IN THE STUDENT SUPREME COURT IN AND FOR FLORIDA STATE UNIVERSITY

JASON PUWALSKI, on behalf of FORWARD FSU,

Petitioner,

v. Case No. 2022-AP-1

RAWAN ABHARI,

Respondent.

_____/

WOLSKI, J. delivered the opinion of the Court, in which DUCEY, CJ., MATHESIE, J., and SOMMERS, J. join. GARCIA MARRERO, J. filed a separate opinion dissenting-in-part with respect to Part II.

SYLLABUS

This action was brought before this court on an appeal by Jason Puwalski on behalf of Forward FSU, an on campus political party ("Petitioners"), from a decision by the Florida State University Elections Commission ("Commission"), which found that Forward party members Ninma Gabadage, Kenley Adams, and Brandan Louis violated provisions of the Florida State University Election Code and entered judgment against Petitioner Forward FSU.

Respondent Rawan Abhari originally filed this complaint with the Supervisor of Elections ("Supervisor")—who in turn forwarded it to the Elections Commission—as three separate actions, alleging that Petitioners each individually violated Student Body Statutes ("SBS") §701.1(A) and §711.6(C)(4) by campaigning prior to one week before the election.

The Commission found for Respondent and assessed a single penalty against Petitioner Forward FSU. Petitioners appeal the Commission's finding that their actions constituted a violation of the Election Code.

Respondent filed a separate appeal that was rendered moot by this opinion.

ISSUE

Under SBS Title VII, did the Supervisor of Elections have the authority to receive and review the alleged violations and forward them to the Elections Commission?

HOLDING

No. Under SBS § 711.4(D), the Supervisor of Elections lacked jurisdiction to receive and review the alleged violations prior to February 2, 2022. This Court vacates the ruling of the Elections Commission and dismisses the complaint for lack of subject-matter jurisdiction.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

The relevant facts are as follows. On or about January 20, 2022, Petitioners each posted on their personal Instagram accounts announcements of their candidacies for Student Government Association ("SGA") executive branch offices. Each post tagged the Forward account and contained the Forward logo.

The portion of Petitioner Gabadage's post containing the alleged violation stated, "Support @kenley.adams, @brandowayne_ and I along with the rest of @forwardfsu on February 23rd at the polls at sga.FSU.edu FSU, let's move #forwardtogether[.]"

The portion of Petitioner Adams's post containing the alleged violation stated, "Support the Gabadage-Adams-Louis Administration and ForwardFSU February 23rd- let's do this thing!"

The portion of Petitioner Louis's post containing the alleged violation stated, "Support @nimnagabadage, @kenley.adams, and @forwardfsu on February 23rd, so we can continue to move! #ForwardTogether[.]"

The parties do not dispute that the accounts in question belonged to each Petitioner or that the posts originated from each Petitioner.

The same day, Respondent observed these posts and filed a complaint against Forward, alleging each post separately violated SBS §701.1(A) and §711.6(C)(4) by campaigning prior to one week before the election.

On January 27, 2022, the Commission held a hearing on this complaint. On January 31, 2022, the Commission issued an opinion finding for Respondent, consolidating the sanction into one Schedule II violation, and imposing a fine of $100 on Forward.

On February 1, 2022, Petitioners filed a timely appeal to this Court, challenging the decision of the Elections Commission.

OPINION

It should be noted at the outset that we do not address the merits of Respondent's allegations in this opinion. Because we find that the Supervisor of Elections lacked jurisdiction over the initial complaint, we too lack jurisdiction. "We lack appellate jurisdiction where the district court lacked subject matter jurisdiction. We review the district court's exercise of subject matter jurisdiction *de novo*." *U.S. v. Certain Land Situated in City of Detroit,* 361 F.3d 305 (6th Cir. 2004). (citing *Care Choices HMO v.*

Engstrom, 330 F.3d 786, 788 (6th Cir. 2003)). However, our finding that the Supervisor lacked jurisdiction necessitates a conclusion on the underlying law.

I

SBS Title VII establishes the Election Code, which lays out permitted and prohibited conduct related to SGA elections. This Title has been amended over one hundred times spanning multiple decades, resulting in a disjointed—and often downright contradictory—Election Code. Of particular relevance for this case are SBS Chapters 700, 702, and 711. For the moment, we will focus on Chapter 711.

Chapter 711 establishes violations of the Election Code and outlines the procedure for reporting and adjudicating alleged violations. Specifically, it empowers the Supervisor as the initial recipient of any complaints alleging violations of the Election Code. "All alleged violations shall be brought to the Supervisor of Elections in accordance with Chapter 702.4 of the Student Body Statutes[.]" SBS § 711.4(A).

