

**IN THE FLORIDA STATE
UNIVERSITY SUPREME COURT**

IGNITE PARTY

Appellant,

v.

PROGRESS COALITION

Appellant,

v.

ELECTION COMMISSION

Appellee

Published: March 2, 2012

SUMMARY

There are two key issues before the Court. First, the Appellant, the Progress Coalition (Progress), requests that the Student Supreme Court overturn the Election Commission's decision not to sustain a § 205.3(B)¹ Schedule-2 Violation Penalty against the Ignite Party (Ignite) despite finding there was in fact a violation of the statute. Within this issue, the Court also considers whether intent is a necessary element of the violation for the purpose of imposing a sanction. The Court affirms the decision of the Election Commission finding that although the evidence shows Ignite has violated § 205.3(B), this violation and the penalties naturally following will not be sustained for the reasons discussed below.

Second, the Appellant, Progress, requests that the Supreme Court overturn the decision of the Election Commission and

¹ § 205.3(B) - Misuse of Student Government Property: No officer or employee will use or attempt to use Student Government property, facilities, resources, or personnel to secure a gift, reward, privilege, benefit or exemption for anyone.

completely disqualify Ignite from the past election. Thus, the uncontested seats should be filled by the candidates with the second highest votes (Progress). The Appellant, Ignite also appeals the decision of the Election Commission and requests a Schedule-2 Penalty for violating Student Body Statutes §714.3(B.) The Court affirms the decisions of the Election Commission ordering a Special Election with conditional terms: public notification of reason for a Special Election and a Schedule 2 penalty against Ignite.

BACKGROUND

A complaint was brought before the Elections Commission by Progress, alleging Ignite utilized Student Government resources in support of their party by ordering campaign materials under an account named "FSU Student Government Association." As a result, a tax-exempt benefit was applied to purchases made by Ignite. Evidence was introduced to show the same occurred last year.

§ 205.3(B) provides that it is a "misuse of Student Government property" for an officer or employee to "use or attempt to use Student Government property, facilities, resources, or personnel to secure a gift, reward, privilege, benefit or exemption for anyone. § 715.7(I) states that "utilizing any Student Government equipment, resources or for endorsement or support for or against any candidate, platform, party, or ballot item," is a Schedule-2 Violation.

Ignite responded by stating the purchases were the result of a clerical error not understood by the purchasers at the time. In addition, Ignite contends the account was in place since the previous year and campaign materials were merely re-ordered from the same account. The materials

purchased were not shipped to FSU, and SGA funds were not used in the purchasing of the items.

Progress takes the position that because no taxes were paid, the receipts from the items purchased by Ignite clearly states FSU SGA and the fact that the same occurred in a previous year, are all indicative of a pattern of behavior resulting in an inherent disadvantage to Progress. Upon being put on notice of the violation, Ignite paid the taxes to remedy the violation.

Progress appeals the Election Commission's decision not to sustain the Schedule-2 Violation Penalty. Progress contends that the Election Commission's ruling should be reversed, Schedule-2 Violation Penalties should be imposed, and this Court Should sustain a Code of Ethics Violation against the person who purchased the campaign materials pursuant to § 205.3 (B), Student Body Statutes.

In addition. on February 8, 2012, Ignite and Progress vied for the Student Body President, Vice-President and Treasurer Student Government Association (SGA) seats. The election results determined that Ignite won the Spring 2012 General Election by an overwhelming majority. Pursuant to the Student Body Statutes §714.3(B), "Final expense statements shall be submitted to the Supervisor of Elections no later than 4:00 p.m. on the day following any election, and shall include:

1. A statement of the cumulative campaign expenditures based on the fair market value, signed by the candidates and/or party chairman.

2. An itemized list of all expenses.

3. A signed statement provided by the Supervisor of Elections attesting to the validity of the total campaign expenses and contributions, and that all campaign contributions were collected in accordance with statute.

4. An itemized report containing the full name, residence or business address of each person who has made one or more contributions in any form to the campaign.

5. A copy of all account statements, check stubs, deposit slips, and any other financial documents shall be submitted on the first Wednesday of active campaigning as well as in the candidate or party's final expense statement."

