, privilege, or right. *Clinton*, 339 So.3d at 462 (quoting *Heritage Prop. & Cas. Ins. Co. v. Romanach*, 224 So.3d 262, 265 (Fla. 3d DCA 2017) (quoting *Higgins*, 894 So.2d at 12)).

Here, there were several facts which needed to be determined in order to evaluate Petitioners' claims and Respondent's defenses - namely the defenses that: 1) there existed a strict historical practice of applying SBS § 705.5(D)(1) to SBS § 705.5(C); and 2) Resolution 52 was appropriately presented to the SGA Senate before its passage:

> 2. In response to Paragraph 8, [Respondent] admits that SBS § 705.5(D)(1) states that "No division shall have a difference in allocated seats greater than one from one semester to another." However, [Respondent] operates under the historic interpretation of that statute […] which has been ratified by the Senate time and time again.
>
> 3. In response to paragraph 9-17, Defendant admits. However, the Senate did question the Defendant about the Statute. Specifically, what the proper interpretation of the SBS §705.5 (D)(1) was. Defendant was informed by Student Government Advisor, Jacalyn Butts, that the statute meant that at reapportionment, the Defendant cannot advise the Senate to take away more than or add more than 1 seat per college. Defendant relayed that interpretation to the Senate. For example, the College of Arts and Sciences held 12 seats last year, therefore, they can only [be] raised to 13 seats or decreased to 11 seats. Defendant was informed that the purpose of the practice was to deter a mass decrease or increase in allocated seats in a particular college.
>
> 4. In response to paragraph 18, Defendant divide the apportioned seats according to SBS §705.5 (D)(1). The difference between the semesters were not greater than one. The practice of not increasing or decreasing a division by more than one year-to-year is a different function.

See Respondent's Answer to Petitioner's Compl. at ¶¶ 2-4.

During a hearing on the merits where evidence was evaluated and testimony was given, both Petitioner and Respondent were questioned about historical changes

in Senate apportionment from the 69th through the 74th SGA Senate.

Notably, the division of Graduate Studies went from fifteen seats (15) seats in 2017 to one (1) seat in 2022. This would be impossible if there was, in fact, a strict practice of applying SBS § 705.5(D)(1)'s mandate to SBS § 705.5(C). Per basic principles of arithmetic (i.e. additional and subtraction), the difference in years between 2017 and 2022 is five (5). If the mandate of SBS § 705.5(D)(1) that "[n]o division shall have a difference in allocated seats greater than one from one semester to another" applied to the annual allocation rather than solely the allocation of seats *within* the annual allocation as held forth by SBS § 705.5(C), the minimum number of seats the division of Graduate Studies could possibly have in 2022 is ten (10). This is because ten (10) is five (5) less than fifteen (15).

In response to the mathematical oddity represented by the reduction of Senate seats within the division of Graduate Studies from fifteen (15) to one (1) over the course of five (5) years, Respondent argued the drastic reduction in Senate apportionment to the division of Graduate Studies was due to the passage of a companion statute, specifically one that edited SBS § 705(C)(1) to reassign seats "to reflect the percentage of the student bo[d]y engaged in an upper-division undergraduate, graduate, or professional course of study in that college." Yet, to the opposite point of what Respondent argued, the fact that SBS § 705.5(D)(1) was not applied to restrict this alteration to § 705.5(C)(1) dispositively proves the proposition that no strict historical practice existed whereby § 705.5(D)(1) was applied to § 705.5(C) or its subsections, including the mandates of § 705.5(C)(1) which reduced the number of seats allocated to the division of graduate studies from fifteen (15) to one (1).

This factual finding made by the Court - which resolves a bona fide dispute of fact as to whether there was a strict historical practice of applying SBS § 705.5(D)(1) to § 705.5(C) - specifically calls for the remedy of declaratory judgment. This Court finds, and declares, that there is no such strict historical practice.

Yet, that is not the only reason for why declaratory judgment is proper on the merits of this controversy. As the hearing on the merits concluded, the Court had lingering questions as to how Resolution

52 was proposed to the Senate. Petitioners represented that Resolution 52 was presented in such a manner where the Senate was given no practical choice but to vote in favor of the Resolution. Respondents argued that the Senate willingly disregarded viable alternatives in order to vote in favor of the passage of Resolution 52 by an overwhelming margin of thirty-nine (39) votes in favor, one (1) against, and three (3) votes in abstention.

Having confirmed the vote totals as represented by Respondent, the Court reserved ruling until it could determine whether the Senate was presented with a viable alternative to the reapportionment contained within Resolution 52. As Petitioner alleged, it was confirmed that Respondent not only urged the passage of Resolution 52, but represented to the Senate that its passage was required as it was formulated by Respondent when it was presented to the Senate. Notably, Respondent spoke of the allocation of seats per division in the past tense when describing the impacts of the pending reapportionment:

> "I'm not going to go over every single one, but I am going to go over the ones that have changed
>
> […]
>
> Arts and Sciences gained one seat, going from twelve to thirteen seats. College of Business gained one seat going from seven to eight. College of Health and Human Sciences lost one seat, going from three to two. College of Law gained one seat, going from one to two. College of music lost one seat, going from two to one. College of Social Sciences and Public Policy gained one seat, going from six to seven. Graduate student/unspecified lost one seat, going from two to one, and Undergraduate seats are going from twenty-four to twenty-three."

See Respondent's remarks on Aug. 31, 2022 (emphasis supplied).

Upon analyzing the impacts of an improper representation of Resolution 52 to the Senate, which was subsequently passed, this Court made a factual finding that Respondent's actions were violative of SBS § 705.5(C) because Respondent did not provide a feasible alternative that would have allowed the Senate to pass an apportionment resolution which comports with our student body statutes. Rather, Respondent presented Resolution 52 as if it were fait accompli.

Again, this factual finding which provides a definitive resolution to the issue of law which this Court was tasked with adjudicating specifically calls for declaratory judgment as the proper remedy. And even if it didn't, the

purposefully elastic boundaries of Florida's Declaratory Judgment Act would permit this Court to render declaratory judgment, especially in consideration of the fact that the alternative remedies included more intrusive judicial acts such as writs of mandamus, prohibition, and quo warranto.

Rather than engage in such extremes, which our rogue Justice suggests are more apropos than declaratory judgment in this instance, this Court is content with a less intrusive remedy which respects the separation of powers between the branches of our Student Government Association while making it clear how the competing rights, duties, privileges, powers, and mandates as encoded by various provisions of SBS § 705.5 interact with each other in the context of reapportionment of seats by division within the SGA Senate.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

ADVISORY OPINION 2023-01*:* CONCERNING THE PROSPECT OF UNILATERAL ADMINISTRATIVE REMOVAL OF A SITTING SENATOR

_____/

CHIEF JUSTICE LINSKY, joined by ASSOCIATE JUSTICES GOBIN and CEVERE for the Court:

JURISDICTION

Pursuant to Article IV, Section 3(C)(5), of the Student Body Constitution, it is within the jurisdiction of this Court to issue advisory opinions "concerning student rights under the Student Body Constitution upon request of the Student Body President or any Senator."

On November 30, 2022, a student submitted a request for an advisory opinion concerning the prospect of an administrative removal of a senator. Having confirmed that the student in question is a current Senator representing the College of Business, the Court has jurisdiction to opine on the rights at the core of the Senator's request, which is as follows:

> "If a student has occupied a senate seat for more than half of their term

> and was inaugurated successfully, and they have outstanding sanctions from SCCS, can the SGA advisor remove them from office or would they have to be impeached and/or resign?"

ANALYSIS

First, we begin with the provision of the Student Body Constitution, which concerns eligibility to serve as a Senator stating that:

> "Any student … found guilty of any violation of the University Student Code of Conduct or Academic Honor Code … will not hold office in the Florida State University Student Government Association until the required sanctions are completed."

FLA. ST. U. STUDENT BODY CONST. ART. V, § 4(C).

Specifically, Article V concerns "Elections and Qualifications" and the specific provision as rendered above concerns "Restrictions on Candidacy." Notably, Article V is separate and distinct from Article VII of our Constitution (titled "Recall of Student Body Officials"), the latter of which concerns the recall and impeachment of inaugurated and installed Student Body Officials. *See* FSU CONST. ART. VII.

As a matter of first impression, any prospective administrative "removal" of a Senator which conforms to our Student Body Constitution would likewise be separate and distinct from a recall or impeachment insofar as this "removal" would not be permanent, but rather, would last until the Senator has fulfilled any outstanding sanctions. Hence, this would not serve to fully divest any sitting Senator of the previously confirmed right to hold office but would instead function as a suspension from practicing the powers granted by the Office.

Having opined that any so-called administrative removal of a previously inaugurated and installed Student Government Association Officeholder pursuant to FLA. ST. U. STUDENT BODY CONST. ART. V, § 4(C) would not be permanent, we now turn to the task of determining how an administrative suspension of a Senator can be effectuated according to our Constitution.

The additional bundle of rights provided to all students by the Family Educational Rights and Privacy Act ("FERPA") are of importance to this inquiry. *See* 20 U.S.C. § 1232g; 34 CFR Part 99. These rights include the University's obligation to

maintain the privacy of student records, including their disciplinary histories. *United States v. Miami University*, 294 F.3d 797, 812 (6th Cir. 2002) ("Under a plain language interpretation of FERPA, student disciplinary records are education records because they directly relate to a student and are kept by that student's university")

.

As is with student disciplinary records, improper disclosure of a student's GPA is protected by FERPA. As with student disciplinary records, a university administrator may privately check the GPA qualifications of a candidate for Student Government office to ensure compliance with FSU CONST. ART. V. As is with student disciplinary records, the status of a student's GPA can change after being elected, inaugurated, installed, and sworn into Student Government office.

Distinct from the language regarding the barriers to Student Government office as set forth in FLA. ST. U. STUDENT BODY CONST. ART.V, § 4 ("Restrictions on Candidacy"), the GPA requirements of FLA. ST. U. STUDENT BODY CONST. ART. V, § 3 ("Academic Qualifications") requires that major Student Government officeholders "maintain" a minimum threshold for GPA. Similarly, FSU Const. Art. V, § 4 contains language which indicates a lasting temporal quality insofar as those in violation "will not hold any office in the Florida State University Student Government Association until the required sanctions are completed."

Hence, when limiting our view to the plain text of the FSU Student Body Constitution, it is clear that for Article V to have lasting meaning beyond being vetting criteria for the eligibility Student Government Office, FSU administrators such as the SGA Advisor, vis-à-vis the powers and duties of the FSU Vice President for Student Affairs, have the ability to enforce the eligibility provisions of the Constitution when applicable.

However, our Constitution does not provide any end-arounds to federal law or our state courts' application thereof. When incorporating the mandates of FERPA into the equation, the ability of an FSU administrator to effectuate the suspension of a Student Government Official pursuant to FLA. ST. U. STUDENT BODY CONST. ART. V is not as cut and dry as the plain language of our Constitution makes it seem when analyzed in a vacuum.

It is true that FERPA contains explicit exceptions where the alleged misconduct constitutes a crime of violence or a non-forcible sex offense. U.S.C. § 1232g(a)(4)(A), (b)(1). In addition, at least one Florida appellate court has set forth that FERPA protections for members of State University Student Government Associations are different from other students because:

> "[S[tudent government officers know or reasonably should know (given their voluntary decision to seek election or appointment as a student government officer) that they may be disciplined for misconduct in the performance of their student government duties or alleged misconduct related to their election or appointment, either by referendum vote of the university's students or by vote of other student government officers in a public meeting."

Knight News, Inc. v. University of Cent. Florida, 200 So.3d 125, 128 (5th DCA 2016) (citing Fla. Stat. § 1004.26(4)(a)-(b) (2016)).

According to *Knight*, the determination of whether certain disciplinary records of Student Government Association Officeholders at state universities are not protected by FERPA is made if the disciplinary records at issue resulted from either "malfeasance in the performance of student government duties" or having engaged in "misconduct with regard to their election or appointment to their position." *Id.* Hence, any disciplinary records which hold forth sanctions did not stem from the Student Government Association Officeholder's activities in the pursuit of their office or in the performance of the duties of their office. These records are protected from disclosure by FERPA, even though the student in question availed themselves to the heightened scrutiny of Student Government Office at a public University.

While this Court does not have the jurisdiction to enforce FERPA or the authority to prohibit University administrators from taking any action, we nonetheless take this opportunity to strongly caution any interested University administrators who may intend to disclose potentially protected student disciplinary records from doing so. This not only pertains to divulging the contents of any such records to Student Senators in an attempt to effectuate a removal by impeachment, but also to indicate the very existence of any such records. Unless the records in question are excepted from FERPA protection, we do not see how any University administrator can enforce the provisions of FSU CONST. ART. V, §4(c) to

a sitting senator without divulging the existence of disciplinary records that are protected.

To be sure, there are distinct opportunities in the candidacy and election process for an FSU administrator, such as the SGA Advisor, to privately inform a would-be candidate for Student Government office that they are not eligible to serve due to outstanding sanctions. In this case, the University administrator in question may notify the Vice President for Student Affairs, who has the express authority to preclude a potential candidate from the ballot and can do so without publicly disclosing the reason why the candidate is ineligible for office.

However, after a Senator has been placed on the ballot, has been voted into office by their constituents, has been inaugurated, has been installed, has sworn an oath of office, and has served for over half of their term without issue, the window for the University administrator, vis-à-vis the Vice President for Student Affairs, to effectuate a suspension from office on the grounds of ineligibility based on FSU Const. Art. V, § 4(c) has long since closed due to the University administrator's failure to enforce the Constitutional provision at issue within a reasonable amount of time. In effect, the ability to privately enforce the candidacy and eligibility provisions of FLA. ST. U. STUDENT BODY CONST. ART. V, § 4(c) have been waived.

Any world where the opposite is true is one where a nondescript University administrator can not only hold a Sword of Damocles over the head of a duly elected Student Government Association Official, but do so with the added threat of public humiliation of suspension from office by waiting until the student is elected, inaugurated, installed, and sworn in as a Senator before letting the sword drop edge-first.

On the other hand, if the sanctions at issue are the result of actions taken by the Senator subsequent to election, inauguration, installation, and swearing in, *Knight* nonetheless holds that unless the alleged misconduct constituted a violent crime, a non-forcible sexual offense, occurred during the performance of Student Government duties, or occurred with regard to the student's election or appointment as a Senator, the resulting disciplinary are protected from unauthorized disclosure by FERPA.

Knight, 200 So.3d at 128.

Hence, despite our Constitution's implicit allowance for University administrators, vis-à-vis the approval of the Vice President for Student Affairs, to unilaterally suspend Student Government Association Officeholders from office for outstanding sanctions resulting from violations of the University Student Code of Conduct or Academic Honor Code, this Court does not understand how such an administrative suspension can be effectuated without confirming the existence and nature of confidential student disciplinary records, absent an applicable FERPA exception.

CONCLUSION

After careful consideration of FLA. ST. U. STUDENT BODY CONST. ART. V, § 4(c) and its surrounding provisions, we conclude that an FSU administrator can effectively suspend a Student Government Association Senator from office for having outstanding sanctions. However, we have a number of reservations as to whether an administrative suspension of this nature - effectuated after a Senator has been duly elected, inaugurated, installed, and sworn in - can be effectuated without violating FERPA through revealing the existence and nature of confidential educational records.

In issuing this Advisory Opinion, we do not render any decision as to the merits of a potential claim brought before the Court regarding any issues discussed herein.

SUBMITTED this 9th day of January 2023.

_____

JUSTICE GARCIA MARRERO, with whom JUSTICE LAGO joins, dissenting.

This Court is one of limited jurisdiction and scope. *See* F.S.U. STUDENT CONST. art. IV, § 3 (enumerating the limited jurisdiction of the Court). Today, the Majority ignores the constitutional restrictions on this Court's authority and issues an advisory opinion that opines on questions not presented to it, which will have consequences for years to come. *See Roberts v. Brown*, 43 So. 3d 673, 682 (Fla. 2010) (affirming the position that advisory opinions, although non-binding precedent, "produce[] significant consequences"). Keeping with the text of the Florida State University ("FSU") Student Constitution, the Student Body Statutes, the Florida Constitution, Florida statutes, and the

U.S. Constitution, which do not provide for the advisory opinion the Majority issued today, I dissent.

I. THE QUESTION PRESENTED

On November 30, 2022, a Florida State University College of Business student senator (the "Senator") submitted a request for this Court to issue an advisory opinion concerning the following question:

> "If a student has occupied a senate seat for more than half of their term and was inaugurated successfully, and they have outstanding sanctions from SCCS, can the SGA advisor remove them from office or would they have to be impeached and/or resign?"

