

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

SURGE FSU,

No.: 23-SP-SC-01

Appellant,

v.

OMER TURKOMER, in his official
capacity as General Counsel for
FORWARD FSU,

Appellee.

*ASSOCIATE JUSTICE GARCIA
MARERRO delivers the unanimous
opinion of the Court.*

SYLLABUS

This action was brought before this Court on an appeal from the Elections Commission, case no. 2023-EC-SPR-22. Below, Omer Turkomer, in his official capacity as General Counsel for FORWARD FSU, a student body political party, sought the review of alleged Election Code violations by the student body political party, SURGE FSU, of sections 709.1(C) and 713.1(B) for failing to comply with the policies outlined in the Oglesby Union Policy.

The Elections Commission held that SURGE FSU violated section 709.1(C) by failing to comply with the FSU Oglesby

Union Policy for Posting, Promotions, Advertising and Distribution of Materials on FSU Campuses. Respondent, SURGE FSU, promptly appealed that decision, and the action is now before this Court.

Having reviewed the record, the parties' briefs, and the corresponding statutes and case law, this Court finds that the Elections Commissions erred in holding that the SURGE FSU member was within 30 feet of an entry-way or exit-way, and therefore, reverse and remand the case to the Elections Commission to consider if Petitioner, FORWARD FSU, has sufficient evidence to satisfy its clear and convincing evidence burden.

ISSUES

- I. Does the Oglesby Union Policy apply to other buildings on campus and does section 709.1(C) also include the posting policy found at posting.fsu.edu?
- II. Did the Elections Commission err in finding by clear and convincing evidence that a member of SURGE FSU violated section 709.1(C)?

FACTUAL BACKGROUND

The relevant facts are as follows. On March 1, 2023, the date of the Florida State University Student Government

Spring elections, a SURGE FSU member was identified as campaigning and handing out campaign materials on Legacy Walk at approximately 10:13 am.

At that time an anonymous student—presumably a member of FORWARD FSU according to the information provided at oral argument—captured a photographic image of the SURGE FSU member handing out the campaign materials near the Rovetta classroom building. The singular photograph was the evidence filed with the violation complaint with the Supervisor of Elections, which was referred by him to the Elections Commission (the “Commission”) for adjudication.

At the lower tribunal, Petitioner, there, FORWARD FSU, argued that SURGE FSU violated section 709.1(C) by failing to comply with the regulations provided for in the Oglesby Union’s Posting, Chalking Advertising and Active Distribution of Materials on FSU Campuses policy (the “Posting Policy”)—namely, policy (4)(b). The policy prohibits the “[a]ctive distribution of literature outside a university facility . . . within 30 feet of any entrance or exit way of th[at] facility.” Oglesby Union Policy Manual, FSU-2.0131(4)(b), chrome-

extension://efaidnbmnnnibpcajpcgclefindmkaj/https://posting.fsu.edu/documents/Posting-Chalking-Advertising-and-Active-Distribution-of-Material.pdf (last visited Mar. 27, 2023).

The Commission agreed with FORWARD FSU and found that by clear and convincing evidence SURGE FSU violated the Posting Policy. SURGE FSU now appeals that decision and argues that the Posting Policy is not a part of the Oglesby Union Manual, and therefore, is not referenced in section 709.1(C), and that even if the Posting Policy was applicable, the Commission erred in finding a violation because the singular photograph submitted as evidence of the alleged violation was insufficient to satisfy the clear and convincing evidence burden.

OPINION

ISSUE I

We begin by addressing Appellant’s first issue as it is a threshold matter—does section 709.1(C) delegate regulatory authority to the Posting Policy? We answer this question in the affirmative.

As with any issue of statutory interpretation, we begin with the text. *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)). Section 709.1(C) states that “[a]ll material and activity in the Union **and on FSU campuses shall be in accordance with rules and regulations of Oglesby Union policy.**” § 709.1(C), Student Body Stat. (2023) (emphasis added).

Thus, it is clear from the plain and ordinary language of section 709.1(C) that campaigning rules regulating campaign material and other activities are also governed by the rules and regulations of the Oglesby Union policy. *See Id.* This is because the Student Senate in crafting section 709.1 decided to incorporate the Oglesby Union policy by reference and delegate the regulation powers in the statute to the language drawn out in that policy. *See Aristic Ent., Inc. v. City of Warner Robins*, 331 F.3d 1196, 1206 (11th Cir. 2003) (“Incorporation by reference is a form of legislative shorthand; the effect of an incorporation by reference is the same as if the referenced material were set out verbatim in the referencing statute.”).

Appellant argues that the reference in section 709.1(C) is **only** to the Oglesby Union Policy Manual (the “Policy Manual”). The Court does acknowledge that the language of section 709.1(C) leaves some degree of doubt as to whether it is incorporating by reference the Policy Manual or some other less specific “Oglesby Union policy.” However, these doubts quickly evaporate when we look at the Policy Manual itself.

