IN THE STUDENT SUPREME COURT
IN AND FOR THE FLORIDA STATE UNIVERSITY

THE UNITE PARTY, a Registered Student Organization,

Petitioner,

v.

ALEXIS SHEPARD, Supervisor of Elections,

Respondent.
_____/

Lagos, J. delivers the opinion of the Court.

Published November 1, 2018.

SYLLABUS

This case comes before the Court on an appeal by The Unite Party ("Unite"), from a decision by the Election Commission ("EC"), through its supervisor, Alexis Shepard ("Shepard"), holding that the Unite Party violated SBS § 711.6(A) and violated SBS § 711.7(D), resulting in the assessment of one (1) Schedule 1 Violation, and one (1) Schedule 2 Violation outlined in SBS §§ 711.11 and 711.12, for a total fine of $275.00. EC argues that Unite violated SBS § 709.1(A) when Unite used and displayed campaign materials on a table during Market Wednesday on September 26, 2018, which had not yet been approved. SBS § 709.1(A) reads in relevant part "All campaign materials must be approved by the Supervisor of Elections or the Deputy Supervisors twenty-four (24) hours prior to distribution or use." Unite argues that this Court should not hold its use of unapproved campaign materials to be a violation of SBS § 709.1(A), because Unite was acting under the mistaken reliance that the campaign materials had been approved. Unite accordingly seeks reversal of the EC decision.

ISSUES

1. Were the materials used by Unite "campaign materials"?

2. If found to be "campaign materials," were the materials approved by the Supervisor of Elections at the time they were used and displayed by Unite?

3. Does the affirmative defense of Reliance defeat Respondent's claims?

HOLDING

1. Yes. According to the SBS definition of campaign materials, the materials used by Unite were plainly campaign materials.

2. No. The materials were not approved by the Supervisor of Elections.

3. No. The affirmative defense of Reliance does not apply and Unite should be held liable.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The Unite Party is a registered student organization. The Election Commission is a nonpartisan branch of the Florida State University Student Government Association. The actions underlying this case began on September 23, 2018, when Unite attempted to submit campaign materials to the Supervisor of Elections for approval. Unite was unable to do so due to technical issues. On September 25, 2018, Unite submitted

their campaign materials and received an automatically generated confirmation message via the Qualtrics submission portal. Unite then proceeded to use and display these submitted materials on September 26, 2018, on a table during Market Wednesday.

The Supervisor of Elections ("Supervisor") brought allegations of two violations of the campaign rules and procedures outlined in Chapter 700 of the Florida State University Student Body Statutes ("SBS") against Unite. Specifically, the Supervisor alleged that Unite violated SBS § 709.1(A), that states in relevant part "All campaign materials must be approved by the Supervisor of Elections or the Deputy Supervisors twenty-four (24) hours prior to distribution or use." Also, the Supervisor alleged that Unite had violated SBS § 705.4, that reads in relevant part "[c]ampaigning is prohibited before 12:00 a.m. on the Wednesday prior to elections." The election date had been set for October 10, 2018.

On October 4, 2018, the Election Commission heard testimony on this matter and unanimously held that Unite had violated both statutory provisions. This Court now affirms in part, and reverses in part the decision of the Election Commission.

ANALYSIS

I

The first question requiring resolution is whether or not the materials in question used by Unite were "campaign materials." This question is answered in the affirmative.

The evidence presented allows this Court to find with little difficulty that Unite used and displayed campaign materials. The Respondent entered into evidence three (3) photos which form the basis of this opinion. Two of these photos depict informational cards which list the platform and goals of Unite, both completed and in progress. Unite asserts that these cards were not handed out to students and therefore were informational rather than for campaign purposes, but the Court sees little weight in this argument. The third photo depicts a man and woman, presumably members of Unite, standing behind a table littered with Unite affiliated materials and standing next to a poster which reads "The Unite Party – Empowering Students – Vote 10/10!"

Unite attempted to argue before this court that what these photos depicted was not "campaign materials." However, "campaign materials" have been given a detailed definition that is adhered to by this Court:

> Campaign Materials – any material, including but not limited to 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 announcement 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.*

SBS § 701.1(E) (emphasis added). Unite asserted that while materials depicted in the photos provided students with information about Unite, they did not "call the action to vote." Conveniently for this Court, calling the action to vote has been statutorily defined as "publicizing the name of or likeness of any candidate, publicizing the place, time, or

manner, of voting, *or the use of the word 'vote'*." *See* SBS § 709.1(J)(emphasis added). Unite's argument that these were not campaign materials plainly falls flat.

II

The second issue before this Court is undisputed by either party. There has been no assertion that these Campaign materials were approved at the time Unite used and displayed them on September 26, 2018.

III

The third issue is the affirmative defense that has been raised by Unite. Unite asserts that it should not be held liable for its use of campaign materials without approval by the Supervisor of Elections, because the organization was acting in reliance on the automated Qualtrics submission receipt that the campaign materials had been submitted. In polite terms, this argument is in no way convincing.