Student Body Statute §715.9 states that "any candidate or political party who fails to submit a final expense statement within the allotted time period shall be automatically disqualified from that election, regardless of how many violations they have accumulated, no other penalty other than immediate disqualification may be assessed."

On February 9, 2012 at 3:57 P.M., Ignite submitted a statement of the party's campaign expenses. When Ignite submitted the statement, however, some of the abovementioned components were omitted. Progress filed a formal complaint against Ignite alleging a violation of Student Body Statutes §715.9. The Election Commission disqualified Ignite from the Election then ordered a Recall Election. On appeal, Progress requested that the Student Supreme Court reverse the decision of the Election Commission and disqualify Ignite. Then the uncontested seats could go to Progress as the runner-up in the General Election. Ignite also appealed the decision of the Election

Commission asked this Court to reverse the decision of the Election Commission. Ignite contends the error was made in good faith and this Court should issue a Schedule-2 Penalty for the violation.

STANDARD OF REVIEW

“Absent an abuse of discretion, fraud, lack of notice, or lack of an opportunity to be heard, this Court reviews only the record and questions of fact under an abuse of discretion standard while questions of law are examined de novo.” Impact Party v. Elections Commission, No. 97-111 (FSUUSC 1997) and Wood & James v. Elections Commission, No. 99-01 (FSUUSCC 1999). Pursuant to the aforementioned cases, this Court will review the matters of law presented on appeal de novo.

OPINION

Issue 1: Violation of § 205.3(B), FSU Student Body Statutes

LEVEILLE, J., in a seriatim opinion and majority opinion writes,

In reviewing the issues presented on appeal by Progress, it is necessary to first consider the statute granting the Election Commission the authority not to sustain a Schedule-2 Violation Penalty despite finding § 205.3(B) was violated. §702.2 (E) 12, provides in relevant part that in an alleged violation case, “the Elections Commission shall then rule by majority vote on the following:

- A. If the alleged violation at hand, when proved would constitute a violation at all; and

- B. Whether or not the alleged violation should be sustained.”

1. Was there a violation?

First, we find that § 205.3(B) of the Student Body Statutes, does not require an element of intent in order to find that a person or party has violated the statute. We find that the statute is unambiguous and clearly prohibits the actions enumerated. Ignite’s contention that the error was simply a clerical error, and therefore unintentional, is a consideration we simply cannot entertain under the statute.

Second, we consider whether using an account under the name FSU Student Government Association for purposes of procuring campaign materials constitute a “use of resources” under the statute. We find in the affirmative particularly in instances such as those described in this case in which the resource used, the FSU/SGA name, may potentially and did in this case, provide that person or party with an undue advantage.

Furthermore, the Election Commission considered whether or not Ignite had an unfair advantage over Progress. However, the appropriate consideration is whether Ignite had *any* advantage as result of violating Student Body Statute § 205.3(B). We find that it is out of the scope of the statute to consider degrees of advantage in determining whether a violation has occurred. Instead, a violation of the statute in itself grants the individual or party in violation with an advantage. That advantage is unfair in that a benefit was given exclusively to the party in violation of the statute. With this consideration, we find it unnecessary to discuss the dollar amount Ignite retained as a result of the tax-exemption for campaign

materials but as it has been subsequently repaid.

Considering the plain language of § 205.3(B) we find consistently with the Elections Commission that Ignite violated the statute by purchasing campaign materials with an account listing FSU Student Government Association. It is undisputed that in addition to accepting the campaign materials on this account, Ignite accepted the tax-exemption benefit as a result of using the FSU SGA name as a resource.

2. Should the violation be sustained?

Although we find Ignite in clear violation of § 205.3(B) under the first prong of the test, we now look to the second prong to determine whether that violation should be sustained. This Court affirmed the Election Commission's decision not to sustain the Schedule-2 Violation Penalty. Pursuant to the second prong to § 702.2e12, after finding that a violation occurred, the Elections Commission then has to answer whether to sustain the violation. This specific statute is silent as to what the Election Commission should consider when answering the second prong. As a result, it is well within the purview of the Elections Commission to use its discretion when making determinations under this prong.