It seems, from the question presented and the petition filed with the Court, that the Senator may be facing some form of administrative removal due to sanctions acquired before having been elected as a student senator, which would trigger the language in article v, section 4(C) of the FSU student constitution. Section 4(C) states that:

> Any student found guilty by the Student Government Association Supreme Court of two or more violations of the Florida State University Constitution and/or Statutes, or found guilty of any violation of the University Student Code of Conduct or Academic Honor Code, ***will not hold any office in the Florida State University Student Government Association*** until the required sanctions are completed.

FLA. ST. U. STUDENT BODY CONST. ART. V, § 4(C) (emphasis added).

II. THE COURT'S ADVISORY OPINION JURISDICTION

The first step this Court must take in determining whether it may address the Senator's question is to look at the enabling language that grants the Court the authority to issue such an advisory opinion. We begin with article IV, section 3(C) of the FSU Student Constitution, which states, in part, that this Court shall have the power "[t]o issue advisory opinions ***concerning student rights*** under the Student Body Constitution upon request of the Student Body President or any Senator." FLA. ST. U. STUDENT BODY CONST. ART. IV, § 3, cl. 5 (emphasis added).

Thus, to determine whether the Senator's question merits an advisory opinion we must look at the question presented and whether it invokes a request to provide an opinion "concerning student rights under the Student Body Constitution." *Id.* Here, I agree with the Majority, it does; however, for a different "right" than the right invoked by the Majority

in its discussion of the Family Educational Rights and Privacy Act ("FERPA").

The question presented can be condensed to highlight the alleged "right" being invoked by the Senator: "does a student senator, having been duly elected and sworn in, have a right to hold public office that cannot be superseded by some form of administrative removal due to a constitutional qualification eligibility question"? I answer this question in the affirmative. To see why let us look at what rights ***are*** conferred by the FSU student constitution and statutes.

A. The FSU Student Constitution

We can begin with article 1, section 6, titled "Students Rights," which states that "[e]ach student shall be subject to the rules of the courts and the University [FSU] but these rules shall at no time and in no way abridge the student's rights as [a] citizen under the United States Constitution or the Constitution of the State of Florida." FLA. ST. U. STUDENT BODY CONST. ART. I, § 6. Hence, we must look to the Florida and U.S. constitutions to determine if some right is conferred therein that would allow this Court to invoke its advisory opinion powers, based on the question presented.

B. The Florida Constitution

First, the Florida Constitution provides no express "right" to hold elected public office at a state university; however, it does provide that "[a]ll political power is inherent in the people [and] [t]he enunciation [therein] of certain rights shall not be construed to deny or impair others retained by the people." FLA. CONST. ART. 1, § 1. Therefore, even if the "right" to hold public office is not expressly enumerated in the Florida constitution, a person in Florida may still have an inherent right to hold public office. Thus, we must look beyond the Florida Constitution to determine if the Senator has a valid "right" to trigger the Court's advisory opinion jurisdiction.

Luckily, the Florida Supreme Court has addressed a similar issue dealing with the constitutional right to seek or hold public office. In *Holley v. Adams*, the Florida Supreme Court held that "[t]he right to seek public office *is not a constitutional absolute*, but such privilege is subject to reasonable restraint and conditions." 238 So. 2d 401, 406 (Fla. 1970) (emphasis added). Similarly, other Florida courts have held that statutes may fill the void when the constitution is silent on constitutional qualification requirements to run for public office. *See*

Leon v. Carollo, 246 So. 3d 490, 492–93 (Fla. 3d DCA 2018) (Luck, J.); *Shamburger v. Washington*, 332 So. 3d 1071, 1073 (Fla. 2d DCA 2021) (quoting *State ex rel. Askew v. Thomas*, 293 So. 2d 40, 42 (Fla. 1974)).

Therefore, some "right" to run for, and hold, public office is cognizable under the Florida Constitution. That right, however, is not absolute and is not a fundamental right but nonetheless—the right does exist. In fact, such a right can be restricted by the enactment of statutes that provide qualification requirements for said public office positions. *See Leon*, 246 So. 3d at 492; *Shamburger*, 332 So. 3d at 1073.

C. The U.S. Constitution

Next, we can look to the federal constitution to determine if a clearer right to hold public office exists. Like in the Florida Constitution, the U.S. Constitution has no mention of the right to hold public office, however, it does have a similar clause that may allow for the inherent right to be retained by the people at large. *See* U.S. CONST. amend. IX ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.").

When looking to the decisions of the federal courts to determine if the "right" to hold public office exists, we can stop at *Caron v. U.S.*, 524 U.S. 308, 316 (1998) (acknowledging that the restoration of civil rights includes the "right to hold office"); *see also id.* at 318 (Thomas, J., dissenting) (also acknowledging that the restoration of civil rights includes the "right to hold office"). Thus, a person, such as an FSU student senator, has the right to hold public office under the federal constitution.

Therefore, the Senator has presented a question that invokes the Court's advisory opinion jurisdiction concerning the Senator's right to hold office after having been duly elected.

III. ANALYSIS

The question, here, is whether the FSU student government administrator can remove a duly elected and sworn-in student senator that was elected after having acquired certain student code of conduct violation sanctions. I answer said question in the negative.

On this issue, the Majority concludes that a university administrator can remove a sitting senator, who was duly elected and sworn-in, from public office as a separate procedure

from the impeachment and recall functions laid out in the FSU student constitution and Student Body Statutes. *See ante* at pp. 1–2. However, the Majority misses the mark on this issue.

Article V, section 4, of the FSU Student Constitution, does not provide the university administration with an avenue by which to temporarily remove duly elected public officials in the student government association, rather the text of the constitution provides a constitutional eligibility restriction for any candidate running for office. *See* F.S.U. STUDENT CONST. art. V, § 4(C) (emphasis added) ("Any student found guilty by the Student Government Association Supreme Court of two or more violations of the Florida State University Constitution and/or Statutes . . . ***will not hold any office*** in the Florida State University Student Government Association ***until the required sanctions are completed.***").

However, instead of reading the constitutional language for what it is, an eligibility restriction to run for office—which is even in the name of the section, "Restrictions on Candidacy," *id.* at § 4, the Majority attempts to utilize the plain text of the constitution to unjustifiably invoke another right conferred under a federal statute but not the FSU Student Constitution, the Student Body Statutes, the Florida Constitution, or the U.S. Constitution. *See ante* at p. 2.

In the purest act of judicial activism, the Majority inserts an issue into the question presented that was not raised by the Senator—namely, whether his or her FERPA rights would be violated if the university administration was not able to remove the Senator for the pre- or post-election acquisition of sanctions. *See ante* at pp. 2–5. Such a question is ***not*** before the Court in a case at controversy, much less for an advisory opinion.

Moreover, the role of a court "is to interpret statutes as they are written and give effect to each word in the statute," *see Clines v. State*, 912 So. 2d 550, 558 (Fla. 2005), and not to create remedies or solutions not enacted by statute, *see Egbert v. Boule*, 142 S.Ct. 1793, 1799–80 (2022) (identifying eleven times in which the Supreme Court refused to expand a judicially created remedy to U.S. constitutional violation claims), as the Majority has done today—especially when a clear answer is evident in the plain text of a statute.

To answer the Senator's question, the Majority's willful deviation from the text of the student constitution is not needed. A thorough review of the student constitution shows that no text exists conferring on the FSU student government administrator the power to remove a duly elected public officer. *See generally* F.S.U. STUDENT CONST. In fact, the student constitution provides several methods by which student government officers may be removed from their positions, *see* F.S.U. STUDENT CONST. art. II, § 5(A)5.; art. III, § 3(I); art. V, § 1(D); art. VII, § 1–4, none of which include the student government administrator.

To understand why the student government administrator plays no role in the issue before the Court we must look to the distinction between sections 4 and 5 of article V of the FSU student constitution.

Section 4(C), which is at issue here, provides a restriction on those students who wish to run for and hold public office at FSU, a constitutional eligibility of sorts. *See* F.S.U. STUDENT CONST. art. V, § 4(C). Whereas section 5 establishes the procedure by which a student may establish his or her candidacy, a qualification to run for office requirement. *See* F.S.U. STUDENT CONST. art. V, § 5. Such a distinction was established in *Burns v. Tondreau*, 139 So. 3d 481, 485 (Fla. 3d DCA 2014) (Lagoa, J.) (citing § 102.168(3)(b), Fla. Stat.; *McPherson v. Flynn*, 397 So.2d 665 (Fla.1981)).

This distinction between a constitutional eligibility requirement and a qualification requirement is further explained in *Leon v. Carollo*. There, the Third District Court of Appeal reaffirmed the legal conclusion that "at common law there was no right to a post-election challenge" to an elected official's position. *See Leon*, 246 So. 3d at 492 (Luck, J.). Moreover, the *Leon* court went on to reaffirm the *Burns* court's analysis under section 102.168(3)(b), Florida Statutes (2018), that the Florida legislature created a cause of action for the contesting of an election after the fact, premised on the ineligibility of a candidate. *See Id.* at 492–93.

Therefore, under Florida law, which this Court is bound to follow, *see* section 1004.26, Florida Statutes (2022) (establishing Florida state university student governments as a creation of Florida law), a student senator's position may be challenged or contested after the election is certified if he or she was ineligible for the office that they currently hold at the time the election took

place. *See* § 102.168(3)(b), Fla. Stat. (2022).

Hence, the distinction between sections 4 and 5 of the student constitution is important here. To properly remove a duly elected student senator ***after*** a certified election, the election must be contested—which may only be done if the challenge is of a constitutional ineligibility and not a mere qualifications violation. *See Burns*, 139 So. 3d at 484; *Leon*, 246 So. 3d at 493.

Here, we have a question presented, with a surrounding factual situation, in which a student senator acquired sanctions that would have made that student senator candidate constitutionally ineligible to run for the Student Senate. *See* F.S.U. STUDENT CONST. art. V, § 4(C); *see also* Senator Pet. for Adv. Op. (describing the factual situation for the request of the present advisory opinion). Thus, under section 102.168(3)(b), a challenge to a student senator's position may be raised in state circuit court. *See* 102.168(1), Fla. Stat. (2022).

However, section 102.168(1) does not confer this Court with the jurisdiction to adjudicate such a challenge to a student senator's elected position, nor does it confer the power to determine such a challenge to the FSU student government administrator. Again, I find no evidence that the Majority's position is valid—especially given that the Majority provided no textual support for the position it has adopted today.

Nevertheless, one may wonder if the Student Body Statutes may have similar language to section 102.168, Florida Statutes. It does; however, it makes the Majority's indefensible still.

Section 708.1 of the Student Body Statutes provides the procedure by which an election may be contested—which would include the election of a student senator who would have been constitutionally ineligible pursuant to article V, section 4(C) of the student constitution. It states, that "[s]tudents or political parties who show actual injury shall have standing to contest the results of any election on grounds within or outside the scope of the Election Code until 8 p.m. on the Friday following the election." § 708.1, Stu. Body Stat. (Jan. 2022).

The issue with section 708.1 is that it only confers standing to challenge the election of any public officer of the FSU student government until 8 p.m. on the Friday following any given election—which clearly

serves as a statute of limitation for the contesting of any election. Thus, a challenge to a student senator, who is constitutionally ineligible to have won the office for which he or she ran, must be made by the deadline provided for by the Student Body Statutes, otherwise, any challenge to said constitutional ineligibility is barred—at least before this Court.

IV. CONCLUSION

Having reviewed the binding, plain, ordinary text of the FSU Student Constitution—mainly article V, section 4(C); the pertinent Student Body Statutes; the Florida Constitution; Florida law; and the U.S. Constitution, the FSU student government administrator has no power to remove a duly elected student senator from his or her position.

Rather, an injured party may contest the election before the Election Commission or this Court of said student senator within the limitations provided for in section 708.1, Stu. Body Stat. But only if that senator was constitutionally ineligible to run for the public office position that was won. Likewise, an unsuccessful candidate or qualified elector may also contest said student senator's election in state circuit court pursuant to the limitations outlined in section 102.168, Fla. Stat.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

THE STUDENT GOVERNMENT ASSOCIATION SENATE,

23-SP-SC-10

Petitioner,

v.

LUCAS BOZEMAN, in his Official capacity as a Student Government Association Senator,

Respondent.

_____/

Counsels of record: Andrea Alvarez for Petitioner and University Defender Austin Lunde for Respondent.

ASSOCIATE JUSTICE LAGO delivered the unanimous opinion of the Court.

ORDER OF IMPEACHMENT

Student Senators are elected officers of the Student Body. Fla. St. U. Student Body Stat. § 405.1(A). The Supreme Court shall have sole jurisdiction over cases involving removal of any officer of the Student Body impeached by the Senate. Fla. St. U. Student Body Stat. § 405.5(C). Based on the grounds as enumerated below, the Supreme Court affirms the impeachment of Senator Bozeman and orders his removal from Senate upon publishing of this order:

1. Senator Bozeman is a member of the Student Senate and is under the purview of the Senate Rules of Procedure.

2. Senator Bozeman accumulated unexcused absences for Senate on: November 16th, November 29th, November 30th, January 17th, and January 24th.

3. Any Senator that accrues 5 unexcused absences shall be suspended and forwarded to the Judiciary Committee.

4. During his term, Senator Bozeman accumulated at least 5 unexcised absences and as such, he was forwarded to the Judiciary Committee to begin impeachment proceeding pursuant to SBS 405.3(A).

5. On February 14th. 2023, the Senate Judiciary Committee voted to impeach Senator Bozeman and forwarded impeachment to the full Senate.

6. On February 15th, 2023, the Senate voted to impeach Senator Bozeman.

7. On February 16th, 2023, the Chairman of the Senate Judiciary Committee delivered the Articles of Impeachment, via email, to the Supreme Court Chief Justice.

8. As of March 5th, 2023, Senator Bozeman has not responded to the complaint nor has he contacted the Senate or the Court.

9. Since Senator Bozeman never responded to the complained filed with the Court, all facts stated in the complaint are to be considered true. Supreme Court R. Proc. 3.2.
10. As such, Senator Bozeman waives any challenge as to the procedures followed by the Senate Judiciary Committee or Senate as a whole.

Considering the above conclusions, the Supreme Court finds a sufficient factual basis to affirm the Senate's Articles of Impeachment and hereby orders Senator Bozeman's position in Senate be vacated and the seat open for the public to fill it.

DONE and **ORDERED** this 5th day of March 2023.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-01

Appellant,

v.

OMER TURKOMER, in his official capacity as General Counsel for FORWARD FSU,

Appellee.

_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

ASSOCIATE JUSTICE GARCIA MARERRO delivered the unanimous opinion of the Court.

SYLLABUS

This action was brought before this Court on an appeal from the Elections Commission, case no. 2023-EC-SPR-22. Below, Omer Turkomer, in his official capacity as General Counsel for FORWARD FSU, a student body political party, sought the review of alleged Election Code violations by the student body political party, SURGE FSU, of SBS §§ 709.1(C) and 713.1(B) for failing to comply with the policies outlined in the Oglesby Union Policy.

The Elections Commission held that SURGE FSU violated section 709.1(C) by failing to comply with the FSU Oglesby Union Policy for Posting, Promotions, Advertising and Distribution of Materials on FSU Campuses. Respondent, SURGE FSU, promptly appealed that decision, and the action is now before this Court.

Having reviewed the record, the parties' briefs, and the corresponding statutes and case law, this Court finds that the Elections Commissions erred in holding that the SURGE FSU member was within 30 feet of an entry-way or exit-way, and therefore, reverse and remand the case to the Elections Commission to consider if Petitioner, FORWARD FSU, has sufficient evidence to satisfy its clear and convincing evidence burden.

ISSUES

I. Does the Oglesby Union Policy apply to other buildings on campus and does section 709.1(C) also include the posting policy found at posting.fsu.edu?

II. Did the Elections Commission err in finding by clear and convincing evidence that a member of SURGE FSU violated section 709.1(C)?

FACTUAL BACKGROUND

The relevant facts are as follows. On March 1, 2023, the date of the Florida State University Student Government Spring elections, a SURGE FSU member was identified as campaigning and handing out campaign materials on Legacy Walk at approximately 10:13 am.

At that time an anonymous student—presumably a member of FORWARD FSU according to the information provided at oral argument—captured a photographic image of the SURGE FSU member handing out the campaign materials near the Rovetta classroom building. The singular photograph was the evidence filed with the violation complaint with the Supervisor of Elections, which was referred by him to the Elections Commission (the "Commission") for adjudication.

