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

SURGE FSU,

No. 23-SP-SC-03

*Appellant,*

v.

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

*Appellee.*

_____/

*ASSOCIATE JUSTICE GARCIA MARRERO., joined by ASSOCIATE JUSTICES CEVERE, GOBIN, and LAGO delivered the majority opinion of the Court.*

## SYLLABUS

This action was brought before this Court on an appeal from the Elections Commission, case no. 2023-EC-SPR-23B. Below, Rawan Abhari, in her official capacity as General Counsel for SURGE FSU, a student body political party, sought review of several FORWARD FSU violations filed on March 3, 2023, as allegedly violating section 711.6(C)(1) of the Student Body Statutes. The two violations filed by SURGE FSU's General Counsel were filed after the forty-eight-hour statute of limitations period that exists for student government elections. The Elections Commission held that it would not hold hearings on the two violations because it deemed them untimely pursuant to section 711.4(E) of the Student Body Statutes. SURGE FSU appeals 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 two violations filed by SURGE FSU's General Counsel were compulsory counterclaims to the violations filed by FORWARD FSU on that same day, and therefore, related back in time to the last filed violation by FORWARD FSU, and therefore, the Elections Commission erred in failing to consider the violations.

## ISSUE

**I.** Whether the statute of limitation established in section 711.4(E) should be equitably tolled?

## FACTUAL BACKGROUND

The relevant facts are as follows. On March 3, 2023, at approximately 8:33 pm, the Supervisor of Elections forwarded to SURGE FSU's General Counsel ten violations filed earlier that day—all by approximately 3:00 pm—for her review.

Upon review of the filed violations, General Counsel for SURGE FSU filed two "violations" with the Supervisor of Elections claiming that several of the violations filed by FORWARD FSU were false or malicious.

Considering that Section 711.4(E) provides for a forty-eight-hour statute of limitation for the filing of violations after polls close. In this case, polls closed on March 1, 2023, at 7:00 pm, therefore, the statute of limitations took effect on March 3, 2023, at 7:00 pm. The Elections Commission (the "Commission") found that SURGE FSU's two "violations" were untimely, and thus, rejected to hear the arguments by SURGE FSU that the statute of limitations in section 711.4(E) should have been equitably tolled.

SURGE FSU appealed that decision and now comes before this Court to argue that the statute should be equitably tolled due to the late disclosure of the violations filed by FORWARD FSU—after the statute of limitations cut-off time—and to remand for the Commission to hear the arguments on the false or malicious claims.

**OPINION**

We begin by addressing the relief that Appellant requested. SURGE FSU came to this Court seeking the equitable tolling of section 711.4(E), which states that "[t]he final deadlines for all alleged violations and appeals to be filed by an individual or political party for a particular election, is forty-eight (48) consecutive hours after the close of polls." § 711.4(E), Student Body Stat. (2023).

"Equitable tolling is an extraordinary remedy which is typically applied sparingly." *Steed v. Head*, 219 F.2d 1298, 1300 (11th Cir. 2000) (citing *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96 (1990)). To equitably toll a statute of limitations, a court must determine whether the circumstances in a given case are sufficient to warrant tolling the express intent of the legislature to establish a statute of limitation. *See Machules v. Dept. of Admin.*, 523 So. 2d 1132, 1134 (Fla. 1988).

During oral argument Appellant made a compelling argument for equitable tolling—especially given that the additional violations filed by FORWARD FSU were not provided to Appellant until ***after*** the statute of limitations kicked in. However, this Court need not address the

merits of the argument because of another procedural mechanism.

Florida Rule of Civil Procedure 1.170(a) provides for the filing of compulsory counterclaims. *See* Fla. R. Civ. P. 1.170(a). A compulsory counterclaim is one "arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." *Ocean Bank v. State, Dept. of Financial Servs.*, 902 So. 2d 833, 835 (Fla. 1st DCA 2005) (citing Fla. R. Civ. P. 1.170(a)).