The Election Commission is in a better position than this Court in respect to determining questions of fact. As a result, this Court reviews the record and questions of fact under an abuse of discretion standard, granting great deference to the Elections Commission. In addition to considering the facts, the Election Commission used its discretionary authority granted by the second prong of §702.2e12, to determine whether it was appropriate to impose a

sanction given the circumstances. Subsequent to hearing testimony and reviewing evidence and the circumstances surrounding this case, the Election Commission decided not to sustain the violation.

Although this case is being reviewed de novo and it is well within the purview of this Court to overturn this ruling, we will defer to the ruling of the Elections Commission particularly because of its fact finding capacity. The purpose of this Court is not to overturn every decision below if the results are not in line with how we would have decided a case given the circumstances. However, even if we are to consider the facts we do have at our disposal, a case can clearly be made as to why the violation should not be sustained.

If we are to take Ignite's contentions as true and accurate, then we are to consider the fact that the account using FSU/SGA resources was set up by the previous administration. In addition, the taxes were paid by Ignite immediately after being put on notice concerning the violation. Although mere oversight is no excuse to violating a statute, considering the context as well as the Election Commissions discretion under prong two, this Court finds there is insufficient evidence to support imposing a Schedule-2 violation penalty. Furthermore, the statute does not mandate or command that the Elections Commission must impose a penalty if there is a violation. Again, the statute provides for a two pronged test:

- A. If the alleged violation at hand, when proved would constitute a violation at all; and
- B. Whether or not the alleged violation should be sustained.

There is no strict liability when making a determination as to whether imposing a penalty is appropriate. If there were such strict liability, the second prong of the statute would be completely irrelevant. It only makes sense that the legislature intended to provide a fact finding Court with discretion to assess the facts of the case and use judgment to make that determination.

CONCLUSION

For the aforementioned reasons, this Court affirms the Election Commissions decision not to sustain a Schedule-2 Violation Penalty although Ignite violated § 205.3 of the Student Body Statutes.

It is so ordered.

MILLER, J. in a seriatim and concurring opinion writes,

In addition to the justification provided in the majority opinion, the Election Commissions ruling should be affirmed when considering the “good faith effort” exception pursuant to § 702.2(E)16. The statute states in pertinent part “should a conflict in statutes, emergency, or otherwise unforeseen circumstance render it infeasible for someone to comply with the Election Code... the Election Commission shall have the power to rule if a “good faith effort” was rendered by the specified party and adjust the ruling as necessary.”

As stated in the majority opinion, the account used to purchase campaign materials, which is the source of this violation, was set up by a previous administration. In addition, in good faith, Ignite corrected the violation by paying the

taxes immediately after being put on notice. As a result, it was well within the power of the Election Commission to adjust the ruling as necessary.

Bell, C.J. in a seriatim and dissenting opinion writes,

Pursuant to Student Body Statutes §205.3(B,) this Court may use its discretion when deciding whether to sustain a §205.3(B) violation. The majority allowed the Ignite Party to evade responsibility for what was a *clear* violation of Student Body Statutes. The Court unanimously agreed that the Ignite Party violated § 205.3(B) by using the FSU SGA name to make tax- exempt purchases. I am not inclined to excuse the behavior of the Ignite Party *simply* because the party is run by student officials. The majority in American Party v. Supervisor of Elections held that, “student officials voluntarily undertook the responsibilities of office and there is no reason for any of the student officials not to ‘at least make a serious attempt to carry out those responsibilities to the fullest extent possible.’” American Party v. Supervisor of Elections, No FA07-01, (FSU SSC 2007). The members of the Ignite Party are subject to this principle and should have made a greater effort to comply with the Student Body Statutes. Therefore, despite the second prong of the statute, the majority erroneously affirmed the decision of the Election Commission by failing to sustain this apparent violation.

GUTIERREZ, J., in a seriatim and dissenting opinion writes,

The majority of this Court has determined that a violation will not be sustained in regards to § 715.7(I), Student Body Statutes. This statute clearly forbids

“utilizing any Student Government equipment, resources or for endorsement or support for or against any candidate, platform, party, or ballot item.” In the present case before the Court, an Ignite representative visited FastSigns, Inc. on January 23 and 24, 2012 and purchased campaign materials on an account named FSU Student Government Association. As a result, Ignite benefited from the tax exemption status that FSU SGA possesses. During oral arguments, it was brought to the attention of this Court that the monetary benefit received was somewhere between \$60-\$65. The statute at issue plainly prohibits use of any resources whatsoever for the support of any party, and this is a clear example of a benefit received.