At the lower tribunal, Petitioner, there, FORWARD FSU, argued that SURGE FSU violated section 709.1(C) by failing to comply with the regulations provided for in the Oglesby Union's Posting, Chalking Advertising and Active Distribution of Materials on FSU Campuses policy (the "Posting Policy")—namely, policy (4)(b). The policy prohibits the "[a]ctive

distribution of literature outside a university facility . . . within 30 feet of any entrance or exit way of th[at] facility." Oglesby Union Policy Manual, FSU-2.0131(4)(b), https://posting.fsu.edu/documents/Posting-Chalking-Advertising-and-Active-Distribution-of-Material.pdf (last visited Mar. 27, 2023).

The Commission agreed with FORWARD FSU and found that by clear and convincing evidence SURGE FSU violated the Posting Policy. SURGE FSU now appeals that decision and argues that the Posting Policy is not a part of the Oglesby Union Manual, and therefore, is not referenced in section 709.1(C), and that even if the Posting Policy was applicable, the Commission erred in finding a violation because the singular photograph submitted as evidence of the alleged violation was insufficient to satisfy the clear and convincing evidence burden.

ISSUE I

We begin by addressing Appellant's first issue as it is a threshold matter—does section 709.1(C) delegate regulatory authority to the Posting Policy? We answer this question in the affirmative.

As with any issue of statutory interpretation, we begin with the text. *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 6 (2000)). Section 709.1(C) states that "[a]ll material and activity in the Union ***and*** *on FSU campuses* ***shall be*** *in accordance with rules and regulations of Oglesby Union policy*." § 709.1(C), Student Body Stat. (2023) (emphasis added).

Thus, it is clear from the plain and ordinary language of section 709.1(C) that campaigning rules regulating campaign material and other activities are also governed by the rules and regulations of the Oglesby Union policy. *See Id.*

This is because the Student Senate in crafting section 709.1 decided to incorporate the Oglesby Union policy by reference and delegate the regulation powers in the statute to the language drawn out in that policy. *See Aristic Ent., Inc. v. City of Warner Robins*, 331 F.3d 1196, 1206 (11th Cir. 2003) ("Incorporation by reference is a form of legislative shorthand; the effect of an incorporation by

reference is the same as if the referenced material were set out verbatim in the referencing statute").

Appellant argues that the reference in section 709.1(C) is ***only*** to the Oglesby Union Policy Manual (the "Policy Manual"). The Court does acknowledge that the language of section 709.1(C) leaves some degree of doubt as to whether it is incorporating by reference the Policy Manual or some other less specific "Oglesby Union policy." However, these doubts quickly evaporate when we look at the Policy Manual itself.

First, we can look to Article I of the Policy Manual, subsection A(i), which references the composition of the Oglesby Union Board in accordance with Chapter 605.4 of the Student Body Statutes and during the Student Government Spring elections. This alone is evidence enough in the Policy Manual that it is meant to work in conjunction with the Student Body Statutes—such as section 709.1(C). However, further support is found in Article IV of the Policy Manual, which discusses the use of group leaflets for "student election[s]." *See* Oglesby Union Policy Manual, art. IV, at (A)(i). The multiple references and incorporation of the Student Body Statutes to the Policy Manual makes it clear that it was created to work in tandem with the Student Body Statutes as incorporated by reference therein.

Next, we look to the Posting Policy to determine if it is also incorporated by reference in section 709.1(C). The Posting Policy is established by a committee appointed by the University President. *See* FSU-2.0131, at (11)(d). It provides for the control and regulation of posting, chalking, and distribution of materials on the FSU campuses. *See generally* FSU-2.0131. The Posting Policy can be found on the website posting.fsu.edu under the "Regulations" drop down menu. *See* Posting Regulation, Home, https://posting.fsu.edu/ (last visited Mar. 27, 2023).

The Policy Manual makes six references to the Posting Policy throughout the entirety of the Manual. *See generally* Oglesby Union Policy Manual, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://union.fsu.edu/sites/g/files/upcbnu1456/files/Documents/Union%20Board/Oglesby-Union-Policy-Manual-2016-2017.pdf (last visited Mar. 27, 2023). These references refer to the Posting Policy as "The Florida State University Posting

Policy" and consistently incorporate by reference the posting.fsu.edu website in the Policy Manual. *See generally Id.*

Further, article I, subsection A(ii) puts to rest any remaining doubts that the Policy Manual must abide by the regulations outlined in the Posting Policy. See Oglesby Union Policy Manual, art. I, at (A)(ii) ("This policy manual is subject to the provisions of university policy."). Thus, this Court finds that the Posting Policy is not only applicable to the entire university and all its campuses as is evident in the Posting Policy's language but that it is incorporated by reference in the Oglesby Union Policy Manual, and therefore, in section 709.1(C).

Therefore, we hold today that any violation of the Posting Policy is, by incorporation, a violation of section 709.1(C).

ISSUE II

Next, we address whether the Commission erred in finding that FORWARD FSU satisfied the clear and convincing evidence burden with only one photographic image of the alleged violation. To this question we answer in the negative.

In its decision, the Commission correctly found that the photographic image was of an individual wearing a SURGE FSU t-shirt and handing out SURGE FSU flyers with a call to vote, which would qualify the flyers as campaign material. The Commission, however, erred in holding that by a clear and convincing showing of the evidence, the SURGE FSU individual was within 30 feet of an entry-way or exit-way.

Clear and convincing evidence "requires that . . . [t]he evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." *South Florida Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014) (quoting *Inquiry Concerning a Judge*, 645 So.2d 398, 404 (Fla.1994)). We review a finding by the Commission by clear and convincing evidence under a clearly erroneous standard of review because such a finding "enjoys a presumption of correctness and will not be overturned on appeal unless clearly erroneous or lacking in evidentiary support." *I.T. v. Dept. of Children and Fam.*, 277 So. 3d 678, 683 (Fla. 3d DCA 2019).

Here, it cannot be said that the Commission did not err in its finding based on the record it had before it. On original hearing, the Commission had only one piece of photographic evidence by which to determine if the SURGE FSU member was within 30 feet of an entryway or exit-way. Due to the lack of further support for the position that the SURGE FSU member was within 30 feet of an entryway or exit-way, this Court is convinced that the Commission erred in finding that FORWARD FSU met its burden of showing by clear and convincing evidence that the alleged violation occurred.

Even without the additional support provided by SURGE FSU on appeal—which shows a possibility of the SURGE FSU member being at least 30 feet or more away from the entryway or exit-way, this Court believes that it is impossible to tell by a mere glance of a photographic image whether a person is at any given distance from another point in space.

Therefore, the Commission's finding that SURGE FSU's member was within 30 feet of the Rovetta classroom building entryway or exit-way is clearly erroneous and must be remanded for further fact-finding in accordance with this opinion.

CONCLUSION

In conclusion, this Court rejects Appellant's arguments that the F.S.U. Posting Policy is not incorporated in the Oglesby Union Policy Manual, and thus, not applicable to F.S.U. Student Government elections or to section 709.1(C).

Further, the holding of the Elections Commission, that FORWARD FSU met its burden of establishing by clear and convincing evidence that SURGE FSU violated the Posting Policy, is **REVERSED** and **REMANDED** for further proceedings in accordance with this opinion.

DONE and **ORDERED**, this the 27th day of March 2023, in Tallahassee, Florida.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-02

Appellant,

v.

OMER TURKOMER,
in his official capacity
as General Counsel
for FORWARD FSU,

Appellee.

_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

CHIEF JUSTICE LINSKY, joined by ASSOCIATE JUSTICES CEVERE, GOBIN, and LAGO delivered the majority opinion of the Court.

SYLLABUS

This action was brought before this court on appeal of *2023-EC-SPR-15* wherein the Elections Commission determined that the evidence presented clearly and convincingly demonstrated that Appellant was in violation of Fla. St. U. Student Body Stat. § 709.1(B)(1) by posting materials on privately-owned property without the prior consent of the property owner or property manager.

FACTUAL BACKGROUND

On March 1, 2023, at about 5:00 pm, a member of Appellee's campus political party found several pamphlets advertising Appellant's campus political party strewn about her building of residence. At the same time and in the same building, multiple members of Appellant's campus political party were seen, photographed, and videotaped knocking on doors in an effort to solicit support in the election. These members of the Appellant's campus political party did not receive prior permission of the building's owner or property manager to post any campaign materials, despite at least one of them being a resident of an apartment in that building.

Though witness testimony was conflicting as to whether any member of Appellant's campus political party had these pamphlets on their person while canvassing the building, it was confirmed that Appellant's members had distributed so many of these pamphlets throughout the day that they ran out completely. Upon running out of their pamphlets designed for the March election, Appellants'

canvassers resorted to using leftover pamphlets from the prior October election, which contained a QR code that nonetheless brought interested parties to the current election information. Pamphlets from the October and March elections were both found at the scene.

The building at issue, the Stadium Centre, is a privately owned apartment complex. Located about half a mile away from FSU's main campus, two miles from FAMU's main campus, and three miles from TCC's main campus, the Stadium Centre focuses its business on student housing in the form of short-term leases, but does not exclude renters who are not in college. It is owned by American Campus Communities, a privately owned real estate investment trust engaged in the acquisition, management, and development of properties near universities and colleges throughout the United States.

ISSUES

1. Was the case presented to the Elections Commission sufficiently persuasive so as to satisfy the clear and convincing evidentiary standard?

2. Is FSU Student Body Statute § 709.1(1)(B) constitutional under the First Amendment to the Constitution of the United States of America?

HOLDINGS

1. Yes, the Elections Commission was presented with sufficiently persuasive evidence to satisfy the clear and convincing standard.

2. No, FSU Student Body Statute § 709.1(1)(B) is not constitutional under the First Amendment.

OPINION

It is axiomatic that political speech occupies "the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 466 (1980). In relation to matters of public affairs, the freedom to engage in political speech is "more than self-expression; it is the essence of self-government." *Garrison v. State of La.*, 379 U.S. 64, 75 (1964); *see also* ALEXANDER MIEKELJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT (1948). Above all else, the First Amendment reserves its "fullest and most urgent application" to political speech regarding elections. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

Even so, the First Amendment is by no

means an absolute bar to reasonable restrictions on speech – even political speech concerning elections. As long as a restriction on political speech "furthers a compelling government interest and is narrowly tailored to achieve that interest," it may be deemed constitutional under the First Amendment. *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011).

Likewise, public universities are granted certain exceptions when it comes to the restriction of on-campus speech. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). Specifically, public schools, colleges, and universities "have a special interest in regulating on-campus student speech that 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others.'" *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2040 (2021) (quoting *Tinker*, 393 U.S. at 513).

As applied specifically to Student Government Association ("SGA") elections, relevant authorities indeed provide deference to University regulations restricting on-campus speech. *Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, 867 F.2d 1344 (11th Cir. 1989). Notably, the court in *Alabama Student Party* held that the SGA at the University of Alabama was a "learning laboratory" intended to provide students "an opportunity to learn how to work within a democratic process." *Id.* at 1347. Hence, instead of being a state actor empowered by the laws of Alabama to do anything at all, the SGA at the University of Alabama was more correctly treated as a student club than an extension of any state function. *Id.*

However, there are three key reasons as to why the 11th Circuit's holding in *Alabama Student Party* does not apply squarely to the regulation at issue: 1) Florida's laws directly empower every SGA at public institutions of higher learning with governmental functions; 2) the regulation at issue in this case was not created by the University, but by the FSU Student Government Association itself; and 3) the majority opinion in *Alabama Student Party* dealt exclusively with on-campus political speech in terms of specific temporal and physical restrictions on political expression.

The first reason as to why *Alabama Student Party* is inapplicable in this case is that the laws of Alabama in 1989 may not

have reserved any governmental functions for Student Government Associations, whereas the current laws of Florida most certainly do. *See* Fla. Stat. § 1004.26(3), (2022) (holding forth that the FSU SGA is charged with adopting procedures to govern its "operation and administration … including all other duties prescribed to the student government by law"); *see also* Fla. Stat. § 1009.24(10)(b) (2022) (requiring all Student Government Associations at public universities to determine the "allocation and expenditure" of the Student & Activities Service Fee charged on a per credit basis to enrolled students).

While the first of the statutory provisions noted in the immediately preceding sentence empowers each Florida SGA to create and abide by governing texts such as a student body constitution or student body statutes, the latter inherently places each SGA in the state on much higher footing than any other club such as a newspaper or a yearbook. *Compare with Alabama Student Party*, 867 F.2d at 1347 ("[a]ccording to the depositions in this case, including the election campaigns, as a 'learning laboratory,' similar to the student newspaper or student yearbook").

Rather, in Florida, one of the most reliable ways for student-run clubs to obtain operational funding is by petitioning the campus SGA for a portion of the Student Activity and Service Fee. *See* Fla. Stat § 1009.24(10)(b) (2022). At Florida State University, which educates over 40,000 students each year, the Student Activity and Service Fee budget administered by the FSU SGA Senate is routinely over $14,000,000 per year. If any other student organization, even political ones as the FSU Republicans or the FSU Democrats, want to use a red cent of that money for their own purposes, they must first petition the FSU Student Government Association.

To ameliorate any additional confusion about where any Florida SGA is placed on a hierarchy of organizations in respect to access of the tens of millions of dollars, which comprise the Activity & Service Fee Funds, for all applicable Florida institutions of higher learning, it is not only student clubs who must apply to the local SGA for funding but also the University administration. For example, the FSU SGA has allocated over $10,000,000 in funding for various units of the FSU administration for the upcoming academic year. As is the case with student

organizations, in order to receive a red cent of these funds, these units of the FSU administration were first required to petition the FSU SGA.

This in mind, and as was the case in *Alabama Student Party,* it would be odd for an FSU administrator to testify in a deposition that the FSU SGA is on the same hierarchical level as a campus newspaper or yearbook – especially if that administrator were somebody who has applied to our SGA for funding in the past in support of their own vanity project(s). *Alabama Student Party*, 867 F.2d at 1347. It would be even stranger if that person's salary were paid by funds allocated and administered by the FSU SGA.

In the academic year of 2021–22, the FSU SGA paid the salaries of over seventy-five (75) full and part time employees. These salaries totaled $3,153,713.25. The bulk of the recipients of these funds were employees of FSU's Campus Recreation Department – including $113,559.80 for the director of the department – and the Student Union personnel. Thankfully, and in consideration of the magnitude of FSU's budget, the FSU SGA appears to no longer be paying the $115,591 salary of the Director of the Oglesby Union.

Besides FSU's SGA, no other campus student organization – not the yearbook, the newspaper, nor any other – provides for the salary of any University employee. In order to receive these funds to pay these employees, the FSU administration must first petition the FSU SGA.

While the laws of Alabama in 1989 may not have distinguished a student government association from any other club, not only do our laws make such a distinction, but one so significant that the paychecks of many university administrators directly depend upon specific governmental decisions made by the FSU SGA.

A broader analysis of Florida's public university system likewise indicates a widespread reliance local Student Government Associations to pay employee salaries. Over the course of the 2021–22 academic year, local student government associations paid the salaries of over six-hundred-and-eighty (680) employees, totaling $29,135,039.82 in allocations and expenditures pursuant to Fla. Stat. § 1009.24(10)(b).

Hence, Student Government Associations in Florida, as empowered by state law and in practice, are much more than "learning

laboratories" for playing "cops-and-robbers," or as the case is "politicians-and-bureaucrats." Accordingly, the Student Government Associations at all twelve of Florida's public universities are more correctly treated as governmental functionaries, all of whom are prescribed ministerial obligations by the Florida legislature to expend and allocate student fees "for lawful purposes and to benefit the student body in general." *Compare Alabama Student Party*, 687 F.2d at 1347 *with* Fla. Stat. § 1009.24(10)(b) (2022).

The second main reason as to why *Alabama Student Party* does not apply here is that section 709.1(B)(1) was not directly enacted by the FSU administration, but rather, by the FSU SGA Student Senate. To be sure, if this were a university-made regulation, this Court would not have jurisdiction over its application. Likewise, if the statute sued upon here was not a provision of our FSU Student Body Statutes, but rather a part of FSU's official posting policy, this Court could might find *Alabama Students Party* applicable. However, and as empowered by Florida law, our Student Body Constitution grants the Court jurisdiction over "violations of the Student Body Constitution and Statutes." FLORIDA STATE UNIVERSITY STUDENT BODY CONST., art. IV, § 3(c)(2); *see also* Fla. Stat. § 1004.26(3) (2022) As the regulation sued upon is a provision of our Student Body Statutes, any threshold question presented by *Alabama Student Party* is inapplicable.