When Florida's rules are adopted from the federal rules, "the general rule is that it should be construed in accordance with the federal decisions interpreting that rule, when not in conflict with Florida law." *Hightower v. Bigoney*, 156 So. 2d 501, 505 (Fla. 1963). In this case, the Florida rule for compulsory counterclaims is derived from its federal counterpart, and therefore, federal cases dealing with temporal relating back analysis are applicable here. *See Maersk Line v. Firepower Displays Unlimited, Inc.*, No. 08-20659-CIV, 2008 WL 4926969, at *6 (S.D. Fla. Nov. 17, 2008) ("Defendant's counterclaim is a compulsory counterclaim pursuant to Federal Rule of Civil Procedure 13(a)(1)(A) and thus, it related back to the original filing of this case . . . [t]hus, Defendant's counterclaim is not barred by the statute of limitations.").

Thus, the question the Court must determine is whether Appellant's two "violations" filed with the Commission were separate and distinct from the violations filed by FORWARD FSU or if they "arise[] out of the transaction or occurrence that is the subject matter" of FORWARD FSU's filed violations.

The answer to the above posed question is a rather simple one. The Court finds that Appellant's two "late" violations arise out of the occurrence of the filing of the violations by FORWARD FSU, and therefore, is a compulsory counterclaim.

It is clear from the record before the Court that but for FORWARD FSU's filing of ten additional violations against SURGE FSU—which many were believed to be false or malicious—the additional two "late" violations by SURGE FSU would not have been filed. Given that it was the filing of the additional violations by FORWARD FSU and the belief by SURGE FSU's General Counsel that several of those new violations were false or malicious, the violations filed by SURGE FSU cannot be construed as anything else than a compulsory counterclaim.

For example, if FORWARD FSU had filed a verified complaint in Florida circuit court on the eve of a statute of limitations and SURGE FSU was served with the verified complaint the day after, when the statute of limitations went into effect, SURGE FSU would still have the procedural ability to file a responsive pleading. In that responsive pleading, SURGE FSU could raise a compulsory counterclaim against FORWARD FSU, and it would be deemed timely. That same procedural rule applies here. Therefore, this Court need not go into the analysis of whether equitable tolling is necessary because other procedural avenues exist by which SURGE FSU's claims may be heard.

Therefore, the Commission's finding pursuant to section 711.4(E) that SURGE FSU's filing of its two violations, after the forty-eight-hour statute limitations took effect, was untimely is clearly erroneous and must be remanded for a hearing to be conducted on the claims raised in the two violations by SURGE FSU.

## CONCLUSION

In conclusion, this Court considered Appellant's arguments as to the equitable tolling of section 711.4(E), however, the Court ultimately finds that Appellant's filed violations are procedurally compulsory counterclaims, and therefore, relate back in time to the original violations filed by FORWARD FSU making the counterclaims timely.

Further, the holding of the Elections Commission, that SURGE FSU's filed violations after the statute of limitations cut-off time were untimely, 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.

*CHIEF JUSTICE LINSKY, specially concurring in the judgment.*

In addition to joining Associate Justice Garcia Marrero's astute determination that Appellant's filing is correctly classified as a compulsory counterclaim which satisfies the "logical relationship test," this opinion asserts that the doctrine of equitable tolling, as represented by Florida's common law and statues, be extended to the evaluation of any and all statutes of limitation enumerated in the

governing documents of the FSU Student Government Association. *See Londono v. Turkey Creek, Inc.*, 609 So. 2d 14, 19 (Fla. 1992); Fla. R. Civ. P. 1.170(a).

As recognized by the Florida Supreme Court, this common law doctrine "is used in the interest of justice to accommodate … a [litigant's] right to assert a meritorious claim when equitable circumstances have prevented a timely filing." *Machules v. Dept. of Admin.*, 523 So.2d 1123, 1134 (Fla. 1988). In considering the applicability of equitable tolling, courts focus on the litigant's "excusable ignorance of the limitations period" in conjunction with "any potential prejudice" to the party against whom the filing is sought which would result from the doctrine's invocation. *Id.*

