

## **Violation**

Filed By: Edward Town, Independent Candidate

Against: Vitality Party

Date Violation was Heard: March 3, 2015

*S. Loveless* delivers the 4-1 opinion of the Commission and is joined by *J. Alexander, J. Meloon, and J. LoBianco*.

Edward Town submitted before this Commission a violation of §714.1(A) of the Election Code.

A Vitality Party member, Savanna Dieser posted a status on his personal Facebook, stating in relevant part “I support Jean [Tabares] and I support Vitality.” At issue in this decision is whether this post constitutes a campaign material? If this does constitute a campaign material, it must have been approved under §714.1(A). Section 714.1(A) provides that “All campaign materials must be approved by the Supervisor of Elections or his/her deputy 24 hours prior to distribution or use.” Section 701.1(E) defines campaign materials as “any material, including but not limited to social media, electronic communication . . . that publicize a political party or candidate for an elected office of the student body, and calling the action to vote.”

Mr. Town argues that this post is calling the action to vote, given that it uses the word “support,” recognizes both the Vitality Party and Jean Tabares and was not approved by the Supervisor of Elections. In addition, Mr. Town argues that the Vitality Party and its leadership were aware of the post because the campaign manager “liked” the Facebook status. The Vitality Party argues that the Supreme Court Opinion of February 23, 2015 shields Ms. Dieser from liability, as she is an individual and a ruling of a violation would restrict her First Amendment right to free speech.

The Vitality Party argues that Ms. Dieser is a board of director member, but the board of directors is an irrelevant institution, since they do not make sole decision-making authority. The Vitality Party explained that the board of directors was created, but has not been involved as intended. In addition, Ms. Dieser is the philanthropy co-chair and is not a candidate. Mr. Town argues that regardless of whether the board of directors is irrelevant, Ms. Dieser is close to the campaign, has an executive position and the party is only attempting to separate themselves from their board of directors.

Although the status contains the word “support,” the Supreme Court Opinion has provided that personal statuses and text messages are exempt from being a violation, given the First Amendment, if an individual makes the statement. Because this status was posted on Ms. Dieser’s personal Facebook page and not the Vitality Party’s Facebook, this is a private person’s

opinion. Even though the post was “liked” by someone in the Vitality Party that fact is not dispositive to render the status a campaign material. Although we hold that this Facebook status is not a campaign material, the Commission deliberated on the issue of campaign material approval. The Commission found that because the Election Code does not require board of director members to attend the mandatory candidate seminar, it would be unreasonable for them to be required to get their materials approved by the Supervisor of Elections. At the seminar, candidates and campaign managers acknowledge that they are aware of the Election Code and will abide by the Code. If every supporter of a party was required to get their materials approved, this would produce an unreasonable result for the Supervisor of Elections, and require an immense amount of time dedicated to campaign material not brought by the party.

We hereby find that this is **NOT A VIOLATION** of the Election Code.