

Advance Party

v.

Vitality Party

### **Issues**

1. Whether the actions taken by the Vitality Party member violated Section 13 of the Student Conduct Code.
2. Whether the actions taken by the Vitality Party member violated Section 14 of the Student Conduct Code.

### **Holding**

1. No, the Vitality Party did not violate Section 13 of the Student Conduct Code because there was no reasonable expectation of privacy for the recorded Advance Party members.
2. No, the Vitality Party did not violate Section 14 of the Student Conduct Code because there was no reasonable expectation of privacy for the recorded Advance Party members.

### **Facts**

On February 16<sup>th</sup> 2016, Advance Party members, Taylor Ney and other party members, were allegedly recorded by a Vitality Party member while speaking during a College Republicans General Body Meeting. The meeting was held on campus in HCB103.

### **Procedural Posture**

On February 22, 2016, Mr. Ney, submitted an original jurisdiction complaint

against an unnamed Vitality Party member. Mr. Ney alleged that the unnamed member violated the Student Conduct Code by recording Mr. Ney and his colleagues, each of whom were speaking during a scheduled College Republicans General Body Meeting. The Court met on February 25, 2016 to discuss Mr. Ney's complaint and to assess the potential need for a hearing. Upon a thorough review of the pleadings and relevant code provisions, the Court holds that Mr. Ney is not entitled to a hearing because the allegations contained within the complaint are insufficient to establish a violation of the Student Conduct Code. In reaching this conclusion, the Court assumed that all the facts alleged in the complaint were true. The Court only determined that the Advance Party did not have a reasonable expectation of privacy when presenting to a general body meeting.

### **Opinion**

J. Mitchell writing for a unanimous court,

### **Jurisdiction**

The Supreme Court shall have jurisdiction over conflicts between student groups and over cases and controversies involving student conduct as provided in Article IV, Section 4. SGA Const. Art. IV § 3(C)(3) and (6). The complaint submitted by Mr. Ney alleges that the Vitality Party acted in violation of the FSU Student Code of Conduct by recording Advance Party members speaking without their consent. The Supreme Court has the authority to hear this case pursuant to SGA Const. Art. IV § 3(C)(6), referencing Article IV, Section 4 Student Conduct, which allows the University Judicial System to exercise authority in matters of student conduct and allows for a student charged with a violation to opt for a hearing before the Student

Supreme Court. The Supreme Court also has the authority to hear this case pursuant to SGA Const. Art. IV § 3(C)(3) which allows for jurisdiction over conflicts between student groups. The Advance Party and Vitality Party are student groups at Florida State University.

### Holding

The Advance Party (Taylor Ney) contends that the recording by members of Vitality Party was acquired without the consent of the individuals recorded and in a meeting during which the individuals had a reasonable expectation of privacy. The Advance Party argues that the meeting taking place in HCB, a classroom building on main campus, created a reasonable expectation of privacy due to the building's standing as an academic environment. Taylor Ney and other members of the Advance Party were said to be speaking under a reasonable expectation of privacy and did not provide consent to being recorded. This opinion assumes that all facts alleged in the complaint are true and solely seeks to determine whether the complainant had a reasonable expectation of privacy when presenting at the College Republican's General Body Meeting.

The issues presented for the court are: (1) whether the actions taken by the Vitality Party member violated Section 13 of the Student Conduct Code, and (2) whether the actions taken by the Vitality Party member violated Section 14 of the Student Conduct Code. We find that the Vitality Party did not violate the Student Conduct Code.

Violations of the Student Code of Conduct include recording of images without consent and recording of oral communications without consent. Fla. Admin. Code R. 6C2R-3.004 (1) (e) (13) and (14) Student Conduct Code. Section 13

provides:

#### Recording of Images without Consent.

Using electronic or other means to make a video or photographic record of any person where there is a reasonable expectation of privacy without the person's consent and when such a recording is likely to cause injury, distress, or damage to reputation. This includes, but is not limited to, taking video or photographic images in shower/locker rooms, residence hall rooms, and restrooms. The sharing and/or distributing of such unauthorized records by any means is also prohibited.

Section 14 provides:

#### Recording of Oral Communications without Consent.

Acquires, by listening or by recording using any device, any wire, oral, or electronic communication, when such communication is uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation (i.e., in a situation in which the person has a reasonable expectation of privacy), and the person has not given consent to the acquisition or recording of the communication.

First looking to Section 13, the necessary elements for finding a violation of recording of images without consent are: (a) a video or photographic record, (b) reasonable expectation of privacy, (c) consent, and (d) likely to cause injury, distress, or damage to reputation. Based on the complaint, the Court will assume that the

pleadings were sufficient to show elements (a), (c) and (d) present. Therefore, the sole question before the Court was whether the recorded individuals had a reasonable expectation of privacy.

In determining whether the Advance Party had a reasonable expectation of privacy in this situation the Court looked to the language of Section 13 and the nature of the meeting that the Advance Party members where the recording took place.

Ney and other members of the Advance Party were recorded while speaking at a College Republicans general body meeting held in HCB103, a main classroom building on campus. The Advance Party asserts that members had a reasonable expectation of privacy because the meeting took place in an academic building on campus. The building's status as an academic building, however, does not guarantee all occupants a reasonable expectation of privacy. Whether a person or group has a reasonable expectation of privacy depends on the totality of the circumstances surrounding the communication. In this case, the Court took note of the fact that the recording occurred while the Advance party was presenting at a general body meeting of the College Republicans. The College Republicans is a student organization and membership is open to all Florida State Students. Additionally, the meeting at issue in this case was a general body meeting, which, by definition, is open to the public. These factors alone indicate that the participants do not have a reasonable expectation of privacy in this setting. The situation at hand is distinguishable from either both a closed executive meeting, or when the room is being used for academic purposes.<sup>1</sup>

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<sup>1</sup> This opinion does not hold that there is a reasonable expectation of privacy in these circumstances but

Furthermore, Section 13 includes a representative list of situations where the statute is intended to apply. This list includes but is not limited to "shower/locker rooms, residence halls rooms, and restrooms." While this list is explicitly non-exhaustive, the list provides guidance to what other circumstances warrant a reasonable expectation of privacy. The statutory rule of interpretation ejusdem generis provides that when a list includes specific terms followed by a general statement, that general statement should be interpreted in light of the items in the list. General body meetings are not of the same kind or nature as residence hall rooms, shower/locker rooms and restrooms.

Second, looking to Section 14 the necessary elements for finding a violation of recording of oral communication without consent are: (a) recording, (b) wire, oral or electronic communication (c) by a person with a reasonable expectation of privacy, and (d) consent. Based on the complaint, the Court will assume that elements (a), (b) and (d) were present. Therefore, the question remaining before the Court was whether the recorded individuals had a reasonable expectation of privacy. Here, applying the same reasoning as used in the analysis of Section 13 in light of the nature of the meeting, the Court concluded that there was no reasonable expectation of privacy and therefore no violation of Section 14.

### **Conclusion**

For the reasons set forth above, we hold that the Vitality Party is not in violation of Section 13 or Section 14 of the Student Conduct Code, Fla. Admin. Code R. 6C2R-3.004 (1) (e) (13) and (14). Since Advance Party cannot show that the members had a

uses these examples to illustrate closer cases under the statute.

reasonable expectation of privacy, the Court does not need to determine whether the other elements of the claim were satisfied.

Although the the pleadings make clear that Advance Party members were recorded speaking without their consent, there is no reasonable expectation of privacy present for individuals speaking at a general body meeting on campus, in the way that the individuals did here.