The key provision for this case, however, is found a few paragraphs later: "Beginning three (3) weeks prior to the day of an election, the Supervisor of Elections…shall have the power to receive and review alleged violations pursuant to Chapter 720.4(D)[1] of the Student Body Statutes." SBS § 711.4(D). While much of the Election Code contains contradictions or vague language, this part is clear: the Supervisor only attains authority to receive and review violations beginning twenty-one days before the day of an election, and no sooner.

This is where we hit a snag with this case. The alleged violations—and subsequent reporting of them by Respondent—occurred on January 20, 2022. The Commission then held its hearing on January 27, 2022. While the record is unclear on the exact date which the Supervisor "received and reviewed" the alleged violations, it had to have been some point between January 20 and January 27. Here is the problem: The election is scheduled to take place on February 23, 2022. As outlined above, the Supervisor can only "receive and review" alleged violations "[b]eginning three (3) weeks prior to the day of an election…" SBS § 711.4(D). In this case, three weeks prior to the election would be February 2, 2022. Therefore, the Supervisor could not have received and reviewed *any* alleged violation prior to February 2, 2022,

[1] While § 720.4(D) does not exist, the context makes it clear that this represents a scrivener's error with the intention of referencing SBS § 702.4(D).

rendering the Supervisor unable to address the complaint filed in this case.

One argument Respondent presented to rebut this conclusion was that "receive and review" should be read to say that the Supervisor can *receive* alleged violations prior to three weeks before the day of an election but cannot *review* them until the statutorily provided period. However, this argument quickly falls apart upon reading SBS § 702.4(E). SBS § 702.4(E)(1) states, in relevant part:

> "In the event that the Supervisor of Elections determines a complaint does not state a cause of action…[t]he Supervisor will notify the petitioner and respondent(s) of the complaint's dismissal *within twenty-four (24) hours of the receipt of the initial complaint*…"

SBS § 702.4(E)(1) (*emphasis added*). Further, SBS § 702.4(E)(2) states, in relevant part:

> "In the event that the Supervisor of Elections does not dismiss a complaint pursuant to 702.4(E)(1)…[t]he Supervisor will both notify the petitioner and respondent(s) of the decision… *within twenty-four (24) hours of the receipt of the initial complaint*."

SBS § 702.4(E)(2) (*emphasis added*). These paragraphs make clear that whether the Supervisor dismisses the action or forwards it to the Commission—the only two options available—the Supervisor must respond to the complaint within twenty-four hours of filing. Therefore, the Supervisor is prohibited from sitting on any complaint until they are permitted to "review" it under SBS § 711.4(D) like Respondent proposes.

But this begs another question: what constitutes receipt? Respondent may seek to define it as when the Supervisor actually reads it, regardless of how much time has passed since the complaint was submitted. However, due process considerations require that the party filing the complaint receive a response in accordance with the plain meaning of the statute. A petitioner cannot be expected to file a complaint and then wait for an indefinite amount of time in light of the statute, which clearly requires a response within twenty-four hours. Similarly, a respondent has a due process right to be notified of any complaint filed against them in the statutorily provided amount of time. Further, the Supervisor has a duty to fulfill all their statutory obligations, so just because the Supervisor neglects to check for new complaints does not negate the due process rights of the petitioner and respondent.

Looking to the law, to "receive" something is defined in Black's Law Dictionary as, "[t]o take something given, sent, etc.; to come into possession of or get from some outside source; to gain knowledge

of from some communication." BLACK'S LAW DICTIONARY (11th ed. 2019), receive. Under the Florida Supreme Court Standards for Electronic Access to the Courts, "an electronic record is received when the record enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and is in a form capable of being processed by that system…An electronic record is received [] *even if no individual is aware of its receipt*." FL. ST. S. CT. ELEC. ACC. Standard 3.1 (*emphasis added*).

Therefore, we hold that "receipt" as it is used in SBS § 702.4(E)(1) and § 702.4(E)(2) is defined as the time in which the complaint is delivered to the Supervisor (whether in person, via electronic submission, or any other method), not when the Supervisor decides to read it.

Applying that definition to this case, the Supervisor acted outside the scope of their authority when they received, reviewed, and then forwarded Respondent's complaint to the Commission prior to February 2, 2022, as they did not have subject-matter jurisdiction over the complaint.

This does, however, raise one more question: the Supervisor cannot control when complaints are submitted. So, what must happen when a complaint is submitted before three weeks prior to the day of an election? That brings us to Part II of our opinion.

II

It must be reiterated at this point that this opinion does not render a judgment on the merits of this case, but merely explains this Court's decision regarding the Supervisor's jurisdiction.