This Court is ignoring the statutory command of the statute by withholding enforcement of this violation. Additionally, Ignite committed the same violation during the last school year. If this Court allows behavior of this kind to go unpunished, the goals of general and specific deterrence are completely washed away. This result is showcased through the behavior of Ignite in the recent history of SGA elections because it has already occurred twice, and the Party has received an unfair advantage on both occasions. If this statute was enforced, Ignite and other parties in a similar situation may have taken preemptive measures to avoid this historical abuse. Furthermore, this repeated behavior has been conceded by Ignite, but they have masked this violation as a mistake that occurred without the group’s knowledge. The statute carries no intent requirement, and therefore, lack of knowledge is not an affirmative defense.

Additionally, this Court is in no position to alleviate the severity of this violation. This pattern of behavior resulted in an inherent disadvantage to the party that

did not make purchases under this account. This Court has the duty to enforce the statutory command of a statute passed by the Legislature, and shall enforce the punishment regardless of whether the benefit was a paltry \$1.00 or massive \$ 10,000.00. Although the Court has not differentiated between dollar amounts of the benefit, I want to be clear that such a position would lead to a slippery slope and should not be considered in elections to come.

In a past decision from this Court, the Court held that “student officials voluntarily undertook the responsibilities of office and there is no reason for any of the student officials not to “at least make a serious attempt to carry out those responsibilities to the fullest extent possible.” American Party v. Supervisor of Elections, 07-01 (FSU SSC 2007). Again, the responsibility is incumbent on Ignite to ensure that their “agent” complies with the applicable statute.

Agency refers to the type of relationship that is created when one person acts for another. In this case, the Ignite party is the principal and the representative who purchased the campaign materials is the agent. With this consideration, the representative and or Ignite should be held responsible for violating the statute. Although election campaigns can become disorganized and frantic, the principal is in a position to ensure that its agent zealously carries out their duties in the appropriate fashion. Clearly, the purpose of the agent is to appropriately fulfill a command from its principal because the duty has been delegated to him or her.

These principles and standards are strengthened in § 205.2(a) of the Student Body Statutes. It is essential to the proper

conduct and operation of the Student Body that its officials be independent and impartial, and that public office not be used for private gain. “Student Body officers and employees hold their position for the benefit of the Student Body. Such offices and employees are bound to observe in their official acts the highest standards of ethics consistent with this code, recognizing that promoting the public interest and maintaining the respect of the student body in their Student Government must be the foremost concern.” § 205.2(a), Student Body Statutes.

This Court acknowledges that the Ignite Party immediately corrected this mistake upon notice by Progress and the unpaid taxes were then surrendered voluntarily. Again, however, there is no intent requirement written into this statute, and therefore, remedial efforts are not to be considered when determining whether the statute has been violated. Furthermore, although Ignite instituted remedial efforts after the fact, the benefit received still exists because the Party received the benefit at that point in time. In an election, all times are of critical importance, and any unwarranted violation can compromise the implemented process. If Progress did not bring this violation to the attention of the Elections Commission, this would have gone unnoticed and possibly repeated in future election cycles. The ultimate goal of this Court is to deter this behavior and encourage careful compliance with the statutes passed by the Student Senate. We cannot veer away from a statute based on a mistake.

Violation of the statute occurred in the present case and the penalties for committing a Schedule-2 violation include: “For the 1st instance of a sustained Schedule-2 violation, a \$100.00 fee or 7 approved work hours shall be levied against

an individual or a \$250.00 fee shall be levied against a party, whichever shall have been found responsible.” § 716.3(a)(1), Student Body Statutes. In this case, Ignite is in the better position to feel the brunt of these penalties, and the individual student should be reprimanded internally by his or her party, not by this Court. As his or her principal, Ignite should have been penalized for this clear violation.

I respectfully dissent.