Thirdly, while *Alabama Student Party* may seem to have relevance to the second issue of this case – the interplay between the First Amendment and a University regulation restricting political speech in the context of student body elections – the Eleventh Circuit's holding "focused solely on the regulations' effect on the University's campus." *Alabama Student Party*, 867 F.2d at 1352.

Here, the regulation at issue refers only to off-campus speech. Ergo, and despite its relevance to restrictions for *on-campus* political speech, the holding in *Alabama Student Party* bears no relevance to the regulation at issue here, which relates solely to *off-campus* speech. Hence, the correct test to apply is *Tinker's "*substantial disruption" test, which measures and analyzes the effects that certain expressions of off-campus speech have on the University's educational environment. *See Mahanoy*, 141 S.Ct. at 2045 (quoting *Tinker*, 393 U.S. at 513)

(positing that public high schools "have a special interest in regulating speech that 'materially disrupts classwork or involves substantial disorder or invasion of the rights of others.'")

The dissent in this case seems to believe that all private property *owners* and *managers* – but not the actual residents who live on private property – have a right to not be disturbed by canvassers which somehow trumps the First Amendment. No case law is cited to back up that rationale, which is more akin to a half-baked personal belief that anything that resembles a textual analysis of the law.

Another quirk in the dissenting opinion is that, relying upon Judge Tjoflat's dissent in *Alabama Student Party*, it asserts that the statute at issue is indeed constitutional under the First Amendment. In this, our rogue Justice seems to miss the fact that Judge Tjoflat's dissent was motivated by his opinion that the regulation on campaigning at issue in *Alabama Student Party* represented "an infringement of appellants' right of free speech" which was "overbroad" and "unconstitutional" under the First Amendment. (Tjoflat, J., dissenting) *Alabama Student Party*, 867 F.2d 1354.

Likewise, Judge Tjoflat's dissent argued that one of the key reasons for his finding of unconstitutionality was that the regulation only applied to "only one topic of discussion: political speech regarding SGA elections." *Id.* This in mind, it is seemingly inexplicable as to why Part II of the dissent in this case relies upon reasoning and conclusions which are directly contradictory to the its ultimate argument regarding the purported constitutionality of § 709.1(B)(1). It is likewise perplexing as to why Part I of this dissent includes a robust discussion of § 701.1(E), which was neither included in the original complaint nor the subsequent appeal which form the issues of this case. On the other hand, the dissent's elaboration on why the Court unanimously found that the Election's Commission's determination was the correct one is much appreciated.

It so follows that as applied to the Court's first issue for consideration, though Court unanimously finds that the lower tribunal demonstrated no error in finding the Appellant responsible for violating § 709.1(B)(1). This in mind, the only remaining issues for the Court's analysis here is whether the regulation at issue is constitutional under the First Amendment. In order for § 709.1(B)(1) to

be constitutional under the First Amendment, it must pass both a strict scrutiny review for political speech as well as the substantial disruption test for off-campus speech.

This Court holds that Student Body Statute § 709.1(B)(1) passes neither:

> "Campaign material is prohibited on **any** privately-owned property, except that candidates may post materials on private property should they obtain the consent of the property owner or manager."

See Fla. St. U. Student Body Stat. § 709.1(B)(1) (2022) (emphasis supplied).

STRICT SCRUTINY AND THE MODERNIZED TINKER TEST

Though *Tinker's* "substantial disruption" test explicitly excluded restrictions for off-campus speech, recent decisions, including that of the *Mahanoy* Court, leave room for public universities to regulate off-campus speech in extreme and urgent matters such as "serious or severe bullying or harassment targeting particular individuals" or "threats aimed at teachers or other students." *Mahanoy*, 141 S. Ct. at 2040.

It so follows that if campaigning on private property off-campus were even tangential to such disruptions and their ilk, the *Tinker* test as modernized by *Mahanoy* could indeed be met.

Of great importance to the viability of this statute is the word "any" as used in § 709.1(B)(1) in reference to which privately-owned properties this regulation applied towards. Taken literally, as all statutes should be, it could bar the posting of campaign materials on all privately-owned property everywhere in the world. If a member of Appellee's campus political party were vacationing in Key West and found one of Appellant's pamphlets in a tiki bar, that would be a violation of the Election Code unless Appellant's counsel could prove that somebody in their campus political party got permission from the tiki bar's owner or manager.

Clearly, this regulation is not "narrowly tailored" in any fashion – let alone to forward a compelling state interest. It is overbroad to the point where it extends to every corner of every privately-owned building. But perhaps even more striking, and directly applicable to this case, is that the member of Appellant's campus political party who was seen canvassing the Stadium Centre is, herself, a resident of that very building. In other words,

enforcement of this statute would prevent her from posting campaign materials advertising her campus political party *in her own room* without the prior consent of the building owner or manager.

The dissent, in its gross misconstrual and misapplication of public forum doctrine, does not seem to grasp that even if the purpose of this regulation was indeed to save non-University affiliates from being bothered by the hullabaloo surrounding SGA elections, the text of the regulation, as accurately applied, reaches *into the bedrooms* of students, including those of candidates for office, as long as they live off-campus and do not own the property on which they live. Likewise, the dissent makes no effort to consider if a regulation which prohibits a specific form of political speech on "any privately-owned property" might be overbroad. Rather, the dissent contains no discussion or analysis whatsoever, as if overbreadth was not one of the chief concerns motivating the majority's opinion.

If the regulation at issue were restricted to certain geographical areas within a half-mile radius of the University, perhaps this majority opinion would no longer be the majority opinion. But § 709.1(B)(1) is not restricted to any geographical area. Not a quarter-mile, not a half-mile, not a full mile, not even the 24,901 miles which comprise the circumference of the Earth's equator. As provided by § 709.1(B)(1) "any privately-owned property" means all privately-owned property – there are no exceptions included in the statutory language and it would be highly improper for the Court to insert them in attempt to make it constitutional.

Even if there were a geographic limitation within the statute, it would still prevent students from posting campaign materials in their own domiciles without the prior consent of the property's owner or manager. Far be it for this Court to compare our Student Body Statutes to the 1961 film "Breakfast at Tiffany's," the 1983 film "Scarface," or the currently running television show "RuPaul's Drag Race," but it is absurd to believe that a student would need such permission to have a poster of Holly Golightly,[1] Tony Montana,[2] or

[1] The protagonist of *Breakfast at Tiffany's*, as played by Audrey Hepburn, posters of her wearing a multi-strand pearl necklace held together by a brooch while grasping a long-stem-cigarette-holder are standard fare on bedroom walls of college-aged women.

[2] The protagonist of *Scarface*, as played by Al Pacino, posters of him wearing a leisure suit

RuPaul[3] on a bedroom wall. That SBS § 709.1(B)(1) also seeks to impute any additional obligations upon the manager of the Stadium Centre – a person over whom the FSU SGA has no authority whatsoever – is likewise indicative of its spurious nature.

As for why the FSU SGA has any compelling interest whatsoever in preventing students from posting campaign materials on all privately-owned properties, this Court is at a loss. This is especially true in light of the low voter turnout in FSU SGA elections, a sampling of which indicates that less than 25% of the student body participates in the spring elections, which includes the election of the Student Body President.

Yet, Appellee's counsel warned the Court of the potential ramifications of repealing this statute, specifically that repealing this statute would open FSU's administration to significant liabilities. When pressed for the causes of actions that could be filed against the University absent the presence of § 709.1(B)(1), Appellee's counsel posited that its repeal might lead to harassment of private citizens who want nothing to do with a student body election.

Considering that a supermajority of the FSU student body chooses not to participate in the election of officers of the Student Government Association, Appellee's counsel is likely correct that non-affiliates of the University do not want to hear why one campus political party deserves attention and support over the other. However, the magnitude of this potential harm does not come close to rising to the level of harassment under the substantial disruption test which permit a public university to regulate off-campus speech to preserve a safe and educational status quo.

For an example of what does rise to this level of "substantial disruption" to a public college's educational environment or campus safety, the Court turns to the example set in *Doe v. Valencia*. *See Doe v. Valencia Coll.*, 903 F.3d 1220 (11th Cir. 2018). In *Valencia College*, a 42-year-old male nursing student sent a series of

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while holding an automatic machine gun are standard fare on the bedroom walls of college-aged men.

[3] The host of *RuPaul's Drag Race*, as played by RuPaul Andre Charles, posters of them wearing a blond beehive wig and holding a golden scepter are standard fare on the bedroom walls of college-aged individuals who identify with a non-binary construction of gender.

sexually harassing text messages to a 24-year-old female student over the course of the break between summer and fall classes. *Id.* at 1225.

Some of the more palatable of these text messages involved the male student calling the female student a "hussie" a "hooker" and a "whore." *Id.* at 1226. Most of the rest are unfit for print in this opinion. *Id.* All of these text messages were sent and received off-campus and when school was out of session. *Id.* at 1231.

When fall classes resumed, the 24-year-old female student showed the Dean of the school the text messages. *Id.* at 1226. As a result of this meeting the Dean used these documents as the basis of a complaint against the 42-year-old male under Valencia's student conduct code. *Id.* at 1227.

The hearing on the matters concluded with a finding of responsibility, the panel having concluded by the preponderance of the evidence that the 42-year-old male was responsible for: 1) physical abuse; 2) sexual harassment; 3) stalking; and 4) lewd conduct. *Id.* at 1127–28. Accordingly, the Dean of Valencia College ordered a one-year suspension from school. *Id.* at 1228.

The 42-year-old male appealed his suspension in federal court, who ruled that the behavior complained of – although occurring off-campus and when school wasn't in session – met the threshold for the extreme sort of behavior which extends *Tinker's* substantial disruption test to off-campus speech. *Id.* at 1225.

The Eleventh Circuit roundly agreed with the district court's ruling. *Id.* ("[a]ccused robbers, rapists, and murderers have statutory and constitutional rights. So does a college student who is accused of stalking and sexually harassing another student.

The question in that case is whether Valencia College violated [name redacted]'s statutory or constitutional rights … [t]he district court did not think so, and neither do we"). Juxtaposed with the facts of this case, it is easy to see why *Valencia College's* holding is inapplicable here.

Where the respondent in the *Valencia College* case sent sexually harassing, lewd, and intimidating messages to a woman eighteen years his junior, the Appellant's party member left some pamphlets around the building in which she lived. That a

couple of these pamphlets were found strewn about the Stadium Centre does not compromise FSU's educational environment or campus safety.

Where the respondent in the *Valencia College* case was in no way engaged in any sort of political activity when he embarked on his harassment campaign, the Appellant's party member was engaged in bona fide political activity. Even if it were no question whatsoever that members of Appellant's party posted these pamphlets in public areas of the Stadium Centre, this would not compromise FSU's educational environment or campus safety.

Where the respondent in *Valencia College* case was, indeed, engaged in extreme and outrageous conduct involving "severe bullying [and] harassment targeting [a] particular individual," Appellant's party member was attempting to raise awareness and solicit support for her cause. *See Mahanoy*, 141 S. Ct. at 2040. That Appellant's party members were knocking doors on election day does not compromise FSU's educational environment or campus safety.

Whereas the dissenting opinion deems the regulation at issue to be a "content-neutral" restriction on speech, it suffers from a common misconception: the fact that regulation on speech can be fairly applied on persons with differing political views does not mean that the regulation is content-neutral. The proper test for content-neutrality is not performed by analyzing the content of any barred *expressions* under the regulation at issue, but rather by analyzing the *purpose* of the regulation itself. *McCullen v. Coakley*, 573 U.S. 464, 480 (2014) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) ("[o]n the contrary, '[a] regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messaged but not others'")).

In other words, a "regulation of speech is content based if [it] applies to particular speech because of the *topic* discusses," which is disjunctive of "the idea or message expressed." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 169 (2015). Cutting directly to the core of this case, regulations banning the use of any specific item "for political speech – and only political speech" are content-based regulations, even if they imposed "no limits on the political viewpoints that could be expressed." *Id.*

Of note to the decisions in *McCullen* and *Reed* is that they were published – without dissent – over twenty *years* after the most modern case cited in the dissent regarding the issue of content neutrality. Directly relevant to the modern applicability of these cases, the majority in *Reed* and a concurrence in *McCullen* both discuss the holding in the seminal case relied upon by the dissent in its rationale. *Reed*, 576 U.S. at 166 (citing *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 642 (1994)); (Alito, J., *concurring*) *McCullen*, 573 U.S. at 512 (citing *Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 645-46 (1994)).

Regarding the dissent's gesture to an *in loco parentis* argument, it should be noted that University students, unlike high school students, are typically adults. Similarly, it is a minor curiosity that the dissent does not include any case law from a public college or university applying the modernized *Tinker* test to off-campus political speech.

Interestingly, the dissent's analysis of the doctrine of prior restraint in respect to public high schools and public institutions of higher learning may indicate that public institutions of higher learning have more compelling reasons to restrict the speech of adults than high schools do for minors.

Beside the point that dissent does not seem to understand the very notion of prior restraint, our rogue Justice fails to understand the black letter law whereby adult college students are entitled to *more* and *greater* First Amendment protections than minors in respect to political speech and expression. *Compare Vrasic v. Leibel*, 106 So. 3d 485, 486 (Fla. 4th DCA 2013) ("[p]rior restraints on speech an publication are the most serious and the least tolerable infringement on First Amendment rights") (quoting *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976)) *with Reno v. Am. C.L. Union*, 521 U.S. 844, 864-66 (1997) (rejecting the premise of *Ginsberg* in holding that minors do not have the equal First Amendment protections as adults due to "a parent's claim to authority in their own household" being a "basic in the structure of our society") (quoting *Ginsberg v. State of N. Y.*, 390 U.S. 629, 639 (1968)).

Yet, and in spite of its brief discussion of *in loco parentis* doctrine, the dissent does not include any reference whatsoever to how the modernized *Tinker* test is applied by public institutions of higher learning in any fashion whatsoever. It would seem

that instead of doing any legal research on this matter, or thoroughly reading the majority opinion, the dissent is content with pointing the finger at this majority opinion and claim that the cases cited here in the *Tinker* progeny "relate only to public high schools."

In that claim, it defies all reasonable explanation as to how our rogue Justice missed the ten (10) consecutive paragraphs detailing the *Valencia College* case and how it relates to the issues here under the modernized *Tinker* test. *See infra* at 10-12. Likewise, and in an extraordinary display of a lack of reading comprehension, the dissenting opinion does not seem to notice that the students in *Valencia College* were, respectively, 42-years-old and 24-years-old. *Id.*

To wit, had the dissent included some cursory research in to the doctrine's application in institutions of higher learning versus high school, it may have been discovered that in modern First Amendment jurisprudence, high schools rarely stand *in loco parentis* and institutions of higher institution – as correctly deduced by the dissent – do not stand *in loco parentis* to adult students at all. *Compare Mahanoy*, S. Ct. 2038 at 2040 ("a school will rarely stand *in loco parentis* when a student speaks off campus") *with Nova Se. Univ., Inc. v. Gross*, 758 So. 2d 86, 89 (Fla. 2000) (recognizing that while "the school-minor student special relationship evolved from the *in loco parentis* doctrine" the Florida courts have "recognized a different relationship exist[ing] between the university and its adult students").

In this majority opinion, the purpose of analyzing the dissent's *in loco parentis* argument is not directed towards its conclusions on the matter, but rather, to highlight how the case law cited by the dissent, in multiple subject matters, undermine its arguments. For example, despite citing the *Mahanoy* case multiple times, the dissent never picked up on the fact that even high schools rarely stand *in loco parentis* in the regulating off-campus speech. This realization would have rendered any gesture towards *in loco parentis* as inapplicable. A similar error is present in the dissent's content neutrality analysis.

It is not a sin to miss modern case law. Neither is citing older case law. But when the modern case law is exceedingly easy to find, the old case law is discussed in the modern case law, and the thrust of old case

law undermines the ultimate conclusions of an argument founded upon that case law, the quality of that argument could be rightly categorized as "bad."

It is a wonder as to why our rogue Justice makes such arguments without reading accompanying opinions thoroughly, unless his motivation is better explained his tendency to immediately post his dissents on LinkedIn immediately upon publication, usually alongside preening self-congratulatory statements full of mushy pablum which gives way to his own brazen and prodigious self-interest in climbing the Federalist Society's ideological and partisan ladder towards an actual position in the state or federal judiciary for which our rogue Justice has garnered a well-established reputation at this law school.[4] In other words, this dissent was inevitable – not because it is merited, but because our rogue Justice wanted something of his own to write and publish in this case.

