

Judgment of the Elections Commission

February 13, 2012

Violation #1

Filed By: Ignite Party

Party Against Whom Violation Alleged: Progress Coalition

Date of Alleged Violation: February 8, 2012

Alleged Violation: On Progress Coalition's facebook page contained a post where the Progress Coalition stated "Come watch progress Coalition light a fire under Ignite's ass."

Alleged Statute Violated: 715.7(P), Student Body Statutes, "The issuing of any newspaper article, social media posting, posters, placards, signs, signboards, leaflets, folders, handbills, fliers, banner, tee shirts, buttons, paint, handwritten announcements or circulars of any size and consistency that publicly denounce, bring false or malicious accusations against a candidate for an elected office of the student body" [is a Schedule 2 Violation of the Elections Code.]

M. Griffin delivers the opinion of the Commission.

The plain language of the statute states that the denouncement or false or malicious accusation must be against a "candidate". [Because] the language of Progress Coalition's comments were directed at the Ignite Party, and not a particular candidate, they fall outside of the language of the statute. In the alternate, the particular Facebook post by the Progress Coalition, did not contain a denouncement of Ignite Party, but rather expressed a belief that the Progress Coalition would either 1) defeat the Ignite Party in the debate, or 2) force Ignite to compete in the electoral process in a more energized manner. Although the language used by the Progress Coalition did not constitute a violation of Student Body Statutes, the Commission finds that the usage of such language does reflect the values of Florida State University of Strength, Skill and Character. In the future we would advise candidates and parties to avoid using such language.

The alleged violation is **DENIED**.

M. Burgess, A. Moon, and R. Sloan concur in the Judgment.

Violation # 2

Filed By: Progress Coalition

Party Against Whom Violation is Alleged: Ignite Party

Date of Alleged Violation: February 10, 2012

Alleged Violation: Two receipts from FastSigns, Inc. dating January 23 and 24, 2012, included in Ignite Party's final expense report, list the FSU Student Government Association as the customer for Corrugated Yard Signs and Decals instead of the Ignite Party.

Alleged Statute Violated: 715.7(I), Student Body Statutes, forbids "Utilizing any Student Government equipment, resources or for endorsement or support for or against any candidate, platform, party, or ballot item."

R. Sloan delivers the opinion of the Commission, and is joined by *M. Burgess*.

This complaint was brought by the Progress Coalition, alleging that the Ignite Party had utilized Student Government resources in support of their party by ordering campaign materials under an account named "FSU Student Government Association." It is uncontested that this account allowed for a tax-exemption of such merchandise, which may not be available to other SGA parties individually. The Progress Coalition claims that this use of SGA resources gave the opposition an unfair advantage over them, and the use of such an account would have continued if not for the complaint.

The Ignite Party contends that the account information was merely a clerical error, and was not understood by the purchasers at the time. Counsel for Ignite stated that the account had been in place since the previous year, and the Ignite merely re-ordered materials from the same account. Ignite claim that the error was not known until the complaint was brought forward by Progress Coalition, and then was immediately corrected with all back-taxes paid. Ignite also made clear that none of the materials were ever shipped to FSU, but were picked up from the business. At no time were any SGA funds used in the purchasing on these items.

715.7(I) forbids utilizing any Student Government equipment or resources in support of a political party. This complaint revolves around the determination of whether the Ignite Party used a SGA resource. This could have occurred in two ways: 1) Ignite could have SGA funds for the purchase and 2) Ignite could have gained an unfair advantage of a tax-exemption associated with the SGA account. The facts suggest that we can eliminate the first possibility. Therefore, we must focus on whether the tax benefit gained by Ignite violates the statute. We suggest that Ignite did briefly violate the provision, but that to punish the party would be substantially unjust.

