

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

CONNOR LYNCH

Petitioner,

v.

THE AMPLIFY MOVEMENT

Respondent,

*Keller, CJ. delivers the Opinion for the
Court.*

Published March 18, 2020

SYLLABUS

This case comes before the Court on an appeal by Petitioner, Connor Lynch (“Petitioner”), from a decision of the Elections Commission (“Commission”). Petitioner alleges that the Commission erred in finding that Respondent, the Amplify Movement (“Amplify”) not in violation of section 711.6(C)(1), Student Body Statutes (2019) (“SBS”) for the filing of a false or malicious charge against Petitioner. Petitioner challenges the decision of the Commission in which the Commission did not find a violation by Respondent.

ISSUES

- I. Did the Commission err in finding that Amplify did not violate 711.6(C)(1), SBS?

**FACTUAL BACKGROUND AND
PROCEDURAL HISTORY**

On or about February 15, 2020, an unknown perpetrator trespassed on the property of the Phi Mu sorority house and stole a political banner belonging to Amplify. On or about February 18, 2020, the house mother of Phi Mu reported the stolen banner to the FSU Police Department.

On that same date and shortly following the filing of the police report, Amplify filed a complaint alleging that the Legacy Party, through the actions of Petitioner, trespassed onto the Phi Mu sorority house and tore down a banner that was painted by a sister of Phi Mu to support the Amplify Movement. The complaint alleged that such actions were in violation of SBS § 711.6 (B) (1) (removing, obscuring, or damaging another candidate’s or political party’s campaign materials within a given space such as a bulletin board or general flyer area) and SBS § 711.6 (C)(9) (vandalism or any unauthorized marking of university or private property for campaign purposes, other than poll booths or election-related materials).

In support of such allegations, Amplify submitted security footage from Phi Mu that depicted a man moving on the property sometime after 4:11 a.m. on February 15, 2020. Additionally, Amplify submitted “sworn” statements from multiple persons, who supposedly knew Lynch personally, identifying Lynch as the individual in the video. According to Amplify, a police investigation conducted by FSUPD was pending, but information about the investigation was being relayed to Amplify from members of Phi Mu.

On February 21, 2020, the last possible day for submission of alleged violations of the

Elections Code, Petitioner filed the complaint from which this appeal stems. Petitioner alleges that the complaint brought by Amplify constitutes a false and malicious charge. In support of this contention, Petitioner submitted an email from Petitioner's father, a police commander in Melbourne, FL, that stated Lynch was not the individual shown in the video from the Phi Mu house. Additionally, Petitioner submitted a printout of Petitioner's Life 360 location at the time of the incident and a public records response from FSUPD stating that there was no suspect at that time in the investigation.

On February 19, 2020, the University held the annual spring elections for Student Government Association ("SGA"). Members of both the Amplify Movement and the Legacy Party were running as candidates for office in this election. Prior to the election, but following the filing of the complaint, several members of the Legacy Party defected to the Amplify Movement. Amplify swept the election; and the Legacy Party did not win a single seat for which they had a candidate.

On February 27, 2020, the Elections Commission heard both Amplify's allegation that Petitioner had violated SBS § 711.6 (B)(1) and § 711.6 (C)(9) and Petitioner's allegation that Amplify had violated SBS § 711.6 (C)(1). First, the Elections Commission held Amplify failed to prove by clear and convincing evidence that Petitioner and the Legacy Party had violated the Elections Code. Following the resolution of Amplify's allegations, the Elections Commission held, by a vote of 4-3, that Petitioner failed to prove by clear and convincing evidence that Amplify violated SBS § 711.6 (C)(1).

On March 4, 2020, Petitioner submitted an appeal to this Court challenging the Elections Commission's finding that Amplify had not violated the Elections Code. Amplify did not appeal the Elections Commission's finding that Petitioner had not violated the Elections Code. Although the Elections Commission issued a ruling on all of the allegations that were heard on the evening of February 27, 2020, the written opinions relating to these rulings were not published until March 6, 2020. See *Lynch v. Amplify*, Election Commission (2020); *Amplify v. Legacy*, Election Commission (2020).

ANALYSIS

The question before the Court is whether the Commission erred in finding Amplify not in violation of section 711.6(C)(1) of the Student Body Statutes. In support of a finding of error, Petitioner made three arguments: (1) Petitioner proved by clear and convincing evidence that Amplify violated 711.6(C)(1) SBS (2019); (2) Amplify knowingly brought a false charge against Petitioner by alleging that Petitioner had committed a crime; (3) Amplify filed the charge against Petitioner with malicious intent and without justification or excuse. We find these arguments persuasive and find that the Commission erred in its decision.

As the Court is being asked to review a question of law in this case, the applicable standard of review is *de novo*.

I. Petitioner Proved by Clear and Convincing Evidence That Amplify Had Brought a False and Malicious Charge.

The modern political process of the United States continuously leaves voters to fend for

themselves in separating truths from falsehoods. As this case has made abundantly clear, the campus of Florida State University is no exception to this threat to democracy. The Commission from which this appeal stems found that Petitioner did not satisfy the burden of clear and convincing evidence in proving that Amplify had falsely and maliciously brought an allegation against Petitioner. However, this Court finds that the Commission erred in their finding.

