

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

RYAN VILLACORTA,

Petitioner,

v.

Case No. 2020-AP-6

ALEXANDER HARMON,

Respondent.

_____ /

Ducey, CJ. writing for the Court.

**ORDER OF REMAND FOR
PROCEDURAL ERROR**

This case comes before this Court on appeal by Petitioner Ryan Villacorta, from a decision of the Elections Commission in which Petitioner raises a number of procedural and substantive issues relating to the adjudication of his case. We now reverse the decision of the Elections Commission due to procedural errors in the standard of review used to determine the outcome of Petitioner's case and the means in which it was presented before the Commission. We hereby remand this matter back to the Acting Supervisor of Elections ("SOE") and instruct her to correct her error in the

exercise of her duties under the statutory authority granted to the Supervisor of Elections under the Student Body Statutes ("SBS"), as set forth below.

**FACTUAL AND PROCEDURAL
HISTORY**

Petitioner Ryan Villacorta is a Florida State University student and a member of the Progress Party, a political party affiliate of the Student Government Association ("SGA"). Respondent Alexander Harmon, is a Florida State University student and a member of The Amplify Movement, also an SGA affiliated political party. Both Parties took part in the Fall 2020 SGA elections as candidates for Student Government office.

On October 28, 2020, roughly two weeks prior to the November 10th election, the SGA Student Senate held a meeting¹ at which both Parties were present. Just under an hour into the session, during public comment, Petitioner spoke out against the Amplify Party, making negative comments relating to the organization and its members. The specific comment at issue made by Petitioner states, "...that culture that has been created and exacerbated by organizations like The Amplify Movement that put Jack where he was and

¹ The publicly available video recording of the October 28th Senate Meeting can be found in the 72nd Senate

Minutes for the relevant date, available at SGA website: <https://sga.fsu.edu/senate-documents.shtml>

allowed him to [sic] skirt the democratic processes...”

On November 6, 2020, Respondent filed a complaint with the Supervisor of Elections Office against Petitioner, alleging that Petitioner’s comments at the October 28th Student Senate meeting constituted a violation of the Elections Code, specifically, SBS §711.6(C)(8) prohibiting a candidate for SGA political office from utilizing SGA equipment or resources to campaign for or against another political candidate or party. After receipt of the complaint, the Supervisor of Elections notified Petitioner via email of the allegations against him and stated in regards to the allegation, “This is a Schedule 2 Code Violation that falls under 711.6 C (8), as you brought false charges against another party.” The SOE then asked Petitioner if he “would like to accept responsibility for this violation or appeal to the Elections Commission.” Petitioner responded, stating his denial of the allegations and his intent to appeal, and requested a copy of the official complaint, which the SOE subsequently provided.

Two days later, the SOE notified Petitioner that the Elections Commission intended to hold a hearing on the matters of his case, and a hearing date was agreed upon by the Parties and set for November 10, 2020 at 7:30pm. At the hearing, Petitioner was informed that his case was being presented before the Elections Commission on an appeal from the

decision of the SOE finding him in violation of SBS §711.6(c)(8) of the Elections Code. Petitioner was instructed that his burden at the hearing was to prove by clear and convincing evidence that the SOE erred in her decision to sustain the Schedule 2 violation against him.

After oral arguments were presented by each of the Parties, the hearing concluded and the Elections Commission returned a unanimous vote, finding that Petitioner did not provide clear and convincing evidence to satisfy his burden of proof, and held to sustain the ruling of the Acting Supervisor of Elections to levy a Schedule 2 violation under SBS § 711.6(C)(8) against Petitioner. The Elections Commission released a written opinion regarding the decision on Friday, November 13, 2020. That same day, Petitioner submitted a writ of certiorari to this Court, requesting a review of a number of procedural and substantive issues raised in regard to the allegations against him, as well as the procedure by which his case was adjudicated. We grant review of Petitioner’s case and this opinion follows.

ANALYSIS

This Court holds that Petitioner’s case was improperly decided by the relevant authorities below, as the Supervisor of Elections holds no authority to unilaterally determine the validity or

merits of an individual claim submitted to the Supervisor of Elections Office. Therefore, Petitioner was improperly directed at his hearing as to the burden he carried to refute the decision of the Supervisor of Elections, as well as the standard on which the Elections Commission would be hearing his case. However, noticing a clear procedural error in the manner in which Petitioner's case was presented before the Elections Commission, we do not in this opinion address the merits of the substantive issues relating to the original complaint filed by Respondent.

I.

Title VII of the Student Body Statutes contains the Student Body Election Code. *See SBS §700*. Relevant provisions under these chapters outline the duties and procedures of the Supervisor of Elections Office and the Elections Commission. *Id.* Pertinent to Petitioner's claims is SBS §702.2, which provides the "Duties of the Supervisor of Elections," stating in relevant part that the SOE "[e]nforces the Election Code *subject to approval of the Elections Commission...*" SBS §702.2 (*emphasis added*).