But back to the content of this "dissent," it relies exclusively on the *Turner* case in its content neutrality analysis to support its conclusion that § 709.1(B)(1) is content neutral and therefore constitutional. In this analysis, the dissent is content to find § 709.1(B)(1) content neutral because it can be fairly and evenly applied to all "ideas or views" expressed by the campaign materials upon which § 709.1(B)(1) places a prior restraint.

Yet, and despite quoting the same page *Turner* as published in the United States Reporter, the dissent overlooks a key step in the proper test is analyzing the speech-limiting regulation's purpose. *Turner,* 512 U.S. at 642. Leaving nothing to the imagination, *Turner* itself explicitly held that the test for content neutral speech based on "the message it conveys" does not "end the inquiry" regarding content neutrality, but continues into the purpose of the regulation itself. *Turner*, 512 U.S. at 645. As rendered in *Reed*, a main proposition of the *Turner* Court was that "an innocuous justification cannot transform … [a] content-based law into one that is content neutral." *Reed*, 576 U.S. at 166.

Turning back to the majority's content neutrality analysis, the purpose of the regulation at issue in this case is obviously

[4] The author of this majority opinion is also a member of the Federalist Society.

related to the "contents of expression" barred by the regulation. That this regulation is located in our Election Code, and not generally within our Student Body Statutes, should be a pretty strong indication that it is targeted solely at political speech in campus elections. *See* (Tjoflat, J., dissenting) *Alabama Student Party*, 867 F.2d 1354 (stating that the regulation at issue was designed to limit "only one topic of discussion: political speech").

A close reading of the regulation confirms this notion, as it explicitly applies only to "campaign materials." *See* Fla. St. U. Student Body Stat. § 709.1(B)(1) (2022). No other category of speech is targeted by this regulation. *Id.* Because the purpose of this regulation is to restrict political speech – even if fairly applied to all campus political parties – it is not a content-neutral regulation. To paraphrase *Turner*, § 709.1(B)(1)'s purported justification of protecting private property owners and managers from SGA elections does not transform this intrusion into free speech into a content-neutral regulation.

Hence, Part II of this opinion's dissent grossly misconstrues applicable case law by omitting – among other things – a routine step in a proper content-neutrality analysis.

CONCLUSION

A core tenet of constitutional analysis, especially in respect to First Amendment challenges, involves determining if a provision of law is "unconstitutional on its face." If SBS § 709.1(B)(1)'s prohibition of political speech on "any and all private property" were a person, it would have "UNCONSTITUTIONALLY OVER-BROAD UNDER THE FIRST AMENDMENT" tattooed on its forehead in bright red ink.

Accordingly, § 709.1(B)(1) is so **STRICKEN** from Florida State University's Student Body Statutes, and the finding of responsibility by the Election Commission against Appellant is hereby **VACATED**. Perhaps now, with the unconstitutional prohibition against posting campaign materials in private residences lifted, our Student Government Association can muster a voter turnout greater than 25% of the student body when it comes time to elect our next Student Body President.

DONE and **ORDERED** on March 27, 2023 in Tallahassee, FL.

ASSOCIATE JUSTICE GARCIA MARRERO, concurring in part as to Issue I, and dissenting in part as to Issue II.

I write today to explain my agreement with the Majority on its decision as to Issue I but my disagreement as to Issue II. Disagreeing with the constitutional position adopted by the Majority today, I dissent.

Before the Court is the issue of whether the Elections Commission erred in finding by clear and convincing evidence that SURGE FSU improperly campaigned outside of the Florida State University campus—on private property—and without the express or implied permission of the owners or operators of the premises. To answer that question, I agree with the Majority. The Election Commission's finding, by clear and convincing evidence, was supported by the record and warrants affirmance. Because the Majority did not speak about this conclusion and focused on the potential constitutional issues with section 709.1(B)(1), I feel inclined to expand on the Court's finding before addressing the second issue.

ISSUE I

In the tribunal below, FORWARD FSU brought a violation against SURGE FSU for a purported violation of Student Body Statute 709.1(B)(1), which states, in part, that "[c]ampaign material is prohibited on any privately-owned property, except that candidates may post materials on private property should they obtain the consent of the property owner or manager. . . ." § 709.01(B)(1), Student Body Stat.

The tribunal below, the Election Commission (the "Commission"), held a hearing where FORWARD FSU presented photographic and videographic evidence. *See Turkomer, v. SURGE FSU*, No. SPR-2023-15, at *3–4 (F.S.U. Election Comm'n Mar. 8, 2023) (detailing facts based on the evidence presented at the hearing). The Commission also heard testimony from Appellant's candidate for Student Body Treasurer—the alleged violator of section 709.1(B)(1). *See Id.* at *4.

Now, on appeal, Appellant urges this Court to reverse the Commission on two grounds: (1) because the use of a Quick Response ("QR") Code is not "campaign material" as defined in the Student Body Statutes and (2) because no campaign material was "posted on" private property.

See Initial Brief at *4. I agree with the Majority that Appellant's arguments fail to persuade the Court that the Commission erred in its finding by clear and convincing evidence that Appellant violated section 709.1(B)(1).

First, Appellant's argument that the use of a QR code does not trigger the definition prescribed by section 701.1(E) is unsupported by the text of the statute. The definition for "campaign materials" is a broad one:

> Campaign Materials – ***any material***, <u>*including but not limited to*</u> social media, electronic communication, videos, posters, placards, signs, signboards, leaflets, folders, handbills, fliers, banners, t-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 for an elected office of the student body, and calling the action to vote***.

§ 701.1(E), Student Body Stat. (emphasis added).

With such a broad statute in place, the question becomes, was a QR code in mind when the statute was written? A similar question came up in a previous case before this Court, *see* Forward FSU v. Abhari, No. 2022-SPR-8, 11, at *2 (F.S.U. Student S. Ct. Mar. 29, 2022) (Garcia Marrero, J.), however, there the Court considered whether a QR code was "contact information" as required by the Florida State University Oglesby Union Policy 2.0131(3)(b) at the time the Policy was written—it was not. *See Id.*

Here, however, we have a statute that was reaffirmed prior to the Spring 2023 election cycle. *See* § 704.2(F)(1), Student Body Stat. (2023) (emphasis added) ("The Supervisor of Elections or the SGA Director of Student Affairs shall make all information pertaining to filing available *at least one (1) week prior* to the filing dates. At that time *the Election Code shall be considered binding for the elections in question and shall not be changed by the Student Senate*."). Thus, the definition found in section 701.1(E) was reaffirmed by the Student Senate prior to the violation occurring. Given the reaffirmation of the Election Code, the question becomes whether the Student Senate would consider a QR code to be encompassed in the broad definition of section 701.1(E) as of the statute's reaffirmance. Here, there can be no doubt

that the Student Senate would believe QR codes to be included in the broad category of "campaign materials."

Although legislative inaction does not ratify a certain action, there is something to be said about the fact that the Student Senate has not altered the language of campaign material to exclude QR codes after this Court had a high-profile case revolving around QR codes just last year. Nevertheless, the Student Senate's inaction to alter the language is not the only support that QR codes are inclusive in the definition of "campaign materials." Section 701.1(E) is a catch-all provision, which is evident by the use of the words "any" and "including but not limited to." *See* § 701.1(E), Student Body Stat. Therefore, it is not hard to see that the Student Senate wanted to include all possible materials that would be considered "campaign materials" in its definition.

Taking the broad language of the statute at its face, I find that the QR codes at question, here, are "any material" "that publicize a political party or candidate for an elected office of the student body, and call[s] the action to vote." § 701.1(E), Student Body Stat.

Next, Appellant argues that if the QR code, that was disseminated, was found to be a "campaign material" then it also had to be "posted on" private property for it run afoul of section 709.1(B)(1). *See* Initial Brief, at *4. The Court was unpersuaded by this argument, and I agree.

Section 709.1(B)(1) is extremely clear on what activity it is prohibiting, the use of "campaign material" on "any privately-owned property" except when permission from an owner or manager is received. *See* § 709.1(B)(1), Student Body Stat. Appellant's argument, thus, rests on the second clause of section 709.1(B)(1), which states that "[c]ampaign materials posted on private property must still be in compliance with all applicable provisions of this [the Election] Code, including the time in which campaigning is allowed." *Id.* This clause, however, does not negate the flat out prohibition—with a limited exception—provided for in the first clause. Appellant attempts to argue that the second clause is the crux of the statute and that for the statute to be violated "campaign material" actually has to be "posted on" private property, rather than simply be handed out there. This

argument simply is unsupported by the clear text of the statute.

The first clause details that all campaign material is prohibited on private property unless permission from an owner or manager is obtained. *See Id.* Therefore, the second clause, which Appellant's argument depends on, is a supporting clause that details under what conditions any campaign material must abide by ***if*** permission to use it is granted by a private property owner or manager.

Appellant's argument is not the correct one, however, even if Appellant had argued the application of the first clause of section 709.1(B)(1), it would fail. The record on appeal supports the Commission's finding that Appellant was indeed campaigning with campaign material at private property, Stadium Centre, without the permission of the buildings' owner or manager. *See Turkomer, v. SURGE FSU*, No. SPR-2023-15, at *3–4 (detailing evidence that was presented at the hearing showing that campaign materials were found at Stadium Centre and that Appellant did not have permission to campaign there). The Court reaffirmed the evidence in the record on appeal by hearing from the Appellant's candidate for Student Body Treasurer and the witness who saw her campaigning at Stadium Centre. Therefore, I agree with the Majority that Appellant was indeed campaigning on private property without permission of the property's owner or manager, and thus, is in violation of section 709.1(B)(1). Accordingly, the Commission's ruling was not erroneous and is affirmed per the Majority's holding.

ISSUE II

Now, I turn to the portion of the Majority's opinion with which I disagree. First, it is worth noting that the Commission did not hear any challenges to the constitutionality of section 709.1(B)(1), nor did Appellant raise such a challenge on appeal to this Court. Rather, the Majority raised the issue *sua sponte* at oral argument and addresses the issue—and only that issue—in its opinion today. Given the limited application of *Tinker* and its progeny to K–12 public schools and the text of section 709.1(B)(1), I disagree with the Majority in its conclusion that section 709.1(B)(1) is unconstitutional.

TINKER AND ITS PROGENY

I begin my analysis by establishing why

Tinker and its progeny are inapplicable here—a common theme is evident at first glance.

Tinker dealt with a public high school that wanted to prohibit a peaceful student political demonstration, which consisted of "pure speech" on school property during the school day. *See Tinker*, 393 U.S., at 505–506. Next, in *Fraser*,[5] a public high school student was suspended for delivering a speech to an assembly of the school that contained "an elaborate, graphic, and explicit sexual metaphor." *Fraser*, 478 U.S., at 675.

Then, in *Kuhlmeier*,[6] staff members of a high school newspaper were found to not have their speech rights violated by the excise of two pages of their newspaper for certain privacy reasons. *See Kuhlmeier*, 4874 U.S., at 273.

Later, in *Morse*,[7] a public high school principal was found to have the power to restrict student speech when it related to the promotion of illicit drug use. *See Morse*, 551 U.S. at 409–10. Finally, in *Mahanoy*,[8] the most recent of Supreme Court decisions, the Court held that a public high school could not restrict certain off-campus speech when its special interest was not as evident. *See Mahanoy*, 141 S. Ct., at 2048.

All of the cases dealing with the restriction of speech, including political speech, that the Majority depends on relate only to public high schools—not post-secondary institutions, such as Florida State University.

The issue with these cases is that the Supreme Court viewed the limits on speech through the lens of the *in loco parentis* doctrine, better known as a parents' ability to delegate their authority over their children to another authority—in this case public schools. *See Mahanoy*, 141 S. Ct., at 2051–53 (Alito, J., concurring). However, the application of the *in loco parentis* doctrine goes away when we leave the pre-adult public K–12 school system and enter the world of post-secondary adult education.[9] Thus, the "special interest" analysis that a court must undergo in determining if a

[5] *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986).
[6] *Hazelwood Sch. Dist. V. Kuhlmeier*, 484 U.S. 260 (1988).
[7] *Morse v. Frederick*, 551 U.S. 393 (2007).
[8] *Mahanoy Area Sch. Dist. V. B.L.by and through Levy*, 141 S. Ct. 2038 (2021).
[9] At least two Justices of the U.S. Supreme Court agree with this notion. *See Mahanoy*, 141 S. Ct., at 2049 n. 2.

provision, or statute, is justified is a bit different than that in *Tinker* and its progeny.

ANALYSIS

"Political speech, of course, is 'at the core of what the First Amendment is designed to protect.'" Morse, 551 U.S., at 403 (quoting *Virginia v. Black*, 538 U.S. 343, 365 (2003) (plurality opinion)). And the Supreme Court has made quite clear that "students do not 'shed their constitutional rights to freedom of speech or expression,' even 'at the school house gate.'" *Mahanoy*, 141 S. Ct., at 2044 (quoting *Tinker*, 393 U.S., at 506). Therefore, the question I must address is whether the text of section 709.1(B)(1) places an improper restriction on the political speech of Florida State University students that wish to run for student government office. I answer this question in the negative.

Typically, "off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility." *Mahanoy*, 141 S. Ct., at 2046. However, when the speech is conducted by students at or older than the emancipation age—which is 18 in the state of Florida, or 16 if court ordered, see § 743.015, Fla. Stat. (2022)—the analysis is not whether a school has consent to restrict such a right. Rather, the analysis must be whether the restriction was an improper state government action. *See Turner v. Broadcasting Sys., Inc. v. F.C.C.*, 512 U.S. 622, 641–42 (1994); see also Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala., 867 F.2d 1344, 1349–50 (11th Cir. 1989) (Tjoflat, J., dissenting) (citing to the proper test to be applied in these circumstances).

The Supreme Court has identified three forums in which the state—and by extension public state post-secondary institutions[10]—can restrict speech, they are the following: (1) a traditional public forum, which is "a place which has 'immemorially been held in trust for the use of the public and, time out of mind, has been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions"; (2) a nonpublic forum which "is 'not by tradition or designation a forum for public communication'"; and (3) a limited public forum which "is created when the

[10] Florida State University is a political sub-division of the State of Florida, as an agency of the executive branch of the state, pursuant to section 1001.705(1)(d), Florida Statutes (2022).

government 'intentionally opens a nontraditional forum for public discourse.'" *Ala. Student Party*, 867 F.2d at 1350 (Tjoflat, J., dissenting) (citations omitted). Here, there is no question as to what kind of forum the political speech was being conducted in—nonpublic. A privately owned apartment building is not a public forum which is known for holding public assemblies, nor is it a nonpublic forum that has been opened by the State of Florida, or Florida State University, for the purpose of public discourse—in fact, the Stadium Centre is not owned by the State or any of its political subdivisions. Therefore, the analysis, here, must be if section 709.1(B)(1) is an improper restriction of political speech in a nonpublic forum. It is not.

"In a nonpublic forum, the government may impose *reasonable* content-based restrictions on speech, provided that the restrictions are not viewpoint-based." *Id.* (Tjoflat, J., dissenting) (citing *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983); *Cornelius v. NAACP Legal Defense and Educ. Fund, Inc.*, 473 U.S. 788, 800 (1985)). Thus, if the F.S.U. Student Body Statutes' restriction on off-campus campaigning on private property is a reasonable content-based restriction, it passes the test.

However, I need not go so far as to determine if section 709.1(B)(1) is a reasonable content-based restriction because the plain and ordinary text of the statute is not content-based, rather it is content-neutral and is completely appropriate under the Supreme Court's First Amendment free speech jurisprudence.

"Deciding whether a particular regulation is content based or content neutral is not always a simple task." *Turner*, 512 U.S., at 642. When looking to the content neutrality of government regulation is "whether the government has adopted a regulation of speech because of agreement or disagreement with the message it conveys." *Id.* "The purpose, or justification, of a regulation will often be evident on its face." *Id.*

Generally, any regulation that favors and disfavors speech "on the basis of the idea or views expressed are content based." *Id.* at 643. Whereas, "laws that confer benefits or impose burdens on speech without reference to the ideas or views expressed are in most instances content neutral." *Id.* I find that section 709.1(B)(1) falls in the

latter category. The regulation established by the F.S.U. Student Senate confers a burden on speech ***without*** reference to the ideas or views expressed in said speech.