Issue 2: Violation of § 205.3(B), FSU Student Body Statutes

BELL, C.J., in a seriatim opinion and majority opinion writes,

To determine whether Ignite violated Student Body Statutes §715.9, the Court must first consider questions presented by Progress and Ignite.

1. Is a Party’s Failure to Submit All Five Components Tamount to Not Submitting a Final Expense Statement?

The penalty for complete failure to submit an expense statement is clear, according to Student Body Statutes §715.9. Conversely, the legislative history and case law are silent about what action this court should take when a party submits an incomplete final expense statement. The first question this Court considered was whether an incomplete submission is equivalent to not submitting a final expense report at all. Progress argues that the Statute specifically requires all five items before the submission is complete. Thus, Ignite’s failure to submit all five parts makes their submission invalid. The Ignite Party contends that historically parties have failed to submit these

documents and the Supervisor of Elections has nonetheless certified a complete final expense statement.

The Court rejects the argument made by the Ignite Party because the first page of the Final Expense Statement specifically states what a complete submission includes. The party submitting this information must sign the front page to indicate all relevant documents are included. The final expense statement submitted by the Ignite Party was signed, which indicates the party should have understood and followed the statutory requirements. In addition to the accessibility of the final expense statement components, the Court finds that the plain language of Student Body Statute §715.9 unambiguous. All five components are necessary for a complete, final expense statement; therefore, a failure to submit any of the five parts is an invalid submission for the purposes of this statute.

2. Was there a good faith exception?

Ignite argues that because the party furnished the missing statements the following day, this error was made in good faith. Hence, the Ignite Party should not be subjected to the statutory penalty of disqualification. In Heritage Party v. Elections Commission, this Court reversed the decision of the Election Commission and reinstated the Heritage Party candidates because of a good-faith error. Heritage v. Elections Commission, No. SP 10-01 (FSUUSCC 2010). The Heritage Court held that a party member's inability to attend a mandatory candidate meeting due to an illness. The good faith exception gave this Court more discretion to consider the legislative intent. Ignite, however, was unable to supply an explanation that would permit this Court to use such discretion. Ignite did not report an illness, a flat tire, or

any grave or urgent circumstance sufficient to excuse the failure to submit the required documents. The only explanation given to the Court was this violation went unquestioned in the past. Unfortunately for Ignite, this is simply not how the law operates. A previous party's unquestioned transgression does not render Ignite's behavior permissible.

Ignite failed to submit a complete final expense statement and no good faith exception applies, for these reasons the Court disqualifies Ignite from the Spring 2012 General Body Election, as this is the only option the law allows.

Progress argues that Ignite's disqualification means that the uncontested seats belong to the candidates with the next highest vote (Progress). Progress opened the door and invited the Court to adopt this position. The Court, however, rejects this invitation. Progress could not identify a single statute, or constitutional provision that calls for such a remedy. Furthermore, this Court is not inclined to completely disenfranchise the student body solely for the benefit of Progress. To announce Progress winners by default is highly inappropriate here, so this Court unanimously and respectfully declines this request.

3. Remedy

So the final question before the Court is what the appropriate remedy is in this case. Pursuant to Chapter 713 of the Student Body Statutes, candidates are not elected until the Supervisor of Elections has certified the results and all appeals and violation have been heard and decided. Because the members of Ignite are not "elected officials" for purposes this statute, a Recall Election would be improper. Instead,

this Court will order a Special Election which is an election that can be held at any time other than a General Election for any purpose, pursuant to Student Body Statutes 701.1(L.)

Furthermore, Student Body Statute §715.9 states that “any candidate or political party who fails to submit a final expense statement within the allotted time period shall be automatically disqualified from *that* election....” (emphasis added.) The Court unanimously interpreted this statute to disqualify Ignite from the Spring 2012 General Election, however, this does not result in disqualification from a subsequent election. So the Ignite Party is permitted to run in the Special Election under the party name without penalty.

In addition to the Special Election, this Court orders public notification of the reason for the Special Election. This notification will appear on the Student Government Association Website, on the Special Election ballot and in the FSU View Newspaper. Furthermore, for the purposes of this Special Election no new candidates are permitted to run for office. The Special Election is closed to those candidates who ran in the previous General Election.