While the Ignite Party did use an account designated through SGA and did receive a benefit, 715.7(I) was violated. However, this advantage was immediately corrected upon notice by the Progress Coalition and the unpaid taxes were then surrendered voluntarily. During an elections campaign, things can sometimes become disorganized and frantic. We must also remember that we are all human, and are therefore subject to the errors associated with our imperfection. The Ignite Party contends that this error was made by mistake and without their knowledge. Since this was the same account that previous Ignite Party officials used, and items were simply reordered, such an argument seems plausible.

Under the SGA Code's instructions for the Elections Commission within Section 702.2(E)(12), we are to determine whether a violation did occur, but also "whether or not the alleged violation should be sustained." We agree that a violation in this case did occur, however it is clear to the Commission that such a violation should not be sustained as this would be unjust given the circumstances. Our policy is to determine cases legally, but within the context of fairness and justice. We are within our power to so order that violation be denied.

The violation is **DENIED**.

A. Moon dissented in the judgment, with *M. Griffin* abstaining.

Violation #3

Filed By: Progress Coalition

Party Against Whom Violation is Alleged: Ignite Party

Date of Alleged Violation: February 9, 2012

Alleged Violation: 715.9, Student Body Statutes, provides “Any Candidate or political party who fails to submit a final expense statement within the allotted time period shall be automatically disqualified from that election, regardless of how many violations they have accumulated, no other penalty other than immediate disqualification may be assessed.”

M. Griffin delivers the opinion of the Commission, with *M. Burgess* and *A. Moon* concurring.

710.2(F) - “Each candidate shall show understanding and acceptance of all filing procedures, campaign restrictions, and the elections and ethics prior to filing. This will be shown by signing an affidavit provided by the Supervisor of Elections. In addition, candidates will also sign a statement that they shall be liable for all actions undertaken by their party.

710.2(H) - “All candidates for office will sign a memorandum of understanding provided by the Supervisor of Elections discussing the penalties associated with and specified by Chapters 715 and 716 of the Student Body Statutes.

710.4(B)(2) - “The party chair or its equivalent signs an affidavit provided by the Supervisor of Elections stating that the party will abide by the Student body Constitution and Statutes, as well as its own constitution and bylaws”

710.4(B)(7) - “Each party’s campaign manager and treasurer must sign a memorandum of understanding provided by the Supervisor of Elections discussing the penalties associated with and specified by Chapters 715 and 716 of the Student Body Statutes.

714.3(B) - “Final expense statements shall be submitted to the Supervisor of Elections no later than 4:00 P.M. on the day following any election, and **shall** include (emphasis added):

1. A statement of the cumulative campaign expenditures based on the fair market value, signed by the candidates and/or party chairman.
2. An itemized list of all expenses.

3. A signed statement provided by the Supervisor of Elections attesting to the validity of the total campaign expenses and contributions, and that all campaign contributions were collected in accordance with statute.
- 4. An itemized report containing the full name, residence or business address of each person who has made one or more contributions in any form to the campaign.**
- 5. A copy of all account statements, check stubs, deposit slips, and any other financial documents shall be submitted on the first Wednesday of active campaigning as well as in the candidate or party's final expense statement.**

The uncontroverted facts establish that the Ignite Party submitted a Final Expense Report on Wednesday February 9, 2012 at 3:57 P.M. The expense statement submitted by the Ignite party did not contain an itemized report of the name of any financial contributors or a bank statement concerning the Campaign Treasury of the Ignite Party's bank account. To the extent that the Ignite Party submitted a Final Expense Statement it was incomplete. The failure of the Ignite Party to submit a complete Final Expense Statement constitutes a violation of 715.9, Student Body Statutes. There is only one penalty permitted for a violation of 715.9, Student Body Statutes, dissolution of the violating party.

The Ignite Party contends that their failure to submit a completed Final Expense Statement does not constitute a violation of 715.9 of the Student Body Statutes. In support of this, the Party advanced five arguments: 1) Ignite Party's submission of an incomplete Final Expense Statement was supported by precedent and approval in prior election cycles by the Supervisor of Elections, 2) That the Student Body Statutes are vague as to how to submit a complete Final Expense Report, 3) There is no support for the application of 715.9 sanctions in the statutory language of the Student Body Statutes, 4) Ignite Party acted in good faith in submitting their Final Expense Statement, and 5) An application of 715.9 sanctions would result in a fundamental miscarriage of justice. The Commission's decision addressed each of the arguments as follows.

