John Edward Walker

Petitioner

v.

Hannah McLaughlin, Taylor Ney, Kelly O'Keefe, Andrew Reiter, Quinn Solomon

Respondents

Published: November 22, 2016

Issues

1. Whether Respondents discriminated against Petitioner in violation of Chapter 206.1 of the SGA Statutes.
2. Whether Respondents breached the Code of Ethics by way of Fraud and Discrimination in violation of Chapter 205.3(E)3 and 205.3(F) of the SGA Statutes.
3. Whether Respondents violated the Code of Ethics by voting with a conflict of interest during Senate in violation of Chapter 205.3(A) of the SGA Statutes.

Holding

1. No, there is no evidence that Respondents acted in a discriminatory manner toward the Petitioner in violation of Chapter 206.1 of the SGA Statutes.
2. No, there is no evidence that Respondents breached the Code of Ethics by way of Fraud and Discrimination in violation of Chapter 205.3(E)3 and 205.3(F) of the SGA Statutes.
3. No, there is no evidence that Respondents violated the Code of Ethics by voting with a conflict of interest under 205.3(A) of the SGA Statutes.

Posture/Facts

J. Mitchell writing for the Court.

On September 28, 2016, Petitioner, John Walker petitioned this Court to appeal the Attorney General candidate-forwarding decision of the Student Senate. The Court was asked to determine whether several senators violated the Code of Ethics and various Student Body Statutes. Specifically, Walker (1) alleged that senators' references to the ongoing investigation were direct acts of discrimination in violation of Chapter 206.1 of the Student Body Statutes, (2) alleged that senators violated Chapter 205.3(E) and (F) regarding Fraud and Discrimination in the Student Government, and (3) challenged the Student Senate decision under Chapter 205.3(A)(4) alleging a conflict of interest for senators that sit on the Internal Affairs Committee as being part of the investigation involving Walker. Walker alleges these complaints against the following Senators: Internal Affairs Chair Kelly O'Keefe, Internal Affairs Vice Chair Andrew Reiter, Taylor Ney, Hannah McLaughlin, and Quinn Solomon (collectively, "Respondents"). This Court consolidated the appeal and complaint submissions because the subject matter in both are the same. The Court addresses both in this opinion.

Senate Meeting June 29, 2016

The ongoing investigation at the root of these complaints arose from a Senate meeting held on June 29, 2016. Walker, a Senator at the time, was present at the meeting. At the meeting, Senate interviewed and denied candidates for positions within student government. During the debate regarding one of the candidates, some senators sought permission from, then Senate President, Erin Lusaka to play a PowerPoint about one of the candidates. President Lusaka denied permission to play the PowerPoint. There were several motions, one by Senator Walker to overturn the decision of President Lusaka, and ultimately the PowerPoint was shown. The PowerPoint included screenshots of controversial tweets from the candidate's twitter account. At the close of the June 29th meeting, President Lusaka criticized the Senate for being unethical and breaking Senate rules. Danielle Acosta, SGA Advisor,

also spoke to the Senate about her disappointment in their leadership that evening. An FSView article detailing this Senate meeting was published in July 2016.

The Investigation

President Lusaka enacted an investigation of the 68th Student Senate regarding the events that occurred at June 29th Senate meeting. The investigation is not limited to any specific persons, but is focused on the hostile environment created and perpetuated by the members present. The Investigative Board is currently conducting the investigation. Respondents Quinn Solomon and Kelly O'Keefe are members of the Investigative Board.

Senate Meeting September 28, 2016

The Senate meeting that gave rise to these complaints occurred on September 28th, 2016 as Senate interviewed candidates for positions within student government.

Prior to the meeting, GroupMe messages from the Internal Affairs Committee of Senate show discussion about Walker. The GroupMe group includes: Kelly O'Keefe, Taylor Ney, Erin Lusaka, Andrew Reiter, and Quinn Solomon.