According to the Supreme Court of the United States, “clear and convincing” means that the evidence is highly and substantially more likely to be true than untrue; the finder of fact must be convinced that the contention is highly probable. *See Colorado v. New Mexico*, 467 U.S. 310 (1984).

Amplify filed a charge alleging that Petitioner had stolen the banner from the Phi Mu sorority house in violation of the Election Code and Florida Law. However, at the time of filing such allegation, Amplify knew that Petitioner was not the individual shown in the video and responsible for the theft. Amplify argued that it had identified Petitioner as the individual shown in the video taking the banner from the Phi Mu house.

In support of this contention, Amplify testified that ten individuals, that were hand-selected by Mr. Driscoll, identified Petitioner as the individual in the video. The Court finds it fascinating that ten undergraduate students with zero police training were able to identify the individual in the video as Petitioner when trained law enforcement officers were unable to. In fact, within thirty-seconds of viewing the video, an officer of FSUPD was able to determine conclusively that the individual in the video was not Petitioner. Ignoring the fact that all

ten of the individuals Mr. Driscoll selected to take part in this exercise stood to gain from identifying the perpetrator in the video as Petitioner, were their identification to have been correct, FSUPD would have confirmed this by issuing an arrest warrant for Petitioner. Clearly, that did not occur; thus, this Court recommends students leave the police work to the trained officers of FSUPD.

Alternatively, the eyesight of these individuals may be perfectly fine, but that would mean the reason they identified Petitioner as the perpetrator in the video is of far greater concern. Mr. Driscoll stated on the record before this Court that he believed the individual in the video was, in fact, Mr. Driscoll but wished to confirm before filing an allegation. To confirm his belief, Mr. Driscoll selected ten individuals to provide him with affirmation that his speculative idea was correct, and which each individual he selected all stood to gain substantially from confirming that Petitioner was the individual shown in the video. Although we cannot see into the minds of these individuals who identified Petitioner as the perpetrator, this Court is more than comfortable in stating that they were mistaken because FSUPD confirmed prior to this case being heard by the Commission that at no point was Petitioner a suspect. Moreover, prior to this Court hearing this case on appeal, FSUPD closed the case underlying Amplify’s allegation, and an arrest warrant was issued for the individual responsible. Forget clear and convincing, and it is now clear beyond a reasonable doubt that Petitioner is not the perpetrator shown in the video stealing the Amplify banner from the Phi Mu house.

Although, by now, it should be abundantly clear that the allegation levied by Amplify was indeed false, this Court cannot in good

faith ignore the malicious intent behind this charge. Upon learning of the stolen banner and rather than trusting law enforcement to do their job, Amplify elected to make extraordinary efforts to identify the perpetrator shown in the video. However, rather than providing law enforcement with their identification of the individual in the video, Amplify chose instead to engage in an administrative action against the Legacy Party.¹

Amplify brought such allegations against the Legacy Party and Petitioner on the eve of the university-wide election in which the two parties were scheduled to square off. It is worth noting that Petitioner was the Legacy Party's candidate for the office of SGA Vice President, the second-highest office within student government. Thus, even a hint at dishonesty would be crippling to Petitioner's campaign.² Although the Commission below found that "the filing was not malicious," after reviewing the evidence before us, this Court finds in the alternative. We agree with the argument by Petitioner that Mr. Driscoll's SnapChat messages amount to a finding of legal malice.

Driscoll: ... I wanted [the administrative action] out before the election personally

Cohen: Oh so the voters would know?

Driscoll: Voters, [Legacy Party], everyone

Proving malicious intent does not require proof of actual malice; "legal malice is sufficient and may be inferred from, among other things, a lack of probable cause, gross negligence, or great indifference to persons,

¹ Perhaps Amplify did not feel comfortable reporting such identification to FSUPD because they were aware that the identification was flimsy at best.

property, or rights of others." *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1357 (Fla. 1994). Unlike actual malice, "legal malice may be inferred from one's acts," without the requirement of "proof of evil intent or motive." *Reed v. State*, 837 So. 2d 366, 368 "Proof of an intentional act performed without justification or excuse" is all that is required to successfully plead a claim of legal malice. *Id.* at 368-69.

The SnapChat messages sent by Mr. Driscoll clearly illustrate an intent to lodge an allegation against Petitioner prior to the election and with the electorate as a captive audience. As Petitioner argued, a degree in political science is not necessary to understand the ramifications of alleging a candidate for high office committed the crime of larceny.

Respondent argues that the timing of the allegations brought against Petitioner is solely due to the language of the Statute under which the allegation is brought. While Petitioner is correct that § 711.4(I) SBS (2019) requires all alleged violations be filed within two (2) business days of their discovery, the statute was in no way intended to act as a shield for individuals bringing allegations without probable cause. Whether allegations must be filed within two days or two years, the fact remains that such allegations should be brought only when an allegation has merit, and probable cause exists for the filing of such an action.