We have determined that the Supervisor's subject-matter jurisdiction to receive and review complaints alleging violations of the Election Code begins three weeks prior to the day of an election. We have also determined that the Supervisor must respond to complaints within twenty-four hours of receiving them. So, what happens when a complaint is filed before three weeks prior to the day of an election?

We are provided with a clear answer in Chapter 700, which states:

> "Once the date of an election has been determined…the election code used for that election cannot be changed. The Election Code will be enforced in a time 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."

SBS Chapter 700. This is consistent with the three-week period outlined in § 711.4(D).

But what of the title of Chapter 700? It reads, "Restrictions on Altering the Election Code." Does this provision then only apply to changes to the Code, not the Code itself? The plain language of the statute says otherwise. It is clear that this provision is setting a deadline for altering the Election Code *because the Election Code has to be in effect beginning three weeks prior to the day of an election.* Why? Because candidates and students must be on notice of what they are and are not permitted to do.

The Election Code can be changed up until the point at which the date of the election has been determined. SBS Chapter 700. It is nonsensical, therefore, that the Election Code is in effect when actions taken by candidates and students may constitute a violation one day and not a violation the next (if the Senate enacts legislation altering the Election Code) and none of it can be "received and reviewed" by the Supervisor until three weeks prior to the day of an election. *Notice requirements dictate that the Election Code must be finalized before it can be enforced.* The statute is setting a hard deadline for altering the Election Code so it can take effect beginning three weeks prior to the day of an election, in accordance with Chapter 700.

Adding to the confusion is the last sentence of Chapter 700, which states that "[t]his does not preclude the reporting of violations later enumerated in Chapter 711." However, as outlined above, reporting of violations cannot occur until three weeks prior to the day of an election, based on the language of SBS § 702.4(E). This certainly presents an ambiguity, but it is not the province or duty of this Court to discern intent from a poorly written statute. The ultimate expression of legislative intent is the written law. If the Senate is not satisfied with how a statute reads, it is the Senate's duty – and their duty alone – to amend it.

So that brings us back to the ultimate question – what happens to complaints filed alleging violations that occur before three weeks prior to the day of an election? In plain language, the last sentence of Chapter 700 merely states that an individual is not prohibited from reporting an alleged violation of the Election Code all year round; however, that alleged violation will simply not be actionable if it was submitted outside of the statutory enforcement period.

When combining the limitations on the Supervisor's authority to receive and review alleged violations established in SBS § 711.4(D), the twenty-four-hour response requirement in SBS § 702.4(E)(1) and § 702.4(E)(2), and the plain language of

Chapter 700 stating when the Election Code will be enforced, the only conclusion that can be reached is that the Election Code is not and cannot be enforced before three weeks prior to an election. Therefore, actions that may otherwise constitute violations of the Election Code that occur before three weeks prior to an election or after the certification of that election do not constitute actionable violations at all.

CONCLUSION

In conclusion, we hold that the Supervisor of Elections lacked subject-matter jurisdiction to receive, review, and forward Respondent's complaint to the Elections Commission. The Supervisor of Elections only attains subject-matter jurisdiction beginning three weeks prior to the day of an election. Therefore, the Election Commission erred in exercising jurisdiction over Respondent Abhari's original complaint and any penalty assessed by the Commission is null and void. Further, because complaints cannot be brought before to three weeks prior to the day of an election, actions that would otherwise constitute violations of the Election Code which take place before three weeks prior to the day of an election or after the certification of that election do not constitute actionable violations of the Election Code.

We hereby vacate the decision of the Elections Commission. The complaint is DISMISSED WITH PREJUDICE.

DONE and ORDERED, this the 17th day of February 2022, in Tallahassee, Florida.

GARCIA MARRERO, J., concurring, in part, and dissenting, in part.

Petitioner came before this Court to ask a simple question, did the Supervisor of Elections, and therefore, the Elections Commission, have jurisdiction to "receive and review" the alleged campaign violation that is at issue in this case. I join the Majority in its rationale and its holding in Part I of the Court's opinion today. However, I cannot join the Majority in its position in Part II because of the Majority's deviation from the plain and ordinary meaning of the text.