At the Senate meeting, Walker was being considered for the Attorney General position. After a lengthy debate, the committee failed Walker for the position. While accounts vary about the exact statements made by senators during the debate, ultimately discussion arose about Walker being under investigation for the June 29th meeting. There was also some mention of whether Walker, a non-law student, was qualified for the Attorney General position. Allegedly, President Lusaka warned the Senate about referencing the ongoing investigation during the debate. At some point during Walker's interview President Lusaka stepped outside of the chambers and Walker alleges that mention of the investigation continued, specifically by Senator Ney.

Individual Finding of Facts

Internal Affairs Chair Kelly O'Keefe was not present at the September 28th meeting and did not participate in voting for the candidates. O'Keefe is a member of the Investigative Board. In the GroupMe, O'Keefe mentioned Walker's use of an unapproved letter of recommendation as violating the code of ethics, but told members not to talk about the letter that night due to an email received that "blurs everything regarding the letter." There is no indication that the letter was discussed at the meeting. In the GroupMe, O'Keefe also mentions that Walker was "directly involved in a meeting that's under investigation."

Internal Affairs Vice Chair Andrew Reiter, was present at the September 28th meeting and is not a member of the Investigative Board. It is clear that Reiter participated in the questioning of Walker at the meeting. In the GroupMe, Reiter stated "hopefully they'll put a moratorium on him from being able to apply for any other position in SGA."

Senator Taylor Ney was present at the September 28th meeting and is not a member of the Investigative Board. It is clear that Ney participated in questioning Walker, and specifically asked questions regarding the ongoing investigation. Ney also moved to table the candidate for a week. In the GroupMe, Ney expressed his opinion that the Attorney General job shouldn't be held by someone that isn't a law student.

Senator Hannah McLaughlin was present at the September 28th meeting and is not a member of the Investigative Board.

McLaughlin stated that she never questioned Walker at the meeting, but Walker alleges McLaughlin made references to the investigative board during the meeting.

Senator Quinn Solomon was present at the September 28th meeting and is a member of the Investigative Board. Solomon stated that she held no position on the investigative committee at the time of Walker's denial (9/28/2016). In the GroupMe, Solomon expressed her opinion that tabling Walker would be best pending the outcome of the investigation.

Opinion

Jurisdiction

Pursuant to Article IV, Section 3(C)(2) of the Student Body Constitution and Chapter 205.3(A)(4) of the Student Body Statutes, the Supreme Court shall have jurisdiction "over violations of the Student Body Constitution and Statutes", and "any vote, action, or judgment performed by an officer or employee who has a conflict of interest may be appealed with the Student Supreme Court."

Question 1

J. Thompson writing for the Court.

Petitioner contends that Respondents discriminated against him towards his political orientation, class standing, and denial of due process. In the instant case, Petitioner put forth evidence of text messages, voting results, minutes, a press article, an affidavit, and a statement of facts. Respondents also submitted affidavits and statements of fact. After review of all the evidence, the Court holds that the Petitioner failed to meet his burden of proving a prima facie case of discrimination.

SGA Statute 206.1 defines discrimination as:

> [T]he differential treatment of a student based on, but not limited to race, creed, color, religion, sex, age, sexual orientation, gender identity, gender expression, national origin, marital status, parental status, disability, socio-economic status, inability to pay dues, political orientation, class standing (freshman, sophomore, etc., unless allowed by Statute) or any combination thereof. Discrimination will be further defined as the denial of due process or the infringement of the substantive rights of any student guaranteed by the Florida State University Student Government Association Constitution and Statutes, or organization bylaws, University Rights and Responsibilities, and State and Federal Constitutions.

While the Petitioner does cite to three of the enumerated classes, the evidence in this case does not support any differential treatment due to said classifications.

First, the Petitioner cites to political orientation "in regards to the actions taken on, and events of June 29th." There is no indication in any of the evidence that the Petitioner was discriminated against based on his political affiliation or views in any way. Next, the Petitioner cites to class standing "by denying, and encouraging others to deny [him] of a position due to [his] not being a law student." The Petitioner alleges that Senator Ney asked "being that you're not a law student, what qualifies you for this position?" The Court views this as simply questioning the qualifications of the

candidate as opposed to any discrimination based on class standing. No rights were denied due to class standing. In contrast, discrimination on these grounds would be present if the Petitioner was never permitted to run in the first place due to not being a law student.