Further, SBS §702.4, titled, "Role in the Elections Commission" states:

The Supervisor of Elections has the right, based on the Student Body Election Code, to decide whether an alleged violation shall be

forwarded to the Elections Commission. Notice of such a decision must be given to the party, or individual filing the violations, within twenty-four (24) hours. This decision can be appealed to the Election Commission according to 703.2 of the Elections Code. SBS §702.4(D).

Further, SBS §703.2 provides that the Supervisor of Elections "shall have the power to issue alleged violations... and [submit] them to the Elections Commission to verify, through a hearing, whether the alleged violations shall be sustained." SBS §703.2(G).

Chapter 703 describes the duties of the Elections Commission to "[i]nvestigate, note, and make findings of fact of violations of the Election Code" and "determine if alleged violations are upheld." SBS §703.1(D),(G). If the case before the Elections Commission is an alleged violation, the Commission shall "rule by majority vote" on whether the provision alleged to have been violated would constitute a violation at all, if proven to be true; and whether or not the Party accused of making such violation should be held responsible. *See SBS §703.2(F)*. Upon finding that an alleged violation has merit, the Elections Commission shall sustain the violation. *Id.* The burden that a party alleging a violation of the Student Body Election Code must meet in order to prove a violation shall be by "clear and convincing evidence." SBS §703.2(K).

Lastly, Section 711 makes clear that, “[v]iolations do not count against a candidate or political party until sustained by the Elections Commission or the acceptance of responsibility of an alleged violation.” SBS §711.5(A). The procedures for hearing such an alleged violation are contained in SBS §711.4:

When an alleged violation is filed... the Office of Elections must notify the individual ...within twenty-four (24) hours. The individual will then have twenty-four (24) hours to review and decide to accept responsibility of the alleged violation and penalties...or decline to accept the alleged violation. If the alleged violation is declined, the parties shall present their case directly to the Election Commission. SBS §711.4(B).

As we have identified the relevant provisions of the Student Body Statutes which govern the issue presented here, we now address the procedural error which warrants reversal of Petitioner’s case.

II.

The foregoing provisions, governing the judiciary procedures exercised throughout the adjudication of an alleged violation of the Election Code, grant the SOE the authority, on receipt of a complaint of an alleged violation of the Elections Code, to review the claim and decide whether or not the claim should be forwarded to the Elections Commission to review. This authority grants the SOE the

power to review the complaints submitted and, if she feels that a particular complaint lacks merit or was brought in bad faith or for some other reason does not warrant a hearing, she may dismiss the complaint on her own. That decision is the only ruling that the SOE may make as to the validity of an alleged violation. This decision—the decision of whether to *forward the complaint*—may be appealed to the Elections Commission, which may overrule the SOE by majority vote and decide to hold a hearing on the matters contained in the complaint, if the Commission finds it necessary to do so.

Nowhere in the Student Body Statutes is the Supervisor of Elections granted the unilateral authority to determine whether a violation should be sustained against an individual accused of such violation. Section 711.4 makes explicitly clear that, if the accused Party declines to accept responsibility for the alleged violation, the Parties “shall present their case directly to the Election Commission.” SBS §711.4(B).

The Supervisor of Elections Office operates under the authority of the Executive Branch and is charged with the enforcement of the Elections Code. As a function of executive authority, the SOE may, pursuant to her duties, make such determinations on alleged violations insofar as the determination is on the basis of whether the contents of the complaint are sufficiently stated and

justified with evidence, so as to warrant a hearing on the issue. The SOE may, on her own, file allegations of Elections Code violations, however, each allegation is subject to the ultimate determination of the Elections Commission as to the merits of the claim. Every individual candidate or political party accused of a violation must still be accorded the proper notice and hearing requirements of due process, and be offered an opportunity to defend himself against the charges against him in the proper venue and before the proper governing body.

The case which comes before this Court is therefore procedurally improper. It is unclear whether the error lies with the Supervisor of Elections in making a decision beyond her statutory authority, or with the Elections Commission in exercising appellate jurisdiction over the original complaint. The matter could have been easily cleared up at Petitioner's hearing, had the SOE been in attendance as she is statutorily required to be, but such was not the case. Regardless of when the precise misstep took place or who is responsible, it is clear that this case was wrongly heard by the Elections Commission under appellate jurisdiction and a decision as to the merits of the claim has not yet been appropriately rendered.

We now remand this matter back to the Supervisor of Elections to conduct

a review of the allegations contained in the complaint, and properly determine whether the claim should be forwarded to the Elections Commission to hold a hearing in which Petitioner will be afforded an opportunity to defend himself of the allegations against him on original jurisdiction and without the burden of proof placed upon his Party to the case.

CONCLUSION

We hereby reverse the decision of the Elections Commission and hold that the Commission erred in hearing Petitioner's claim under appellate jurisdiction and placing the burden of proof upon Petitioner instead of Respondent. We further hold that the Supervisor of Elections exceeded the statutory authority granted to her by the aforementioned provisions of the Student Body Statutes when she sustained a violation against Petitioner without first forwarding the matter to the Elections Commission to render a proper decision on the merits of Respondents claim.

This matter is hereby REVERSED and REMANDED.

DONE AND ORDERED, this the 17th of November 2020, in Tallahassee, Florida