The Ignite Party contends that they have submitted Final Expense Statements which have been approved by the Elections Commissioner in this election and the Fall 2011 election. Under sections 710.2(F), 710.2(H), 710.4(B)(2), the candidates and parties in FSU SGA elections agree to abide by the terms of the Student Body Statutes regarding elections. Both the Elections Commissioner and the Parties in an election are bound by the explicit terms of the Student Body Statutes. Regardless of whether incomplete Final Expense Statements had been approved in prior elections, the Ignite Party had a duty to ensure that their Final Expense Statement abided by the terms of the Student Body Statutes in this election. Therefore, the Ignite Party had a duty to ensure that their Final Expense Statement conformed to the requirements stated in 714.3(B), Student Body Statutes.

Ignite Party's next argument claims that the Student Body Statutes are vague as to the information that is required to be submitted in the Final Expense Report. Both the Student Body Statutes and the Final Expense Report state in plain language all the information that must be included. To the extent that there confusion concerning the difference in the statutory language of 714.3(B), Student Body Statutes, and the language on the face of the Final Expense Statement regarding which contributions must be disclosed, this does not make 714.3(B) so vague as to make compliance impossible. Since the Ignite Party's Final Expense Statement failed to include the information required by 714.3(B) or on the face of the Final Expense Statement, they waive any vagueness arguments.

The Ignite Party's third argument claimed that there was no support for the application of the 715.9 sanctions in the statutory language of the Student Body Statutes. This argument contradicts itself by its own terms since the language of Section 715.9, Student Body Statutes, outright states that a failure to submit a Final Expense Statement shall result in disqualification of the offending party. The Ignite Party's statutory argument is additionally undercut by the language located on the Final Expense Statement. The first page of the Final Expense Statement states the information that the Final Expense Statement must contain. The language on the first page of the Final Expense Statement for the most part mirrors the language of Section 714.3(B)1.-5.; the only difference being that on the Final Expense Statement the submitting party is only required to disclose individuals who have contributed twenty five (\$25.00) or more. The plain language on the face of the Final Expense Statement indicates that the Statement must include all of the listed items. The Final Expense Statement submitted by the Ignite Party included only 3 of the 5 requested classes of documents. The Student Body Statutes requires that the Final Expense Statement include 5 different types of information. By failing to submit all required information the Ignite Party failed to abide by the plain statutory language of 715.9, Student Body Statutes.

The Ignite Party also contends that there should be a "good faith" exception read into the statutory language of 715.9, Student Body Statutes. This argument is not supported by the statutory language. Furthermore, the Ignite Party's actions in submitting the Final Expense Report support rejecting the application of a good faith exception in this case. Under the Student Body Statutes Political Parties are required to submit their Final Expense Reports by 4:00 P.M. Both party's arguments indicate that political parties could submit Final Expense Reports from 8:00 A.M. – 4:00 P.M. The evidence produced in support of the alleged violation shows that the Ignite Party submitted their Final Expense Statement at 3:57 P.M. on the date which it was due. By submitting their Final Expense Statement only three minutes before the deadline they effectively foreclosed any chance they may have had to fix any omissions in the Final Expense Report.

The Ignite Party's final argument is with great merit; that the disqualification of the Ignite Party would result in a miscarriage of justice. The hearing has occurred after the Student Body Elections. The Ignite Party has won the election by an overwhelming majority. A disqualification of the Ignite Party would serve to contravene the will of the Student Body electorate. However, the violations of the Ignite Party in this case cannot be overlooked.