Looking to section 709.1(B)(1) it is evident that the restriction of off-campus campaigning for student government elections on private property is content neutral. Section 709.1(B)(1) states that "[c]ampaign material is prohibited on any privately-owned property, except that candidates may post materials on private property should they obtain the consent of the property owner or manager." § 709.1(B)(1), Student Body Stat. The statute does not limit speech on account of any given viewpoint, political party, or reason for campaigning—rather it restricts campaigning on private property altogether. Such a regulation is not only content neutral but is recognized by the Supreme Court as completely proper. *See Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 805 (1984) ("A government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."); *see also Martin v. City of Struthers*, 319 U.S. 141 (1943) (discussing the propriety of the government protecting private householders from unwanted solicitors, while not cutting off access to homes whose residents are willing to hear what the solicitors have to say).

Thus, section 709.1(B)(1) has the intended purpose of restricting student campaigners from bothering private property owners or managers with their solicitation without restricting specific speech, nor without giving the student campaigners the ability to express their speech if the private property owner or manager grants them permission to do so.

Given the plain and ordinary text of the statute and the binding Supreme Court jurisprudence on this issue I find that section 709.1(B)(1) is not unconstitutional because it is a content-neutral regulation and does not infringe on the public forum freedom of speech that is protected under the First Amendment.

In fact, all Appellant had to do was ask the property managers of Stadium Centre for

permission to campaign on the property's premises to avoid running afoul of the regulation. The evidence in the record shows that Appellant did not even bother to seek out the property's manager for said permission. Further still, Appellant has various other methods of expressing its political speech that is in no way restricted by section 709.1(B)(1)—namely, the widely accessible (and free) social media platforms that most students utilize in this day and age.

Based on the text of the statute at issue, the record before me, and the Supreme Court's jurisprudence on the government's restriction of free speech, I would hold that Section 709.1(B)(1) is not unconstitutional, and therefore, Appellant did violate the statute by campaigning on private property.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-03

Appellant,

v.

OMER TURKOMER,
in his official capacity
as General Counsel
for FORWARD FSU,

Appellee.

_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

ASSOCIATE JUSTICE GARCIA MARRERO., joined by ASSOCIATE JUSTICES CEVERE, GOBIN, LAGO, and CHIEF JUSTICE LINSKY in part delivered the majority opinion of the Court
.

SYLLABUS

This action was brought before this Court on an appeal from the Elections Commission, case no. 2023-EC-SPR-23B. Below, Rawan Abhari, in her official capacity as General Counsel for SURGE FSU, a student body political party, sought review of several FORWARD FSU violations filed on March 3, 2023, as

allegedly violating section 711.6(C)(1) of the Student Body Statutes. The two violations filed by SURGE FSU's General Counsel were filed after the forty-eight-hour statute of limitations period that exists for student government elections.

The Elections Commission held that it would not hold hearings on the two violations because it deemed them untimely pursuant to section 711.4(E) of the Student Body Statutes. SURGE FSU appeals that decision, and the action is now before this Court.

Having reviewed the record, the parties' briefs, and the corresponding statutes and case law, this Court finds that the two violations filed by SURGE FSU's General Counsel were compulsory counterclaims to the violations filed by FORWARD FSU on that same day, and therefore, related back in time to the last filed violation by FORWARD FSU, and therefore, the Elections Commission erred in failing to consider the violations.

ISSUE

I. Whether the statute of limitation established in section 711.4(E) should be equitably tolled?

FACTUAL BACKGROUND

The relevant facts are as follows. On March 3, 2023, at approximately 8:33 pm, the Supervisor of Elections forwarded to SURGE FSU's General Counsel ten violations filed earlier that day—all by approximately 3:00 pm—for her review. Upon review of the filed violations, General Counsel for SURGE FSU filed two "violations" with the Supervisor of Elections claiming that several of the violations filed by FORWARD FSU were false or malicious.

Considering that Section 711.4(E) provides for a forty-eight-hour statute of limitation for the filing of violations after polls close. In this case, polls closed on March 1, 2023, at 7:00 pm, therefore, the statute of limitations took effect on March 3, 2023, at 7:00 pm. The Elections Commission (the "Commission") found that SURGE FSU's two "violations" were untimely, and thus, rejected to hear the arguments by SURGE FSU that the statute of limitations in section 711.4(E) should have been equitably tolled.

SURGE FSU appealed that decision and now comes before this Court to argue that the statute should be equitably tolled due to the late disclosure of the violations filed

by FORWARD FSU—after the statute of limitations cut-off time—and to remand for the Commission to hear the arguments on the false or malicious claims.

OPINION

We begin by addressing the relief that Appellant requested. SURGE FSU came to this Court seeking the equitable tolling of section 711.4(E), which states that "[t]he final deadlines for all alleged violations and appeals to be filed by an individual or political party for a particular election, is forty-eight (48) consecutive hours after the close of polls." § 711.4(E), Student Body Stat. (2023).

"Equitable tolling is an extraordinary remedy which is typically applied sparingly." *Steed v. Head*, 219 F.2d 1298, 1300 (11th Cir. 2000) (citing *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96 (1990)). To equitably toll a statute of limitations, a court must determine whether the circumstances in a given case are sufficient to warrant tolling the express intent of the legislature to establish a statute of limitation. *See Machules v. Dept. of Admin.*, 523 So. 2d 1132, 1134 (Fla. 1988).

During oral argument Appellant made a compelling argument for equitable tolling—especially given that the additional violations filed by FORWARD FSU were not provided to Appellant until ***after*** the statute of limitations kicked in. However, this Court need not address the merits of the argument because of another procedural mechanism.

Florida Rule of Civil Procedure 1.170(a) provides for the filing of compulsory counterclaims. *See* Fla. R. Civ. P. 1.170(a). A compulsory counterclaim is one "arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." *Ocean Bank v. State, Dept. of Financial Servs.*, 902 So. 2d 833, 835 (Fla. 1st DCA 2005) (citing Fla. R. Civ. P. 1.170(a)).

When Florida's rules are adopted from the federal rules, "the general rule is that it should be construed in accordance with the federal decisions interpreting that rule, when not in conflict with Florida law." *Hightower v. Bigoney*, 156 So. 2d 501, 505 (Fla. 1963). In this case, the Florida rule for compulsory counterclaims is derived from its federal counterpart, and therefore, federal cases dealing with temporal relating back analysis are applicable here. *See Maersk Line v. Firepower Displays Unlimited, Inc.*, No. 08-20659-CIV, 2008

WL 4926969, at *6 (S.D. Fla. Nov. 17, 2008) ("Defendant's counterclaim is a compulsory counterclaim pursuant to Federal Rule of Civil Procedure 13(a)(1)(A) and thus, it related back to the original filing of this case . . . [t]hus, Defendant's counterclaim is not barred by the statute of limitations.").

Thus, the question the Court must determine is whether Appellant's two "violations" filed with the Commission were separate and distinct from the violations filed by FORWARD FSU or if they "arise[] out of the transaction or occurrence that is the subject matter" of FORWARD FSU's filed violations.

The answer to the above posed question is a rather simple one. The Court finds that Appellant's two "late" violations arise out of the occurrence of the filing of the violations by FORWARD FSU, and therefore, is a compulsory counterclaim.

It is clear from the record before the Court that but for FORWARD FSU's filing of ten additional violations against SURGE FSU—which many were believed to be false or malicious—the additional two "late" violations by SURGE FSU would not have been filed. Given that it was the filing of the additional violations by FORWARD FSU and the belief by SURGE FSU's General Counsel that several of those new violations were false or malicious, the violations filed by SURGE FSU cannot be construed as anything else than a compulsory counterclaim.

For example, if FORWARD FSU had filed a verified complaint in Florida circuit court on the eve of a statute of limitations and SURGE FSU was served with the verified complaint the day after, when the statute of limitations went into effect, SURGE FSU would still have the procedural ability to file a responsive pleading. In that responsive pleading, SURGE FSU could raise a compulsory counterclaim against FORWARD FSU, and it would be deemed timely. That same procedural rule applies here. Therefore, this Court need not go into the analysis of whether equitable tolling is necessary because other procedural avenues exist by which SURGE FSU's claims may be heard.

Therefore, the Commission's finding pursuant to section 711.4(E) that SURGE FSU's filing of its two violations, after the forty-eight-hour statute limitations took effect, was untimely is clearly erroneous

and must be remanded for a hearing to be conducted on the claims raised in the two violations by SURGE FSU.

CONCLUSION

In conclusion, this Court considered Appellant's arguments as to the equitable tolling of section 711.4(E), however, the Court ultimately finds that Appellant's filed violations are procedurally compulsory counterclaims, and therefore, relate back in time to the original violations filed by FORWARD FSU making the counterclaims timely.

Further, the holding of the Elections Commission, that SURGE FSU's filed violations after the statute of limitations cut-off time were untimely, is **reversed and remanded** for further proceedings in accordance with this opinion.

DONE and **ORDERED**, this the 27th day of March 2023, in Tallahassee, Florida.

———

CHIEF JUSTICE LINSKY, specially concurring in the judgment.

In addition to joining in Associate Justice Garcia Marrero's astute determination that Appellant's filing is correctly classified as a compulsory counterclaim which satisfies the "logical relationship test," this opinion asserts that the doctrine of equitable tolling, as represented by Florida's common law and statues, be extended to the evaluation of any and all statutes of limitation enumerated in the governing documents of the FSU Student Government Association. *See Londono v. Turkey Creek, Inc.*, 609 So. 2d 14, 19 (Fla. 1992); Fla. R. Civ. P. 1.170(a).

As recognized by the Florida Supreme Court, this common law doctrine "is used in the interest of justice to accommodate … a [litigant's] right to assert a meritorious claim when equitable circumstances have prevented a timely filing." *Machules v. Dept. of Admin.*, 523 So.2d 1123, 1134 (Fla. 1988). In considering the applicability of equitable tolling, courts focus on the litigant's "excusable ignorance of the limitations period" in conjunction with "any potential prejudice" to the party against whom the filing is sought which would result from the doctrine's invocation. *Id.*

Generally, Florida courts apply the doctrine when a litigant "has been misled or lulled into inaction" or "in some extraordinary way been prevented" from

asserting their rights. *Id.* Distinct from other doctrines that impact a court's analysis of limitations periods, equitable tolling "does not require active deception or … misconduct" by any party who may have unduly influenced a litigant's untimely filing, but rather focuses on the rights of an otherwise that potential litigant. *Id.*

Despite the lack of need to recognize the doctrine of equitable tolling to resolve the outcome here, this case is a textbook example of when it is not only appropriate, but moreover, in the interests of justice and fairness to invoke the doctrine.

For instance, Appellant first received notice of the final eleven (11) elections violations – which are of importance to the merits of the underlying action – filed by Appellee on Friday, March 3rd at 8:33pm – one hour and 33 minutes *after* the statutory deadline to file elections complaints. *Compare* Fla. St. U. Student Body Stat. § 711.4(E) (2023) ("[t]he final deadline for all alleged violations and appeals to be filed by an individual or political party for a particular election, is forty-eight (48) consecutive hours after the close of polls") *with* Fla. St. U. Student Body Stat. § 713.13(A) (2023) ("[o]nline polls and polling sites on the main campus shall be open from 8:00 a.m. to 7:00 p.m. on the day of election").

Regarding the excusable ignorance provision of common law equitable tolling, the mere fact that Appellant had no notice of the violations which comprise the substance of their complaint until *after* the deadline passed may not, by itself, be sufficient reason to invoke the doctrine's application.

However, the fact that the Appellee waited to file several of the election complaints directly at issue in the Appellant's underlying suit until the day before the deadline, coupled with the additional fact that the Supervisor of Elections waited until after the statutory filing deadline to notice Appellant of the existence of these complaints against them, rises above and beyond the excusable neglect provision of the doctrine.

Not only that, but upon consideration of statements made by Appellee's counsel concerning one-on-one conversations with the Supervisor of Elections which preceded and delayed certain filings at issue in Appellant's underlying claims, the series of events which caused Appellant to be notified of the underlying cause of action in this case resulted in the Appellant being

misled. Hence, and independent of the facts relevant to Appellant's internal reasons for excusable ignorance, that Appellant was lulled into inaction by the actions of the Supervisor of Elections and the Appellee – coordinated or not – is sufficient motivation for this Court to apply the common law doctrine of equitable tolling to this case.

Whether Appellee intentionally and systemically delayed filing elections complaints against the Appellant in an attempt to use the statute of limitations as an impenetrable shield against any causes of action they knowingly accrued before the passage of the filing deadline is one of the many questions for the Elections Commission to decide when this case is heard on remand. At this stage of the case, the prospect of foul play is completely irrelevant to whether this Court should invoke the common law doctrine of equitable tolling. Rather, the proper countervailing analysis requires the Court to balance the Appellant's right to have a cause of action heard against any resulting prejudice to the Appellee.

Appellee's counsel was given ample opportunity to explain how applying the common law doctrine of equitable tolling would be prejudicial to his client. The justifications given were as follows: 1) applying the doctrine to this case is prejudicial to Appellee insofar as it would result in additional and undesirable time commitments; 2) applying the doctrine to this case would be prejudicial because Appellee – unlike the Appellant – made all of their filings before the statute of limitations for this election expired; and 3) applying the doctrine to this case would be prejudicial to Appellee because having a hearing on the merits of Appellant's case would harm their reputation in the community. None of these arguments come close to meeting any accepted standard for procedural prejudice.

The first argument falls short because it is not prejudicial to any party to litigate a case on the merits. In fact, litigating cases is what counsel signed up for when electing to allege and defend all of the election violations filed in this cycle.

The second argument falls short because whether not Appellee was timely in making its filings is irrelevant to any future procedural possibilities, and therefore cannot constitute a distinct and concrete harm represented by hearing this case on the merits.

The third argument likewise falls short, and in the process, begs the question as to why Appellee filed twenty-two (22) elections complaints if they think defending against one (1) would prejudicially tarnish a campus political party's reputation. As no procedural prejudice would fall upon Appellee by recognizing the common law doctrine of equitable tolling, it is properly applied in this case.

In addition, multiple statutory provisions in Florida's equitable tolling statute are met by this case. *See* Fla. Stat. § 95.051 (2023). Of consideration is that Appellant's counsel was out of the state when first receiving notice of the second batch of eleven (11) election complaints filed against them. *See* Fla. Stat. § 95.051(1)(a) (2023).

Yet, Appellant's counsel filed their counterclaim within two (2) hours of receiving notice of these additional accusations. While this is indicative of the due diligence of Appellant's counsel (and in stark contrast to any argument which insinuates that Appellant's filings were late due to negligence), it also demonstrates that being out of the state poses little complications to participating in the litigation process in the context of student government.

More appropriately, subsection (1)(c) of Florida's equitable tolling statute squarely applies to the facts of this case and subsection (1)(g) of the same statute is relevant to certain arguments made by Appellee. As discussed previously, the common law doctrine of equitable tolling may hinge upon whether a litigant has been lulled into inaction. Florida statutes directly confront this issue by tolling any applicable statute of limitation when there is concealment of a cause of action "so that process cannot be served." Fla. Stat. § 95.051(1)(c) (2023). That the Supervisor of Elections did not serve process on Appellant until after the relevant filing deadline had passed fulfills this condition, and the limitation period should therefore be tolled accordingly.

In response to this particular fact, Appellee's counsel argued at the Election Commission's hearing and before the Court that equitable tolling should not be up for discussion until Appellant successfully sued and received a judgment against the Supervisor of Elections for untimely noticing Appellant of the final eleven (11) election complaints filed by

Appellee.

Even if it were true that successfully litigating a separate cause of action against the Supervisor of Elections were a pre-suit requirement for filing an action against Appellee (and it most certainly is not), the limitations period would nonetheless be tolled pursuant to subsection (1)(g) of Florida's equitable tolling statute. *See* Fla. Stat. § 95.051(1)(g) (2023) (holding forth that equitable tolling is automatically recognized during "the pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action").

Regardless of whether the source of authority is statues or the common law, this Court has a duty to the FSU Student Government Association to uphold the principles of equity, justice, and fair play. And whether Appellee strategically tried to railroad Appellant in a round of good-old-fashioned political trickery is beside the point at this juncture. A robust justice system must take efforts to prevent the unfair and inequitable outcomes which all too often result when squabbles in student government more closely resembles a blood sport than a cooperative environment which is supportive of doing good work that benefits the entire FSU student body.

For the reasons as outlined above, though the Court need not recognize and extend the common law and statutory conceptions of equitable tolling to any specific statute of limitation in any of the FSU Student Government Association's governing documents, we hereby extend their applicability to all such deadlines for the consideration of future SGA Student Supreme Courts.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

FORWARD FSU,

23-SP-SC-04

Appellant,

v.