No court has the authority to reshape legislative text. *Myers v. TooJay's Management Corp.*, 640 F.3d 1278, 1286 (11th Cir. 2011) ("[W]e are not licensed to practice statutory remodeling.") (quoting *United States v. Griffith*, 455 F.3d 1339, 1344 (11th Cir.2006)). And this Court certainly does not, as our jurisdiction is of a limited nature as laid out in the Student Body Statutes. *See*

generally Student Body Statutes § 500.3. Regardless of how poorly a statute or law may have been composed by the governing legislative body, a court cannot impose its will and change the plain text meaning of the statute.[2]

This is what the Majority purports to do with respects to the text and the variations in language found within Chapter 700, SBS I agree with my learned colleagues that the language of Chapter 700, SBS, is clear that the Supervisor of Elections lacked enforcement powers and, therefore, jurisdiction to "receive and review" any complaint filed pursuant to an Elections Code violation prior to the three-week enforcement period. However, I disagree with the Majority that this same language found in Chapter 700, SBS, would mean that no such violation can be found to exist outside of the enforcement period.

When reviewing a statute, a court must always start with the text of the statute. *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("It is well established that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.") (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N. A.*, 530 U.S. 1, 6 (2000)). As such, here we start with the language of Chapter 700, SBS, which begins by stating:

> 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.***

Chapter 700, SBS (2022). Given the plain text in Chapter 700, S.B.S., we need not go any further to conclude that the Elections Code is in full force and effect year-round. I agree with the Majority that the first sentence of Chapter 700, SBS, clearly states that the Elections Code cannot be changed when an election date has been set. However, I disagree that this same language comes to mean that outside of the "lock down period" for the Elections Code that any violation of the Elections Code is not a violation.

The plain text of the statute does not provide for such a conclusion, and neither does reality. The setting of the election date for any given election cycle has already been

[2] *Bostock v. Clayton Cnty, Georgia*, 140 S. Ct. 1731, 1823 (2020 (Kavanaugh, J., *dissenting*) ("Under the Constitution's separation of powers, our role as judges is to interpret and follow the law as written, regardless of whether we like the result. (citing *Texas v. Johnson*, 491 U.S. 397, 420–421 (1989) (Kennedy, J., *concurring*).

pre-determined by statute. *See* SBS §§ 705.4, 706.6 ("The elections shall take place on the eight Wednesday of the [ ] semester. In the case of a date conflict the Student Senate shall determine the date of the elections between the sixth and eighth week of school. . . ."). Meaning, that by statute the date of every election has already been pre-determined and established, barring any conflicts. Therefore, so long as the Student Senate or the Supervisor of Elections need not change the date of the election, the election date is set and it would follow, per Chapter 700, SBS, that the Elections Code would be "locked in" as well.

If this was not enough to demonstrate the plain meaning of the statute, the rest of Chapter 700, SBS, makes it abundantly clear: "[The enforcement of the Elections Code] does not preclude the reporting of violations later enumerated in Chapter 711." SBS § 700. Respondent argued in her brief that a prior decision by this Court, *Ney v. Unite Party* (2018), was disagreed with by legislative action. *See* Respondent's Brief at pp. 2-3. In doing so Respondent pointed to Bill 41 passed by the 71st Student Senate on April 17, 2019. Bill 41 amended Chapter 700, SBS, importantly, adding in the additional provision that violations were not precluded from being reported.[3]

It is unclear what the purpose or intention of the Student Senate was in adding this provision to Chapter 700, SBS, however, the language is clear on its face. The Elections Code "lock in" date does not preclude the reporting of violations of the Elections Code. There is no other way to read this statute other than as laid out herein. The Majority's position on this goes beyond our Constitutional mandate and beyond the text of the statutes. Whether the Student Senate intended for the Elections Code to be in effect all 24 hours for 365 days in a year or not is immaterial to our analysis. The legislative process is full of compromise and the ultimate law that is enacted is, more often than not, different from the original bill filed. And we may only look to the final product that is passed by the Student Senate and signed by the Student President. *See Bostock*, 140 S. Ct. at 1738 ("After all, only the words on the page constitute law adopted by Congress and approved by the President."). Hence, whether we like the outcome of what the plain and ordinary meaning of the text means or does not mean is irrelevant to our duty to the Constitution and the rule of law. *Johnson*, 491 U.S. 421 (Kennedy J., *concurring*) ("The hard

[3] *See* Bill 41, https://sga.fsu.edu/archives/71st-Senate/bills/04.17.19-bill41.pdf.

fact is that sometimes we must make decisions we do not like. We make them because they are right, right in the sense that the law and the Constitution, as we see them, compel the result. And so great is our commitment to the process that, except in the rare case, we do not pause to express distaste for the result, perhaps for fear of undermining a valued principle that dictates the decision. This is one of those rare cases.").

Although the position I take may not impact the outcome of this case today, it may impact the outcome of future cases should the Student Senate decide to amend the Student Body Statutes. For the reasons above, I respectfully dissent as to Part II of the Majority's opinion today, and emphasize to those elected officials that hold the legislative power to revisit Chapter 700, SBS.