First, we can look to Article I of the Policy Manual, subsection A(i), which references the composition of the Oglesby Union Board in accordance with Chapter 605.4 of the Student Body Statutes and during the Student Government Spring elections. This alone is evidence enough in the Policy Manual that it is meant to work in conjunction with the Student Body Statutes—such as section 709.1(C). However, further support is found in Article IV of the Policy Manual, which discusses the use of group leaflets for “student election[s].” *See* Oglesby Union Policy Manual, art. IV, at (A)(i). The multiple references and incorporation of the Student Body Statutes to the Policy Manual makes it clear that it was created to work in tandem with the Student Body Statutes as incorporated by reference therein.

Next, we look to the Posting Policy to determine if it is also incorporated by reference in section 709.1(C).

The Posting Policy is established by a committee appointed by the University President. *See* FSU-2.0131, at (11)(d). It provides for the control and regulation of posting, chalking, and distribution of materials on the FSU campuses. *See generally* FSU-2.0131. The Posting Policy can be found on the website posting.fsu.edu under the “Regulations” drop down menu. *See* Posting Regulation, Home, <https://posting.fsu.edu/> (last visited Mar. 27, 2023).

The Policy Manual makes six references to the Posting Policy throughout the entirety of the Manual. *See generally* Oglesby Union Policy Manual, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://union.fsu.edu/sites/g/files/upcbnu1456/files/Documents/Union%20Board/Oglesby-Union-Policy-Manual-2016-2017.pdf (last visited Mar. 27, 2023). These references refer to the Posting Policy as “The Florida State University Posting Policy” and consistently incorporate by reference the posting.fsu.edu website in the Policy Manual. *See generally Id.*

Further, article I, subsection A(ii) puts to

rest any remaining doubts that the Policy Manual must abide by the regulations outlined in the Posting Policy. *See* Oglesby Union Policy Manual, art. I, at (A)(ii) (“This policy manual is subject to the provisions of university policy.”). Thus, this Court finds that the Posting Policy is not only applicable to the entire university and all its campuses as is evident in the Posting Policy’s language but that it is incorporated by reference in the Oglesby Union Policy Manual, and therefore, in section 709.1(C).

Therefore, we hold today that any violation of the Posting Policy is, by incorporation, a violation of section 709.1(C).

ISSUE II

Next, we address whether the Commission erred in finding that FORWARD FSU satisfied the clear and convincing evidence burden with only one photographic image of the alleged violation. To this question we answer in the negative.

In its decision, the Commission correctly found that the photographic image was of an individual wearing a SURGE FSU t-shirt and handing out SURGE FSU flyers with a call to vote, which would qualify the flyers as campaign material. The Commission, however, erred in holding

that by a clear and convincing showing of the evidence, the SURGE FSU individual was within 30 feet of an entry-way or exit-way.

Clear and convincing evidence “requires that . . . [t]he evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.” *South Florida Water Mgmt. Dist. v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014) (quoting *Inquiry Concerning a Judge*, 645 So.2d 398, 404 (Fla.1994)). We review a finding by the Commission by clear and convincing evidence under a clearly erroneous standard of review because such a finding “enjoys a presumption of correctness and will not be overturned on appeal unless clearly erroneous or lacking in evidentiary support.” *I.T. v. Dept. of Children and Fam.*, 277 So. 3d 678, 683 (Fla. 3d DCA 2019).

Here, it cannot be said that the Commission did not err in its finding based on the record it had before it. On original hearing, the Commission had only one piece of photographic evidence by which to determine if the SURGE FSU member was within 30 feet of an entryway or exit-way.

Due to the lack of further support for the position that the SURGE FSU member was within 30 feet of an entryway or exit-way, this Court is convinced that the Commission erred in finding that FORWARD FSU met its burden of showing by clear and convincing evidence that the alleged violation occurred.

Even without the additional support provided by SURGE FSU on appeal—which shows a possibility of the SURGE FSU member being at least 30 feet or more away from the entryway or exit-way, this Court believes that it is impossible to tell by a mere glance of a photographic image whether a person is at any given distance from another point in space.

Therefore, the Commission’s finding that SURGE FSU’s member was within 30 feet of the Rovetta classroom building entryway or exit-way is clearly erroneous and must be remanded for further fact-finding in accordance with this opinion.

CONCLUSION

In conclusion, this Court rejects Appellant’s arguments that the F.S.U. Posting Policy is not incorporated in the Oglesby Union Policy Manual, and thus, not applicable to F.S.U. Student

Government elections or to section 709.1(C).

Further, the holding of the Elections Commission, that FORWARD FSU met its burden of establishing by clear and convincing evidence that SURGE FSU violated the Posting Policy, is **reversed and remanded** for further proceedings in accordance with this opinion.

DONE and **ORDERED**, this the 27th day of March 2023, in Tallahassee, Florida.