II. Respondent's Violation of Good Faith Filing

When Respondent filed the original allegations that lead to this case, no individual was named. Instead, Respondent

² It is again worth noting that these allegations may have had some effect on the election, however, that particular issue was not before the Court.

lodged charges against the Legacy Party as a whole for the theft of the campaign banner from the Phi Mu house. While this Court cannot begin to imagine how the Commission found a justiciable case against the Legacy Party as a whole, we deduce that the Commission reasoned in much the same way as Respondent. That is, given there are only two political parties with candidates in the election when the campaign materials of one political party are stolen, the only possible perpetrator must be the opposing political party or agents thereof. Without going into a long-winded tirade, this Court finds such reasoning patently wrong and utterly disturbing.

However, the issue remains that at the time the Commission heard these allegations, no individual was named. Respondent filed the allegations against the Legacy Party on February 18, but Petitioner was not named as the individual responsible for the alleged theft until the actual hearing before the Commission on February 27. Ignoring for a moment the question of how in the world Petitioner could have possibly been on notice without having been named prior to the hearing, Respondent failed to allege Petitioner as an individual within forty-eight (48) hours of having that knowledge. That act, in and of itself, constitutes a bad faith filing.

While this Court will save our readers the agony of explaining due process, the allegations levied by the Legacy Party likely never should have been heard by the Commission from the outset. However, this only serves as further evidence that Petitioner did, in fact, prove by clear and convincing evidence that Respondent's allegations amounted to false and malicious charges.

III. Public Policy Concerns

Respondent argues, and the Commission below found that concerns of public policy would arise if Petitioner's allegation of false and malicious charges were to be upheld. The Elections Commission stated that it "does not want to render an opinion that would discourage a future party from filing an allegation in the first place because of fear of retaliation." *Lynch v. Amplify*, Spring 2020-3. Such a statement not only erodes the trust in the judiciary but has an even more chilling effect on the fundamental rights of the Petitioner and all those similarly situated individuals that may wish to raise an allegation in the future. It is, however, noted that this Court believes that a good faith filing would be given the proper attention and analysis, thus such concern should not be at the forefront of a bad faith analysis.

The Florida Constitution states, "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." Art. I, Sec. 21, Fla. Const. While the Elections Commission may not be referred to as a "court," nevertheless, the Commission exists for the purpose of serving as a venue for the injured to seek redress. This Court entreats the Commission to take seriously their obligation to the FSU community without fear of retribution or reprisal.

The public policy concern in this matter lies not in dismissing Petitioner's claim, but rather in the Commission's finding for the Respondent. Were the holding of the Elections Commission to be affirmed, it would leave a chilling effect on our democratic system. The courts are not the proper venue for a political party to further its agenda. Instead, the public policy concern in the Commission's holding has the effect of allowing a party that brought a

meritless claim to get off scot-free, without so much as a slap on the wrist.

CONCLUSION

In recent years, this Court has heard the same election appeal year in and year out. Namely, some political party has been found by the Commission to have committed a campaign violation and appeals to this Court claiming their freedom of speech or expression guaranteed by the First Amendment has been abridged. However, this case is a departure from the norm, and one that all too much parallels the ongoing charade in our national government.

In this case, Mr. Lynch posed a question of honesty and ethics in political campaigns, and such issues are some of the most pressing of our time. In modern political campaigns, the line between truth and falsehood becomes more obfuscated with each election. Flipping on the nightly news often leads to second-guessing whether the program on television is an informational update on the happenings of America's democratic process or the non-animated version of South Park, The Simpsons, etc. The first step in solving any problem is identifying that there is one, and modern-day America has a monumental disconnect between verifiable facts and political discourse.

This Court is gravely concerned with the fact that the statutes allow absolutely unbridled allegations of criminal acts with no repercussions. Reluctantly, this Court is aware that it is restrained to impose SBS 711.6(C) violations. While here, as is often the case, the punishment certainly does not

fit the crime, the Court would invite the members of Amplify to take a gander at SBS 711(E)(3). Now, with that being said, it is not this Court's place to furnish remedies that were not sought. However, were the Petitioner in his pleadings before the Commission to have alleged a violation of 711(E)(3), FSU may well have been looking at its first party disqualification in recent years.

Notwithstanding the aforementioned potential for a Schedule 4 violation, the Court implores the legislature to reassess the penalties found in the Election Code. Bringing false and malicious claims against both an individual and a political party should result in drastically more than than a mere slap on the wrist.³ Nothing in this opinion nor the hearing upon which this opinion is based should deter any student from bringing further complaints when those we entrust with Student Government power violate that trust.

Respondent is found in violation of SBS 711.6(C)(1). Under SBS 711.10(A)(1) the Amplify Movement is hereby fined \$100. Therefore, the decision by the Commission is hereby *reversed* and such fine is imposed on the Amplify Movement.

It is so ordered.

³ This Court hopes that the Legislature has been cognizant of our criticism of SBS and takes such critiques seriously.