Lastly, the Petitioner cites to discrimination based on a denial of due process "being that Respondents kept [him] from office because of actions taken over the summer, and [his] being investigated by the senate." The record does not support this assertion. As stated above, the case would be different had the Petitioner never been allowed to run in the first place. However, he was able to run for the position, be questioned on the senate floor, and put to a vote. While the investigation was mentioned, it was simply an allegation and brought up in regards to the candidates' qualifications in which the Petitioner was free to respond to. Additionally, in regards to the investigation, an investigative board was formed to investigate the entire senate, as opposed to just the Petitioner. There was no denial of due process as a hearing was permitted. Defamation law is clear that public officials/figures receive less protection from speech. When officials voluntarily inject themselves into the public, they accept the risk that they will be subject to this kind of criticism. The recent presidential election in which both candidates were accused of crimes illustrates this concept. Therefore, in the instant case, there was no denial of a due process right.

Question 2
J. Tomassetti writing for the Court.

Petitioner contends that Respondents breached the Code of Ethics by fraudulently stating that the Petitioner used an unapproved letter of recommendation in his application and provided false or misleading statements during the Senate candidate interview. In the instant case, Petitioner put forth evidence of text messages, voting results, minutes, a press article, an affidavit, and a statement of facts. After review of all the evidence, the Court holds that Petitioner failed to meet his burden of proving a prima facie case of fraud.

SGA Statute 205.3(E)3 defines Fraud in the Student Government Association as:

> "No officer or employee will bring false charges or provide false or misleading evidence against another officer, employee, or student."

First, Petitioner contends that Respondents fraudulently breached the Code of Ethics because Respondent Kelly O'Keefe accused Petitioner of using an unapproved letter of recommendation in his application for the Attorney General position in the Internal Affairs GroupMe. Candidates interested in the position for Attorney General must submit their application to the Student Government Association Internal Affairs Committee ("IA Committee"). Upon reviewing the application, the Internal Affairs Committee must verify and ensure that all the information provided is true and correct. Based on the evidence, the GroupMe message sent by Respondent Kelly O'Keefe was meant to inform the IA Committee that Petitioner's application may not be true and correct. This is further evidenced by the response in the GroupMe message sent by Senate President Erin Lusaka stating, "I haven't written a writ of prohibition I requested an advisory opinion from the Supreme Court but they haven't responded back yet." Additionally, at the end of the GroupMe chat, Kelly O'Keefe informs the IA Committee not to talk about the letter during the Senate meeting because an email was

received that "blurs everything regarding the letter."

The conversations in a committee GroupMe are meant to facilitate information and communication quickly between committee members. Here, the IA Committee was following proper protocol by verifying that all the information provided in Petitioner's application was true and correct. Upon receipt of an email that made the recommendation letter unclear, the IA Committee determined that the application was true and correct. There is no evidence that any statement regarding the letter of recommendation was made on the Senate floor. As such, Respondents did not violate the SGA Statute 205.3(E)3. The Court warns Respondents to maintain a level of professionalism when it comes to digital communications. The Court would like to remind Respondents that GroupMe chats, text messages, and other forms of communication made in the role of an SGA Senator are public records. As such, Respondents should maintain a level of professionalism fitting of their position as Senators and as campus leaders when they are discussing qualifications of candidates in digital messages.

Next, Petitioner contends that Respondent fraudulently breached the Code of Ethics by providing false or misleading statements on the Senate floor. As discussed earlier, the statements made on the Senate floor were deemed questioning of the candidate's qualifications. Furthermore, the questions in regard to the investigation of the summer Senate were easily discoverable on FSUView. As such, any Senator conducting their due diligence on the candidate would have accessed the information regarding the investigation. Therefore, Respondents did not violate the Code of Ethics based on their statements made on the Senate floor.

Finally, Petitioner contends that Respondents discriminated against him based on his political orientation, class standing, and by denying him due process in violation of SGA Statute 205.3(F)3.