RAWAN ABHARI, in her capacity as General Counsel for SURGE FSU,

Appellee.

_____/

Counsels of record: Omer Turkomer for Appellant and Rawan Abhari for Appellee.

Per Curiam.

The judgment of the Elections Commission in the matter previously styled as 2023-EC-SPR-9 is affirmed by an equally divided Court.

The Elections Commission shall summarily enter a final judgment finding Surge FSU **not responsible** for violation of § 711.6(8) of our Student Body Statutes.

DONE and **ORDERED**, this the 27th day of March 2023, in Tallahassee, Florida.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

FORWARD FSU,

23-SP-SC-05

Appellant,

v.

RAWAN ABHARI, in her capacity as General Counsel for SURGE FSU,

Appellee.

_____/

Counsels of record: Omer Turkomer for Appellant and Rawan Abhari for Appellee.

Per Curiam.

The judgment of the Elections Commission in the matter previously styled as 2023-EC-SPR-18 is affirmed by an equally divided Court.

The Elections Commission shall summarily enter a final judgment finding Surge FSU **not responsible** for violation of § 709.1(C) or § 713.1(B) of our Student Body Statutes.

DONE and **ORDERED**, this the 27th day of March 2023, in Tallahassee, Florida.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

COLE KARIHER, in his official capacity as SGA Senator for the College of Music

23-SP-SC-09

Petitioner,

v.

JASON PUWALSKI, in his official capacity as Director of SGA's Office of Governmental Affairs,

Respondent.

_____/

Counsels of record: Rawan Abhari and Andrea Alvarez for Petitioner and Attorney General Khamisi Thorpe and University Defender Austin Lunde for Respondent.

CHIEF JUSTICE LINSKY, joined by ASSOCIATE JUSTICES CEVERE, GARCIA MARERRO, GOBIN, and LAGO, enter the following order accepting the joint settlement agreement with continued jurisdiction over compliance and enforcement of terms.

ORDER REGARDING SETTLMENT OF ALL CLAIMS

Having reviewed the settlement agreement as submitted jointly by counsel for each party, this Court accepts the terms included in the agreement and orders the following:

1. Respondent shall immediately submit a letter of resignation from his position of Director of the Office of Governmental Affairs to Student Body President Gabadage and Deputy Director Turkomer. This letter may be sent via email or other digital means, but it must be transmitted by the close of business on Tuesday, March 28, 2023.

2. Respondent shall direct Deputy Director Turkomer and Assistant Director Dorman regarding the continued advocacy of the amended legislation which served as the subject of this action's original complaint.

3. Respondent shall transmit the meeting minutes of all meetings of the Office of Governmental Affairs which occurred during his tenure as Director to the SGA Webmaster.

4. Respondent shall direct the SGA Webmaster to post all relevant minutes on the Office of Governmental Affairs' webpage by 11:00 AM of Wednesday, March 29, 2023.

5. The joint settlement agreement of the parties and counsel shall be attached to this order as "Appendix A."

Pursuant to the enumeration above, Counts I, II, III, IV, V, VI, and VIII of Petitioner's complaint are hereby **dismissed without prejudice** to Petitioner's cause of action. The Court hereby reserves jurisdiction to hear and try these claims provided that Respondent does not demonstrate full compliance with this order's terms by 5:00 PM on Friday, March 31, 2023. In the event that

Respondent does not demonstrate full compliance with this order, Petitioner may submit a motion seeking the enforcement of its terms.

DONE and **ORDERED**, this the 28th day of March 2023, in Tallahassee, Florida.

APPENDIX A

1. Defendant PUWALSKI agrees agrees to resign his office of Director of the Office of Governmental Affairs in result of settlement of filed charges of Count I-VIII, effective on March 27th, 2023, through a letter to the Student Body President and the Deputy Director of OGA, which shall be delivered to the aforementioned persons. Defendant **PUWALSKI** further agrees that this resignation is full and free and waives any and all review under all student body, state, or federal law relating to this resignation and settlement.
2. Defendant **PUWALSKI** agrees to, before his resignation, direct the Deputy Director and Internal Director of OGA, for the remainder of the Board's term as adjacent to the remainder of the legislative session, properly advocate with the entirety of the amended Legislative Agenda.
3. Defendant **PUWALSKI** agrees to email Webmaster Ben Young a copy of the minutes of all OGA meetings during his tenure as Director and ask him to post said minutes on the OGA webpage of the SGA website by 11:00 AM on March 29th, 2023.
4. As pertaining to Count V, Defendant **PUWALSKI** denies fault. Plaintiff KARIHER agrees to drop his demand that Defendant PUWALSKI issue an apology to the Agencies due to the lack of holding meetings of and consulting with the Agency Advisory Council.
5. Plaintiff **COLE KARIHER**, Student Senator for the College of Music Seat 2, In His Official Capacity, agrees to release Defendant **JASON PUWALSKI** of all claims relating to this instant case, except that Plaintiff **KARIHER** retains the right to file all writs or subsequent complaints with this Court as necessary.
6. The Parties agree that this settlement constitutes a public record and, accordingly, agree that this settlement should be posted on the Supreme Court Reporter.

Agreed to this 26th day of March, 2023.

_____

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-06

Appellant,

v.

OMER TURKOMER,
in his official capacity
as General Counsel for
FORWARD FSU,

Appellee.

_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

ASSOCIATE JUSTICE GOBIN. delivered the unanimous opinion of the Court.

SYLLABUS

This action was brought before this Court on appeal by Appellant, Surge FSU, from 2023-EC-SPR-03, a decision by the Florida State University Elections Commission ("Commission"). The Commission determined that the evidence presented by Appellee, Forward FSU, clearly and convincingly showed that Appellant was in violation of Florida State University Body Statutes ("SBS") § 709.1(C) by placing a freestanding sign in a non-designated area on campus.

ISSUES

1. Is Florida State University's Freestanding Sign map and policy clear and unambiguous regarding where organizations may setup freestanding signs on campus?

2. Did the Commission err in ruling that the Appellant's sign is a freestanding sign subject to SBS § 709(1)(C)?

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The relevant facts are as follows. On February 28th, 2023, at approximately 6:31 PM, Appellant placed a sign within the Askew Student Life Center (an area located inside of the Oglesby Union). The sign in question is a custom cardboard cutout standing between 5 ½ and 6 feet tall, with three political candidates from the Appellant's campus political party striking a pose. Throughout the sign, several political promises are displayed on the candidates' bodies.

On March 1st, Appellee filed a complaint with the Supervisor of Elections against Appellant, alleging that Appellant's sign is a freestanding, that it does not promote a specific on-campus event, and that its placement in the Askew Student Life Center is prohibited. Appellee further

contends that the sign violates of SBS § 709(1)(C), the Oglesby Union Board Policy Manual article IV, section D, subsection (i), and FSU-2.0131 Posting, Chalking Advertising and Active Distribution of Materials on FSU Campuses policy.

Neither party disputed that the sign belonged to Appellant nor that the sign was displayed inside of the Askew Student Life Center.

On March 10, 2023, the Commission held a hearing on this complaint. On March 17, 2023, in a 4 to 1 decision, the Commission found in favor of Appellee. The majority found that the sign was: (1) a freestanding sign (2) its placement inside the Askew Student Life Center was improper. Consequently, Appellant sign violated SBS § 709(1)(C).

The lone dissenter found the information from Florida State University on freestanding signs was too unclear, coupled with the fact that freestanding signs are regularly displayed in the Askew Center the clear and convincing standard was not met.

On March 20, 2023, Appellant filed a timely appeal to this Court, challenging the decision of the Commission.

HOLDINGS

1. Florida State University's map and policies provide clear and unambiguous guidance on where organizations are permitted to display freestanding signs on campus.

2. The Commission erred in reasoning but correctly held that Appellant's sign is subject to SBS § 709(1)(C).

OPINION

Our review of the Commission's decision consists of determining whether a preponderance of the evidence supports the Commission's findings of fact while legal determinations are reviewed *de novo*.

ISSUE I

As to the first issue, while the Commission ultimately came to the correct judgment, they stumbled their way to this conclusion. This longstanding principle of appellate law, sometimes referred to as the "tipsy coachman" doctrine, allows an appellate court to affirm a trial court that "reaches the right result, but for the wrong reasons" so long as "there is any basis which would support the judgment in the record." *Robertson v. State*, 829 So. 2d 901, 906 (Fla. 2002). Pursuant to the tipsy coachman doctrine, we disagree with the Commission's reasoning that the

University does not provide clear guidance regarding where freestanding signs may be located. Nevertheless, we accept the holding of the Elections Commission as correct as the record supports the conclusion reached by the Commission.

With that out of the way, we now turn to the first issue. When determining whether Florida State University provides clear and unambiguous maps, policies, and guidance regarding freestanding signs, we must take a journey through the various FSU statutes and policies. As such, we now turn to the text of the statute. *State v. Gabriel*, 314 So. 3d 1243, 1246 (Fla. 2021) ("A court's determination of the meaning of a statute begins with the language of the statute.") (citing *Lopez v. Hall*, 233 So. 3d 451, 453 (Fla. 2018)). First, SBS § 709(1)(C) states that "[a]ll material and activity in the Union and on FSU campuses shall be in accordance with rules and regulations of Oglesby Union policy."

The plain language of the statute here is clear. The Student Senate intended for the regulation of campaign materials and other activities to conform to the rules and regulations put in place by Oglesby Union. *See* SBS § 709.1 (header reading "Regulation of Campaign Material and Other Activities")

With this in mind, we must now turn to Oglesby Union Board Policy Manual, specifically article IV, section D, labeled "Freestanding signs" and subsection (i) which states "A-frame signs are not permitted in the egress/sidewalk areas of the Oglesby Union. (See posting.fsu.edu)." While a bit unclear, we can deduce that it was the administration's intention that the policies listed on posting.fsu.edu were to govern freestanding signs in the Oglesby Union.

Finally, we go to the last leg of our journey, on posting.fsu.edu we are presented with two pieces of crucial information. First, the map the website provides areas highlighted in green that "**designates** locations for free standing signs." FSU Posting Policy § 2.0131(10) (emphasis supplied) The only areas highlighted are a few outdoor areas, notably, the Oglesby Union is not highlighted (in fact none of Florida State University buildings are). Second, the website provides a link labeled "Free Standing Signs Regulations" which directs users to FSU-2.0131: Posting, Chalking Advertising and Active Distribution of Materials on FSU Campuses. Most germane to our analysis

is paragraph ten of the policy that states:

> "The active distribution and/or posting of material, and **the placement of freestanding signs during federal, state and local elections is limited to candidates running for office and their representatives pursuant to the locations designated at www.posting.fsu.edu**, and shall be consistent with all applicable laws and policies governing campaign activity on campus."

FSU Posting Policy § 2.0131(10) (emphasis added).

When reading SBS § 709(C), the Oglesby Union Board Policy Manual, and FSU-2.0131 together, it becomes clear that it was the intention of legislature for freestanding signs to be limited to only the highlighted green areas as prescribed by the map listed on www.posting.fsu.edu. contrary to the contentions of Appellant, the statute and policies of Florida State are not silent on whether freestanding signs are permitted indoors. FSU-2.0121(10) expressly states that such signs are **limited** to the locations designated on the map.

Appellant argues that precedent and cultural norms are compelling enough for this Court to condone the use of freestanding signs in the Askew Student Life Center, we reject this argument. Appellant provided this Court with several examples of different organizations utilizing freestanding signs inside of the Askew Center. The most prominent example being Appellee's use of a cardboard cutout of the American-Cuban rapper and businessman Pitbull. However, just because everyone else is doing it does not mean it's right. The clear language of the policies and statute overrides any cultural precedent or norms previously employed. When the statutory language is clear or unambiguous, this Court need not look behind the statute's plain language or employ principles of statutory construction to determine legislative intent. *Daniels v. Fla. Dep't of Health*, 898 So. 2d 61, 64 (Fla.2005). As such, we need not to consider the Appellant's parol evidence in determining where free standing signs are limited permitted as FSU provides clear guidance on this. In essence, this Court finds that other organizations use of freestanding signs within non-designated areas as unpersuasive.

Moreover, even if this Court found the policies and statutes ambiguous, we lack the jurisdiction to sanction any change to the policy on freestanding signs. *See* FSU

Posting Policy § 2.0131(11)(d) (reserving jurisdiction for a special committee selected by the University President or their designee). As such, this Court lacks the power to compel the administration to make any policy changes.

This Court finds that though convoluted, the policies regarding freestanding signs clearly and unambiguously limits their placement to the highlighted green areas as provided by www.posting.fsu.edu map. In essence, the policies and procedures of the Election Code and Florida State University prohibit Appellant from placing freestanding signs inside of the Askew Student Life Center. As such, we affirm the Commissions finding in judgment only.

ISSUE II

The crux of the second issue hinges on what is a "freestanding sign" in the context of SBS § 709(1)(C). The statute, manual, and FSU-2.0131 are all void of any definition of what a "freestanding sign" could mean. As such when the legislature has not defined words in a statute, the language should be given its plain and ordinary meaning. *Sch. Bd. of Palm Beach Cty. v. Survivors Charter Sch., Inc.*, 3 So. 3d 1220, 1233 (Fla. 2009). Additionally, "[T]he plain and ordinary meaning of [a] word can be ascertained by reference to a dictionary." *Green v. State*, 604 So.2d 471 (Fla.1992).

"Freestanding" is an adjective describing a sign in this context. Unable to locate the definition in Black's Law Dictionary, this Court turns to the next best thing, Meriam-Webster, who defines freestanding as "standing alone or on its own foundation free of support or attachment". *Freestanding*, Meriam-Webster Online Dictionary, https://www.merriamwebster.com/dictionary/administration (last visited Mar. 27, 2023). As such, a "freestanding sign" is a sign that stands alone or on its own foundation, free of support or attachment. With this definition now in the foreground, we turn back to the sign in dispute.

Appellee presented an image and a video of Appellant's sign in the Askew Student Life Center to this Court. The evidence presented showed a near life size cutout of three of Appellant's candidate, with the cutout standing upright. Absent from the image was any indication another structure supported the sign, in fact the sign casts a shadow on the adjacent wall, demonstrating that the back wall did not support it. While Appellant alleged that

the sign was in fact supported by boxes holding the sign up, Appellant was unable to proffer any evidence that the sign was tethered to another structure. Absent any evidence showing that the sign was not "freestanding", this Court holds here, as well as in the substantially related matters of 23-SP-SC-07 and 23-SP-SC-08 that Appellant's sign is in fact a "freestanding sign" as referenced in SBS § 709(1)(C), the Oglesby Union Board Policy Manual, and FSU-2.0131, and under its plain meaning as widely accepted by relevant definitional authorities.

CONCLUSION

In closing, we reject Appellant's arguments that the posting policy map is unclear or silent regarding "freestanding signs" within buildings. When read in conjecture, the policies state that freestanding signs are limited to the designated highlighted areas only. Moreover, we reject Appellant's argument that their cardboard cutout is not a freestanding sign. When giving "freestanding" its ordinary and plain meaning, no evidence was provided to demonstrate that the sign did not meet this definition. As a result, we conclude that Appellant did in fact violate SBS § 709(1)(C) when they placed their freestanding sign in the Askew Student Life Center.

Having found no substantive error by the Election Commission, the lower tribunal's finding of responsibility in 2023-EC-SPR-07 is **AFFIRMED.** The Elections Commission is hereby ordered to enforce the collection of the penalty levied against Appellant in conjunction with any other penalties so levied after the resolution of proceedings in all subsequent matters before the Elections Commission and this Court related to the Spring 2023 SGA elections.

DONE and **ORDERED** on March 30, 2023 in Tallahassee, FL

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-07

Appellant,

v.

OMER TURKOMER,
in his capacity as
General Counsel for
FORWARD FSU,

Appellee.

_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

ASSOCIATE JUSTICE CEVERE delivered the unanimous opinion of the Court.

SYLLABUS

This action was brought before this court on appeal from 2023-EC-SPR-07 wherein the Elections Commission determined that the evidence presented clearly and convincingly demonstrated that Appellant was in violation of Florida State University Student Body Statutes § 709.1(C) by placing a freestanding sign in an unauthorized location.

FACTUAL BACKGROUND

On March 1, 2023 at about 11:47 am, a member of Appellee's campus political party found evidence that Appellant's campus political party had placed a freestanding cardboard cut-out featuring the Appellant's candidates for Student Body President, Student Body Vice President, and Student Body Treasurer in an unauthorized location. This member of Appellee's campus political party videotaped the scene and submitted the video along with a screenshot. The video and screenshot were properly authenticated by stipulation of the parties, but did not show explicit evidence that the cardboard cutout was freestanding.

