

**FLORIDA STATE UNIVERSITY  
STUDENT ELECTIONS COMMISSION**

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No: SPR-2024-1

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FORWARD FSU, Petitioner v.  
SURGE FSU, Respondent.

[March 5, 2024]

*Argued 5 March 2024 and Decided on 5 March 2024.  
Petitioner for Forward FSU. Rania Chehaitli for the  
Respondent. Opinions delivered electronically on April 1<sup>st</sup>,  
2024.*

*Supervisor of Elections and Chair Spencer Greenwood was  
in attendance. Commissioners in attendance included  
Mason Bennett, Alexa Kays, Andrew Barrineau, and  
Jonathan Carden.*

## SUMMARY OF ALLEGATIONS

This action was brought before this Commission by Marshall Widmann on behalf of Forward FSU, an on-campus political party (“Petitioners”). Petitioner Widmann filed these complaints with the Supervisor of Elections (“Supervisor”)—who forwarded them to this Commission—alleging that Surge FSU, an on-campus political party (“Respondent”), is responsible for the actions of its members who violated Student Body Statute (“SBS”) §§ 710.6(C)(7), three counts for not following the rules and regulations of the Student Body Statutes.

## JURISDICTION

The Elections Commission has the power to investigate and make findings of fact regarding alleged violations of the Elections Code pursuant to SBS §703.2(F) and §703.2(G). Chapter 700 of the SBS states, “Once the date of an election has been determined, according to 705.4 and 706.5, the election code used for that election cannot be changed. The Election Code will be enforced in a time period beginning three (3) weeks prior to an election and ending upon the certification of that election. This does not preclude the reporting of violations later enumerated in Chapter 711.”

## RIGHT TO APPEAL

According to SBS §703.2(I), “Any decision made by the Elections Commission may be appealed by a party to the hearing to the Student Supreme Court no later than thirty-six (36) hours after said decision and all accompanying opinions have posted to the SGA website pursuant to Chapter §703.2(F)(1) of the Student Body Statutes. No appeals of decisions made by the Elections Commission shall be accepted after this thirty-six (36) hour period.”

## ISSUE

Does a social media post that remains visible on a politically affiliated social media profile constitute a violation under SBS § 710.6C(7), which requires the removal of campaign materials no later than 48 hours after the closing of the polls in a particular election?

## HOLDING

Dismissed for lack of standing.

## FACTUAL BACKGROUND

On or about February 25 at 11:30 p.m., representatives of Forward FSU (petitioner) became aware of material that they assert is campaign material per the definition in the student body election code. The material in question was a collection of social media posts that the petitioner alleges were left on the Surge FSU (respondent) Instagram page for more than 48 hours after the closing of the polls of an election in violation of § 710.6 C(7). Three violations were filed and all three were accompanied by video evidence that was gathered from the Surge FSU Instagram page. In all three of the videos, participants can be heard making comments encouraging the audience to vote in favor of the respondent's party – Surge FSU. The video evidence that accompanied the violations was more than one year old.

The petitioner contends that, since a new election cycle has begun, the violations were filed in a timely manner as per the requirement in § 710.4 (F) which bars the filing of election code violations after 48 hours of the closing of the polls for a particular election.

The respondent contends that the violations are, as a matter of law, without standing as they were not filed within 48 of the election to which they pertain, and further points out that the material at issue has been up for well over a year.

## OPINION

COMMISSIONER BARRINEAU delivers the opinion on behalf of the Commission, with whom VICE-CHAIR BENNETT, and COMMISSIONERS CARDEN, and KAYS join.

## ANALYSIS

We reject the argument that a new election cycle opens the window of filing for violations that pertain to material posted in a past election cycle. Had this matter been brought with appropriate standing we would have readily held that the campaign material referenced in the violation was too old to be the basis for a complaint. Notwithstanding the nature of the material, the violations in the instant case were brought without standing and rather than resolving in favor of either party, we DISMISS with this opinion for clarification.

The Commission acknowledges that there is a discrepancy in the requirement of the student body election code that requires the removal of campaign material within 48 hours, and the statute of limitations which restricts the filing period for violations to 48 hours after the closing of the polls. This discrepancy, in effect, reduces the filing window for violations pertaining to old campaign materials to zero. Noting this discrepancy, and having fully accounted for its effects, the Commission is unanimous regarding our ability to resolve this discrepancy — we cannot.

Resolving the conflict between these provisions issue would require us to strike either the prohibition against campaign materials left posted outside of the 48-hour window following the closing of the polls, or alternatively, the requirement that violations be filed within the 48-hour window following the closing of the polls. Simply, there is not a constitutional conflict that would serve as the basis for severing either of these provisions from the elections code. Though they are in conflict with each other, if they are not in conflict with the student body constitution either facially or in their effect, they are nevertheless appropriately enacted provisions of the student body statutes.

It is impossible for us to determine the intent of the legislature in allowing the two provisions to remain during the recent revision to the student body election

code or whether the conflict between them was contemplated at all. To strike either provision would manifest a judicial change to provisions that govern students, which we presume reflect their will through the choice of their elected representation. Absent a clear constitutional conflict, the provisions must remain.

### CONCLUSION

The provisions found in § 710.4(F) and § 710.6 C(7) remain in effect. Enter a judgment of dismissal 4-0.

COMMISSIONER CARDEN delivers a concurring opinion.

COMMISSIONER CARDEN concurring, I join fully with the majority in dismissing this case as the Election Code does not provide a remedy for the violation in question, however I write separately for the purpose of assisting the Legislature in correcting an ambiguity within the language, on which my opinion differs from the majority. Were a remedy present, I would find for Surge for reasons other than those raised by the majority and thus concur in the hypothetical judgment. The language of §710.4(F) states that the final deadline for submitting violations for a particular election is forty-eight hours after the closing of the polls. The majority reads this as barring any action brought on anything related to that election cycle if said action is brought past this deadline. I, however, would not intrinsically tie the campaign materials to the election for which they were posted. As in the case at bar, the materials have remained posted into following semesters and years, and remained posted after the end of later election cycles. Under the majority's opinion, a party could pin a video saying "vote for (party)" to the top of their social media, accept a single schedule one violation for leaving it posted after the end of that election, and then never remove it. They would face no further consequences under this assessment, but would leave campaign materials posted at the top of their social media indefinitely. If they receive said violation, or if they are not reported for leaving the materials up, they have no incentive to then bring down the material at a later date. While this is how I would read the language, Surge FSU is still not in violation of that reading. I agree that actions regarding previous election cycles are and should be barred. As such, I would also find for the respondent, because this claim was raised prior to the end of the current election cycle. Because the campaign materials have not been addressed in previous elections, they may lawfully remain posted during the present election cycle. They must, in my view, be removed before the end of the present cycle, otherwise they would fall within the purview of §710.6(c)(7). I would go one step further and point out that even if a remedy were present, even if Surge FSU violated

the code as I read it, I would still be inclined to find for Surge in the present case. There is a principle in the legal system of *de minimis non curat lex*, or the *de minimis* rule. It literally translates to “the law does not concern itself with trifles.” I can think of few examples of cases which fit this principle better. Forward FSU made no attempt to contact Surge and ask them to remove the materials upon which they base their allegations. Surge showed the commission how far one must scroll to find the objectionable material, and Forward made no effort to deny that they searched Surge’s social media specifically to find materials upon which they could file an allegation, even knowing that the election code barred action on those materials. I find it highly unlikely that even a politically conscious student would ever see this material. I doubt that a single vote was swayed in the present cycle by these materials. Were there a remedy, and were Surge in violation, I would have them delete the videos and then dismiss the case on these grounds.