Under Section 702.2(E)(16), the Elections Commission is permitted to adjust their ruling as necessary if it would otherwise be a miscarriage of justice, and if the violating party had made a “good-faith effort.” As such, we find that the Ignite Party should be disqualified from the election, and that a Recall Election be established for those positions that were held by Ignite members in this election. Other positions, held by other parties, should remain intact. The Ignite Party candidates should be permitted to run in this election. Additionally, the Commission finds that a penalty should be assessed against the Ignite party of which we cannot determine at this time. This should be determined by the FSU Supreme Court on a recommended appeal.

The alleged violation against the Ignite Party is **SUSTAINED**.

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R. Sloan concurring in judgment, on the same and additional grounds.

I agree with the majority opinion in this case on all assertions, but would like to include some brief additional support.

The opinion did not include what, to me, is one of the most damaging statutes against the Ignite Party. **710.2(G)** requires that a mandatory Candidate Seminar be organized by the Supervisor of Elections that “will inform candidates about rules and procedures.” Each party must send their Campaign Manager or their Treasurer to this Seminar, who can act as a representative of all candidates of that party. However, “all candidates are highly encouraged to attend if able.” The crux of this provision is that “Candidates or parties who fail to attend the seminar shall lose their eligibility for office unless they show proof of class conflict or illness.” The Ignite party was required to attend this Seminar to learn about the very requirements that they failed to meet, and should have been properly instructed on the correct procedure.

As stated by Commissioner Griffin, the Ignite Party failed to turn in two of the financial elements within 714.3(B). However, they were also required to submit banking and financial disclosures under 714.4(B) as well. Ignite claims that they were instructed that such documents were satisfactory to the Supervisor of Elections when they submitted on the due date.

Ignite suggests that candidates of the party, as a whole should, not be held liable for the inaction of party officers. While this argument has some weight in policy, there are statutory provisions that explicitly state otherwise. 710.2(F) clearly orders each candidate to sign an affidavit that confirms their knowledge of elections procedures, possible penalties, and categorically requires the candidates to accept liability “for all actions undertaken by their party.” The party officials also must sign similar affidavits under 710.4(B). Therefore, the Senate has made it very clear to me that a candidate's lack of participation within a party, does not excuse himself/herself from the liabilities associated with a party violation.

It should be noted that the Ignite Party did include this documentation the following morning, after they were alerted to this complaint by Progress Coalition. They would have us believe that this was a good-faith effort on their part and qualify for the deferring sanctions of 715.9, because of the powers provided to our Commission under 702.2(E)(16) that allow us to alter a proscribed judgment. This argument has validity, especially considering that we are deliberating whether to ignore several thousand FSU student votes due to a procedural error. However, we cannot also ignore the plain language of the Statutes.

It is my contention that the FSU Senate created rules like 715.9, and the others previously mentioned, precisely to compel candidates and political parties to be knowledgeable, involved, and responsible for their action and/or inaction. Being in an elected office in Student Government is a privilege that should be given to those who are worthy of the students' support. With that, comes professionalism. In the adult world in which we operate, there is little room for excuses due to a lack of knowledge when the information is clearly available, and especially when it is required to learn under the terms of the position.

It seems to be patently unfair to disqualify all Ignite candidates from the election, only to replace them with the opposition. This would create total dominance by one party, and do not necessarily comport with the desires of the student population. Therefore, under our powers provided by 702.2(E)(16), we seek an alternative to total disqualification. The majority simply recommends that a re-election take place with a penalty. I would suggest that by holding a re-election in which the Ignite Party could not indorse any of their previous candidates, could not contribute monies, nor provide any campaign materials, would effectively have disqualified the party for this election while allowing for the party's candidates to still run for office. The Progress Coalition should be able to use whatever funds of materials they have available. This seems the most equitable solution. However, the FSU Supreme Court may find some other penalty more appropriate, or may dismiss the penalties entirely. That is up to their discretion. We must simply apply the laws as provided, and feel we do so here.

These Judgments are so ordered, on this 14th day of February, 2012.

A handwritten signature in blue ink, reading "Russell L. Sloan", is written over a horizontal line.

Russell Sloan
Election Commission Secretary