SGA Statute 205.3(F)3 states:

> "No officer or employee will practice any discrimination as defined in the Student Government Association Anti-Discrimination Policy. No officer or employee will deny any student rights guaranteed by the Federal and State Constitution, or the Florida State University Student Body Constitution and Statutes. No officer or employee will deny any student the right to due process or the right to an impartial hearing or trial. "

As discussed earlier, the record does not support these assertions. The Petitioner was questioned on his qualifications for the position and was able to run for the Attorney General Position. Therefore, the Petitioner was not discriminated against.

However, the Court would like to chastise Respondents for their lack of professionalism and demeanor at Senate. Similar to the mud-slinging that occurred during the 2016 Presidential Election, Respondents were disrespectful, rude, and borderline unethical. It is the duty of SGA Senators to hold themselves to a standard of excellence and to serve as role models for the FSU campus. Yet, Respondents acted in a childish manner by repeatedly questioning Petitioner about the investigation. Furthermore, Respondents pushed the line of

ethical conduct based on their actions. The Court warns Respondents that they are lucky that the facts fell in their favor. The Respondents actions pushed the limits of ethical conduct and such unprofessional conduct is unwanted in FSU student leaders.

Question 3

C.J. Meyer writing for the Court.

Petitioner contends that Respondents violated the Code of Ethics by voting with a conflict of interest during Senate. Petitioner points to the open investigation and the fact that "some of the Senators that spoke on the matter currently sit on the committee." Petitioner points to 205.3(A)4 which states,

> "Any vote, action, or judgment performed by an officer or employee who has a conflict of interest may be appealed with the Student Supreme Court. This must be done in a written, signed complaint submitted no later than three (3) days after the vote, act, or judgment in which the conflict occurs."

This language is the procedural language describing how to seek remedy for a conflict of interest and is not language prescribing any actual conflict of interest. The sections that prescribe conflicts of interest are 205.3(A)1-3. The prescribed conflicts deal with financial gain, personal interests, and coercion but do not deal with voting with special knowledge requiring recusal.

When looking to the legislative intent specifically mentioned in 205.2(A) and 205.2(B), it is clear that the conflict of interest alleged by Petitioner does not meet the criteria that has been clearly prescribed by the SGA Statutes. "It is the intent of this act to protect the integrity of Student Government by *prescribing* conflicts of interest and unethical practices. It shall serve as the basis of discipline for those who violate its provisions." SGA Stat. 205.2(B) (emphasis added). Under the canon of statutory construction, *expression unius,* because the legislature used language specifying the "prescribed" conflicts, it can be inferred that the list is meant to be exhaustive.

This is solidified when looking to Florida law which has very narrow conflict of interest restrictions when it comes to voting. Florida law pertains, nearly exclusively, to monetary interests and benefits to the person casting a vote. Other states have much more inclusive conflict of interest laws that include "abuse of official power" or "improper conduct" on top of any monetary interest issues. In the instant case, none of the Respondents' actions amounted to a conflict of interest, as it is written, under the SGA Statutes or Florida law.

The Court would like to note that from its examination of the facts, Senator Quinn Solomon voted with what would be considered a conflict of interest in some states. The senator was a member of the investigative board looking into the Senate meeting on June 29th, 2016, and voted on the forwarding of Petitioner. As already stated, under SGA Statutes and Florida law, this is acceptable, but the Court contends that this is pushing the boundaries of ethical behavior. The most prudent course of action would have been for the senator to recuse herself, or to abstain from voting.

Conclusion

We hold that Respondents did not discriminate against or breach the Code of Ethics in regards to the forwarding of Petitioner. Because there was no violation of Chapter 205 of the SGA Statutes, there is no action to appeal, and the result of the vote on September 28th, 2016 stands.

While there were no technical violations, the Court is alarmed by the actions taken by several parties in the case. Ethical behavior is characterized by a very blurry line, but as students of the Florida State University, we should always strive to remain firmly planted on the ethical side of that line, not to push the boundaries and search for loopholes until someone notices. This Court encourages all SGA members to closely examine how they conduct themselves. We further recommend that the SGA as a whole looks into implementing formalized ethics training for its members.