This is not the first time that Unite has raised the affirmative defense of Reliance before this Court. This Court held that Unite was relieved of any and all liability based on their affirmative defense of Reliance, in Unite's violation of the very same statutory waiting period at issue here today. *Walker v. Unite Party*. In *Walker*, Unite acted in reliance on the words of the Supervisor of Elections, stating that "materials needed to be approved 24 hours before use, but that once a material was approved it could be used immediately after approval."

The Court finds the direct words of the Supervisor of Elections far more significant and easily distinguishable, from the automated receipt provided to Unite by Qualtrics, which is at issue here today. The automated receipt has been entered into evidence for this Court's consideration, and provides nothing of value to this Court's decision. Nothing on the receipt indicates that campaign materials have been approved. The only substantive piece of information on the receipt comes in the subject line that reads "Campaign Materials Approval." Additionally, there is a hyperlink on the receipt which reads "Link to View Results: Click Here." A direct indication to the recipient that this automated message cannot be considered as a final approval of campaign materials.

For these reasons, this Court *affirms* the decision of the Election Commission that Unite violated SBS § 709.1(A).

It is so ordered.

Moorhead, C.J., with whom Engelbrecht, J. joins, concurring.

What lies quietly in the background of this case, and not given the discussion it deserves by the majority is Unite's argument which essentially can be summed up by saying "*Ney v. Unite Party* is dispositive, because in that case this Court threw out what amounts to all of Chapter 700 when it found the definitions of 'campaigning' and 'campaign materials' unconstitutional." This argument is certainly not without merit since "Where the unconstitutional portion of an act cannot be declared void without defeating the *manifest legislative purpose*, the entire statute must fail as unconstitutional and void." *In re Advisory opinion to the Governor*, 63 So. 2d 321, 327 (Fla. 1953). However, today's decision does no violence to the opinion in *Ney*, and Unite's argument fails.

The question before the Court in *Ney* specifically was with regard to how those terms were defined, not the term itself. This

nuance is what allowed this Court to declare a definition unconstitutional but leave the manifest legislative purpose intact. At the end of the day, we found what the legislature had attempted to do in creating terms of art failed the strict scrutiny test they would be subject to. *See Widmar v. Vincent*, 454 U.S. 263, 267 n. 5 (1981). However, again, it was the definitions which were the problem, not the words "campaigning" or "campaign materials" themselves.

I am quite certain Unite is now scratching their head, saying, "well gee Mr. Chief Justice, I get all that, but wasn't the purpose of Chapter 700 to limit 'campaigning' and 'campaign materials' to those definitions? So, how is it the whole 'manifest legislative purpose' is left intact such that the remainder of the Chapter isn't also rendered unconstitutional?" Well, the answer is quite simple,

> An unconstitutional portion of a general law may be deleted and the remainder allowed to stand if the unconstitutional provision can be logically separated from the remaining provisions, i.e., if the expressed legislative purpose can be accomplished independently of those provisions which are void, if the valid and invalid provisions are not inseparable, if the Legislature would have passed one without the other, and if an act complete in itself remains after the invalid provisions are stricken.

State ex. Rel boyd v. Green, 355 So. 2d 789, 794 (Fla. 1973) (citing *Presbyterian Homes Synod v. Wood*, 297 So. 2d 556 (Fla. 1974)). So, the question is, "can the words be separated from their artful, but poorly drawn, definitions?" The answer is yes. "The test remains whether the portion to be stricken is of such import that the remainder would not be complete or would cause results not contemplated by the Legislature." *Boyd*, 355 So. 2d at 795.

Certainly, the legislature did not foresee the entire Chapter being stricken, especially after this Court was reversed when it attempted to do just that. *See Ignite Party v. Vitality Party*, Fla. St. Univ. Rep. (published Feb. 23, 2015). Accordingly, since the effect of the *Ney* case was that the definitions be struck, and the manifest legislative purpose can be achieved without those definitions, we need only to return to the most elementary approach to statutory construction to understand what the words without their statutory definitions mean. Textualism, and abundantly clear Florida law, dictates "[i]n the absence of a statutory definition, words of common usage are construed in their plain and ordinary sense." *Sieniarecki v. State*, 756 So. 2d 68, 75 (Fla. 2000). It appears, quite obviously, to me that "campaigning" and "campaign materials" are certainly words of common usage when used in the context of elections for public office. Accordingly, they are to be given their plain meaning.

Thus, the Court comes to the correct conclusion, and I join in its opinion in full. My concurrence serves to flesh out a point I felt was missed by the majority in its analysis. Moreover, I hope it helps the legislature understand not everything has to be specifically defined in every instance. The average person is more than capable of reasonably understanding what the words "campaigning" and "campaign materials" mean without such rigid definitions. Let the "marketplace of ideas" work as intended, while that market is not free from

imperfection, it certainly provides a better alternative than the use of those definitions struck in *Ney*.