There were two possibilities as to which external structures kept the cardboard cutout from falling over. First was a truck behind the cutout on one side. The other was a cardboard box located behind the other side of the cutout.

As to the truck, the video provided included no direct indication that it was supportive of the cardboard sign to the extent necessary that it was keeping it from falling. The photograph likewise provided no indication that the cardboard sign was being as support. Notably, the

box's flaps cast a distinct shadow onto the box itself.

Crucially, video and screenshot indicate that the curb, where the truck was parked, was substantially lower than the sidewalk upon which the cardboard cutout was found. Likewise, the cardboard box in the photograph was placed upon the heightened sidewalk. The cardboard cutout showed no indication of any lilt which would have been indicative of being supported by both the truck and the box.

Of note is that the screenshot submitted was digitally altered to zoom in on the sign and surrounding environment. While an alteration of sorts, that the screenshot was a digital enlargement has no impact on its contents in relation to this Court's findings.

ISSUES

1. Was the case presented to the Elections Commission sufficiently persuasive so as to satisfy the clear and convincing evidentiary standard?

2. Does the FSU Posting Policy's language in respect to freestanding signs apply to matters sued upon under § 709.1(C) of the Elections Code?

3. Did the Election Commission err in their designation of the cardboard cutout as a freestanding sign pursuant to FSU Posting Policy 2.0131?

HOLDINGS

1. Yes, the Elections Commission was presented with sufficiently persuasive evidence to satisfy the clear and convincing standard.

2. Yes, due to the express delegations of authority represented by the language of § 709.1(C) to the Oglesby Union Policy and to the University's own regulations regarding freestanding signs, FSU Posting Policy 2.0131 is applicable to this case.

3. Yes, the Election Commission did err in their designation of the sign as "freestanding." However, this error was harmless and did not impact the resolution of this case in any meaningful fashion.

OPINION

We now turn to an analysis of how the Court made the conclusions of law as enumerated above.

THE BURDEN WAS MET

Evidence is "clear and convincing" when it is "precise, explicit, lacking in confusion, and of such weight that is produces a firm belief or conviction, without hesitation, of the matter at issue." *In re Standard Jury Instructions In Civ. Cases-Rep. No. 09-01 (Reorganization of the Civ. Jury Instructions)*, 35 So. 3d 666, 726 (Fla.

2010). As indicated in Appellee's Exhibits, the video and screenshot lack any indication that the cardboard cutout is being supported by any external structure. Rather, analysis of the difference in height between the curb where the truck was parked and the sidewalk where cardboard box was placed makes it exceedingly unlikely that the cutout was being supported by either or both. Moreover, the shadows cast by the flaps on the box indicate the absence of any pressure which would be applied if the cardboard cutout were being supported by the box.

Again, in no way, shape, or form does the evidence presented indicate that the cardboard cutout was being supported by the truck or the box. The preceding in mind, this Court finds that the Election Commission correctly decided this case by the correct evidentiary standard.

FSU'S POSTING POLICY APPLIES

Appellant argued, at length, that it would be improper for the Court to apply FSU Posting Policy 2.0131 to this case. This argument asserted that the Posting Policy was too far removed from the Oglesby Union Policy to have any binding affect. This Court disagrees. We are unpersuaded by the argument that the Oglesby Union Policy's delegation to the Posting Policy renders it null.

The binding effect of the Posting Policy is a result of multi-level delegation. § 709.1(C) contains an express delegation to the Oglesby Union Policy. Fla. St. U. Student Body Stat. § 709.1(C) ("[a]ll material and activity in the Union and **on FSU campuses** shall be in accordance with the rules and regulations of the Oglesby Union Policy") (emphasis supplied).

This sort of delegation to an additional and external source of authority is standard fare, not only in the law, but also in our Student Government Association's governing documents. *See id.* at § 806.4(C) ("[a]ll monies shall be spent in accordance with the Finance Code and A&S Fee Guidelines"); *id.* at § 808.3(C)(3)(a)(ix) (requiring the Chair of the Sports Club Distribution Council to abide by the SGA Senate Rules of Procedure); *id.* at § 907.3(B)(1)(a) (requiring Executive Officers of the Inter-Residence Halls Council to abide by their own by-laws).

Next, we turn to the Oglesby Union's delegation of authority to the FSU Posting Policy, which does so in two separate

provisions. *See* THE OGLESBY UNION POLICY MANUAL (2016-17) at 35 & 38. Notably, the Union policy provides that "all organizations must adhere to the Florida State University Posting Policy." *Id.* at 35. For good measure, the Union policy includes the entire policy in an addendum to the document. *See id.* at SECTION VII: ADDENDUMS.

While the face of Appellant's argument - that the Union policy is absent an explicit delegation of authority to the Posting Policy - seemed to have merit, upon review of that policy it became abundantly clear that not only was this policy applicable, but also this Court has limited jurisdiction over its terms in respect to any policy regarding freestanding signs.

In fact, FSU's Posting Policy is explicit about who is permitted to alter any of its regulations which apply to freestanding signs, and it is not this Court nor the SGA Senate. *See* FSU Posting Policy 2.0131(11)(d). Rather, only a special committee appointed by the University President or their designee may "update" the locations as to where freestanding signs are permitted. It so follows that even though the posting policy is silent about where freestanding signs are expressly not permitted, this Court lacks the authority to recognize any locations not explicitly mentioned as permissible within the policy, full stop.

Hence, this Court rejects Appellant's arguments on this issue. As long as § 709.1(C) contains an express delegation to the Union policy and the Union policy delegates authority in a fashion that impacts all organizations, the Posting Policy and its provisions are to be read as if it were part of the Election Code itself.

While this Court lacks authority to add locations where freestanding signs are permitted under the posting policy, it does not prevent this Court from addressing the plain meaning of freestanding to be applied by subsequent Election Commissions and Courts of our Student Government Association.

THE PLAIN MEANING OF "FREESTANDING"

The relevant opinion from the Election Commission asserts that a sign is "freestanding" when it "stands alone without the need for interference by another party." *See* 2023-EC-SPR-8 at 6. The Court rejects this definition and replaces it with the following: a sign is

freestanding when it is unsupported by any other structure. Further, the Court rejects the Election Commission's analysis that if a sign was once "freestanding," it must always be classified as such in an analysis of FSU's Posting Policy.

Reasoning by analogy regarding what it means to be freestanding, consider a felled Kapok tree of the Amazon rainforest canopy. These trees stand nearly 200 feet tall, unsupported by any other structure. Once felled, however, the Kapok tree cannot become upright without the assistance of heavy machinery. It would be wrong to consider it to be capable of being a "freestanding" tree.

However, if the Election Commission's opinion – which essentially posits that if a sign was once freestanding it remains as such despite any damage it may incur – is applied to this felled tree, then somehow a felled tree is simultaneously prone on the ground and "freestanding."

Clearly, one cannot be dependent upon heavy machinery for movement and be considered "standing" in any capacity which would indicate freedom of movement or the ability to withstand gravity absent help from an external structure. Hence, the definition of "freestanding" as put forth by the Election Commission is clearly erroneous. However, this definitional error has no impact on the merits of the case, which we hold was correctly decided by the lower tribunal.

CONCLUSION

Having found no substantive error by the Election Commission, the lower tribunal's finding of responsibility in 2023-EC-SPR-07 is **AFFIRMED.** The Elections Commission is hereby ordered to enforce the collection of the penalty levied against Appellant in conjunction with any other penalties so levied after the resolution of proceedings in all subsequent matters before the Elections Commission and this Court related to the Spring 2023 SGA elections.

DONE and **ORDERED** on March 30, 2023 in Tallahassee, FL.

THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

SURGE FSU,

23-SP-SC-08

Appellant,

v.

OMER TURKOMER,
in his official capacity
as General Counsel
for FORWARD FSU,

Appellee.
_____/

Counsels of record: Rawan Abhari for Appellant and Omer Turkomer for Appellee.

ASSOCIATE JUSTICE CEVERE delivered the Court's unanimous opinion.

SYLLABUS

This action was brought before this court on appeal from 2023-EC-SPR-08 wherein the Elections Commission determined that the evidence presented clearly and convincingly demonstrated that Appellant was in violation of Florida State University Student Body Statutes § 709.1(C) by placing a freestanding sign in an unauthorized location.

FACTUAL BACKGROUND

On March 1, 2023 at about 8:43 am, a member of Appellee's campus political party found evidence that Appellant's campus political party placed a freestanding cardboard cut-out featuring the Appellant's candidates for Student Body President, Student Body Vice President, and Student Body Treasurer in an unauthorized location. This member of Appellee's campus political party photographed the scene. The photograph was properly authenticated by stipulation of the parties, but did not show explicit evidence that the cardboard cutout was freestanding.

There were four possibilities as to which external structures kept the cardboard cutout from falling over. First was a lamppost located directly behind the cardboard cutout. Second was a box located behind the cardboard cutout. Third was a table located behind the cutout. And fourth was Appellee's candidate for Student Body President, also located behind the cutout.

As to the lamppost and the location of Appellee's candidate for Student Body President, the photograph indicated that the head of Appellee's candidate was in

between the cardboard cutout and the lamppost.

As to the cardboard box, the photograph indicated that it was not used as any support structure, as its flaps were loose and unimpeded by any pressure which would result from the cardboard cutout being placed against it for support. Likewise, the shadows from the morning sun clearly indicate a gap between the box and the cutout.

Regarding the table, the shadows cast by the morning sun indicate ample space between it and the cutout. Likewise, these shadows indicated that Appellant's candidate for Student Body President was standing between the cutout and the table.

Finally, in respect to whether Appellant's candidate for Student Body President was holding the cutout up with his right hand was inconclusive in the photograph. However, Appellant's candidate made no claim as to whether or not their right hand was holding up the sign, nor were they called to testify in this appeal by counsel.

ISSUES

1. Was the case presented to the Elections Commission sufficiently persuasive so as to satisfy the clear and convincing evidentiary standard?

2. Does the FSU Posting Policy's language in respect to freestanding signs apply to matters sued upon under § 709.1(C) of the Election Code?

3. Did the Election Commission err in their designation of the cardboard cutout as a freestanding sign pursuant to FSU Posting Policy 2.0131?

HOLDINGS

1. Yes, the Elections Commission was presented with sufficiently persuasive evidence to satisfy the clear and convincing standard.

2. Yes, due to the express delegations of authority represented by the language of § 709.1(C) to the Oglesby Union Policy and to the University's own regulations regarding freestanding signs, FSU Posting Policy 2.0131 is applicable to this case.

3. Yes, the Election Commission did err in their designation of the sign as "freestanding." However, this error was harmless and did not impact the resolution of this case in any meaningful fashion.

OPINION

We now turn to an analysis of how the Court made the conclusions of law as enumerated above.

THE BURDEN WAS MET

Evidence is "clear and convincing" when it is "precise, explicit, lacking in confusion, and of such weight that is produces a firm belief or conviction, without hesitation, of the matter at issue." *In re Standard Jury Instructions In Civ. Cases-Rep. No. 09-01 (Reorganization of the Civ. Jury Instructions)*, 35 So. 3d 666, 726 (Fla. 2010). As indicated in Appellee's Exhibit 1, the photograph clearly and explicitly showed that the lamppost, the cardboard box, and the table were not keeping the cardboard cutout upright. While analysis of the photograph may include an indicia that Appellant's Student Body President candidate may have been touching the cardboard cutout, this was discovered only after rigorous analysis of the photograph.

Important to this Court's lack of hesitation in determining that Appellant's candidate for Student Body President was not holding up the cardboard cutout is the fact that this theory was never proffered as a defense to the claim at issue. Appellant's candidate did not testify as such, nor were they called by Appellant's counsel to testify as such. The very possibility never seemed to cross Appellant's mind as a potential defense.

Moreover, when pressed by the Court in oral arguments, Appellant's counsel – in a remarkable demonstration of candor and restraint – did not provide any argument other than the photograph may be indicative of some external support. However, even if Appellant's candidate were touching the cardboard cutout, that in and of itself does not demonstrate that the cardboard cutout would have fallen absent the support provided by gently touching it.

All of the preceding in mind, this Court finds that the Election Commission correctly decided this case by the correct evidentiary standard.

FSU'S POSTING POLICY APPLIES

Appellant argued, at length, that it would be improper for the Court to apply FSU Posting Policy 2.031 to this case. This argument asserted that the Posting Policy was too far removed from the Oglesby Union Policy to have any binding affect. This Court disagrees. We are unpersuaded that the Oglesby Union Policy's delegation to the Posting Policy renders it null.

The binding effect of the Posting Policy is a result of multi-level delegation. § 709.1(C) contains an express delegation to

the Oglesby Union Policy. Fla. St. U. Student Body Stat. § 709.1(C) ("[a]ll material and activity in the Union and **on FSU campuses** shall be in accordance with the rules and regulations of the Oglesby Union Policy") (emphasis supplied).

This sort of delegation to an additional and external source of authority is standard fare, not only in the law, but also in our Student Government Association's governing documents. *See id.* at § 806.4(C) ("[a]ll monies shall be spent in accordance with the Finance Code and A&S Fee Guidelines"); *id.* at § 808.3(C)(3)(a)(ix) (requiring the Chair of the Sports Club Distribution Council to abide by the SGA Senate Rules of Procedure); *id.* at § 907.3(B)(1)(a) (requiring Executive Officers of the Inter-Residence Halls Council to abide by their own by-laws).

Next, we turn to the Oglesby Union's delegation of authority to the FSU Posting Policy, which does so in two separate provisions. *See* THE OGLESBY UNION POLICY MANUAL (2016-17) at 35 & 38. Notably, the Union policy provides that "all organizations must adhere to the Florida State University Posting Policy." *Id.* at 35. For good measure, the Union policy includes the entire policy in an addendum to the document. *See id.* at SECTION VII: ADDENDUMS.

While the face of Appellant's argument - that the Union policy is absent an explicit delegation of authority to the Posting Policy - seemed to have merit, upon review of that policy it became abundantly clear that not only was this policy applicable, but also this Court has limited jurisdiction over its terms in respect to any policy regarding freestanding signs.

In fact, FSU's Posting Policy is explicit about who is permitted to alter any of its regulations which apply to freestanding signs, and it is not this Court nor the SGA Senate. *See* FSU Posting Policy 2.031(11)(d). Rather, only a special committee appointed by the University President or their designee may "update" the locations as to where freestanding signs are permitted. It so follows that even though the posting policy is silent about where freestanding signs are expressly not permitted, this Court lacks the authority to recognize any locations not explicitly mentioned as permissible within the policy, full stop.

Hence, this Court rejects Appellant's arguments on this issue. As long as § 709.1(C) contains an express delegation to the Union policy and the Union policy delegates authority in a fashion that impacts all organizations, the Posting Policy and its provisions are to be read as if it were part of the Election Code itself. While this Court lacks authority to add locations where freestanding signs are permitted under the posting policy, it does not prevent this Court from addressing the plain meaning of freestanding to be applied by subsequent Election Commissions and Courts of our Student Government Association.

THE PLAIN MEANING OF "FREESTANDING"

The relevant opinion from the Election Commission asserts that a sign is "freestanding" when it "stands alone without the need for interference by another party." *See* 2023-EC-SPR-8 at 6. The Court rejects this definition and replaces it with the following: a sign is freestanding when it is unsupported by any other structure. Further, the Court rejects the Election Commission's analysis that if a sign was once "freestanding," it must always be classified as such in an analysis of FSU's Posting Policy.

Reasoning by analogy regarding what it means to be freestanding, consider a felled Kapok tree of the Amazon rainforest canopy. These trees stand nearly 200 feet tall, unsupported by any other structure. Once felled, however, the Kapok tree cannot become upright without the assistance of heavy machinery. It would be wrong to consider it to be capable of being a "freestanding" tree. However, if the Election Commission's opinion – which essentially posits that if a sign was once freestanding it remains as such despite any damage it may incur – is applied to this felled tree, then somehow a felled tree is simultaneously prone on the ground and "freestanding."

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CONCLUSION

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DONE and **ORDERED** on March 30, 2023 in Tallahassee, FL.

THE STUDENT SUPREME COURT REPORTER
IN AND FOR FLORIDA STATE UNIVERSITY

CHIEF JUSTICE

MATTHEW LINSKY

ASSOCIATE JUSTICES

ASHLEY CEVERE
DEVIN GOBIN
ALBERTO GARCIA MARRERO
JORGE LAGO

ACADEMIC YEAR OF 2022-23