Finally, Student Body Statute §716.3(A)(2) states: “The following penalties shall be levied against those who have been found responsible for committing a Schedule 2 violation...a \$500.00 fee shall be levied against a party, whichever shall have been found responsible.” Consequently, we issue a Schedule-2 violation penalty against Ignite in punitive damages.

CONCLUSION

For the aforementioned reasons, the FSU Student Supreme Court affirms the decision of the Election Commission and disqualifies Ignite from the Spring 2012 General Election. This court also reverses the Election Commission’s ruling to hold a Re-Call election, but instead, orders a Special Election with the following conditional terms: public notification of the reason for the Special Election and a Schedule 2 penalty against Ignite, pursuant to 716.3(A)(2.)

It is so ordered.

LEVEILLE, J. with whom BELL, C.J. joins, in a seriatim and concurring opinion writes,

Although I agree with the majority opinion as to Ignite’s violation of statute § 714.3 of the Student Body Statutes, and as a result, Ignite is and should be disqualified from the past election, an ambiguity in the statute allows for it to be read in a manner inconsistent with the majority’s opinion. The majority contends that in order for a final expense statement to be submitted, all five documents enumerated in the statute must be submitted. This reading of the statute contemplates a singular final expense statement with five parts.

However, § 714.3(B) of the Student Body Statutes, state in relevant part that “final expense statements shall be submitted to the Supervisor of Elections...and shall include...” five documents. Because the statute states “final expense statements” (plural), “shall include,” an argument can be made that each of the five documents are individually a final expense statement. Essentially, each party must submit five final expense statements to adhere to the statute. The issue that arises is whether or

not § 714.3(B) of the Student Body Statutes is an all or nothing provision.

In either respect, the legislature should consider whether the failure to submit one or more parts of the final expense statement under the majority's opinion, or the failure to submit one or more of the five enumerated final expense statements under the alternate reading, should have a greater penalty than if a party submitted everything required but committed fraud in the process. § 715.7(K) provides that "submitting a falsified or fraudulent individual or final expense statement" is a Schedule-2 violation, punishable under § 716.3 with a fine and/or work hours. It is rather unconscionable that evidence of fraud would have a more favorable result than the submission of four out of five required documents.

MACDONALD, J. in a seriatim and concurring opinion writes,

I concur that Ignite violated the strict compliance requirement of a "final expense statement" under § 714.3(B), Student Body Statutes. The unambiguous language of § 715.9, Student Body Statutes, establishes the only permissible remedy as disqualification from that election for which the final expense statement was required. I additionally concur that Schedule-2 sanctions are appropriate along with clear public notice of the reason for the special election. However, I question whether we have gone far enough.

The legislature determined this particular violation required a unique and severe punishment, apart from "scheduled" violations. Progress should certainly not be automatically placed into office; however, we should recognize that holding a special election is no small matter.

A special election could in fact be more burdensome on the student body, Progress, and the University as a whole than on Ignite. The student body will have to "turn out" for another election and the entire process will need to be re-administered. On the other hand, the party necessitating the special election is merely subject to mild public censure and a fine. As we have found, the legislature intended for § 714.3(B) to carry a distinct and extreme penalty. That language is unambiguous and therefore we should effectuate the intent of the legislature by imposing extreme sanctions. In this case I believe that could include such remedies as the denial of a campaign week leading up to the special election or even a restriction on future campaign spending on the part of the violating party, Ignite. The legislative branch may wish to revisit its sanctioning scheme if it desires a different result.

CONCLUSION

In light of the above mentioned discussion on the merits of this case, it is hereby ORDERED that this Court:

1. Affirms the Election Commissions decision not to sustain a Schedule-2 Violation Penalty against Ignite although there was a violation of § 205.3 of the Student Body Statutes;
2. Affirms the decision of the Election Commission and disqualifies Ignite from the spring 2012 General Election;
3. Reverses the Election Commission's ruling to hold a re-call election;
4. Orders a Special Election with the following conditional terms:
 - a. public notification of the reason for the Special Election; and

b. a Schedule-2 penalty against
Ignite, pursuant to
716.3(A)(2.)

SO ORDERED this 2nd day of March 2012
in Tallahassee, Florida.