Generally, Florida courts apply the doctrine when a litigant "has been misled or lulled into inaction" or "in some extraordinary way been prevented" from asserting their rights. *Id.* Distinct from other doctrines that impact a court's analysis of limitations periods, equitable tolling "does not require active deception or … misconduct" by any party who may have unduly influenced a litigant's untimely filing, but rather focuses on the rights of an otherwise that potential litigant. *Id.*

Despite the lack of need to recognize the doctrine of equitable tolling to resolve the outcome here, this case is a textbook example of when it is not only appropriate, but moreover, in the interests of justice and fairness to invoke the doctrine. For instance, Appellant first received notice of the final eleven (11) elections violations – which are of importance to the merits of the underlying action – filed by Appellee on Friday, March 3rd at 8:33pm – one hour and 33 minutes *after* the statutory deadline to file elections complaints. *Compare* Fla. St. U. Student Body Stat. § 711.4(E) (2023) ("[t]he final deadline for all alleged violations and appeals to be filed by an individual or political party for a particular election, is forty-eight (48) consecutive hours after the close of polls") *with* Fla. St. U. Student Body Stat. § 713.13(A) (2023) ("[o]nline polls and polling sites on the main campus shall be open from 8:00 a.m. to 7:00 p.m. on the day of election").

Regarding the excusable ignorance provision of common law equitable tolling, the fact mere fact that Appellant had no notice of the violations which comprise the substance of their complaint until *after* the deadline passed may not, by itself, be sufficient reason to invoke the doctrine's application.

However, the fact that the Appellee waited to file several of the election complaints directly at issue in the Appellant's underlying suit until the day before the deadline, coupled with the additional fact that the Supervisor of Elections waited until after the statutory filing deadline to notice Appellant of the existence of these complaints against them rises above and beyond the excusable neglect provision of the doctrine.

Not only that, but upon consideration of statements made by Appellee's counsel concerning one-on-one conversations with the Supervisor of Elections which preceded and delayed certain filings at issue in Appellant's underlying claims, the series of events which caused Appellant to be notified of the underlying cause of action in this case resulted in the Appellant being misled. Hence, and independent of the facts relevant to Appellant's internal reasons for excusable ignorance, that Appellant was lulled into inaction by the actions of the Supervisor of Elections and the Appellee – coordinated or not – is sufficient motivation for this Court to apply the common law doctrine of equitable tolling to this case.

Whether or not Appellee intentionally and systemically delayed filing elections complaints against the Appellant in an attempt to use the statute of limitations as an impenetrable shield against any causes of action they knowingly accrued before the passage of the filing deadline is one of the many questions for the Elections Commission to decide when this case is heard on remand. At this stage of the case, the prospect of foul play is completely irrelevant to whether or not this Court should invoke the common law doctrine of equitable tolling. Rather, the proper countervailing analysis requires the Court to balance the Appellant's right to have a cause of action heard against any resulting prejudice to the Appellee.

Appellee's counsel was given ample opportunity to explain how applying the common law doctrine of equitable tolling would be prejudicial to his client. The justifications given were as follows: 1) applying the doctrine to this case is prejudicial to Appellee insofar as it would result in additional and undesirable time commitments; 2) applying the doctrine to this case would be prejudicial because Appellee – unlike the Appellant – made all of their filings before the statute of limitations for this election expired; and 3) applying the doctrine to this case would be prejudicial to Appellee because having a hearing on the merits of Appellant's case

would harm their reputation in the community. None of these arguments come close to meeting any accepted standard for procedural prejudice.

The first argument falls short because it is not prejudicial to any party to litigate a case on the merits. In fact, litigating cases is what counsel signed up for when electing to allege and defend all of the election violations filed in this cycle.

The second argument falls short because whether or not Appellee was timely in making its filings is irrelevant to any future procedural possibilities, and therefore cannot constitute a distinct and concrete harm represented by hearing this case on the merits.

The third argument likewise falls short, and in the process, begs the question as to why Appellee filed twenty-two (22) elections complaints if they think defending against one (1) would prejudicially tarnish a campus political party's reputation. As no procedural prejudice would fall upon Appellee by recognizing the common law doctrine of equitable tolling, it is properly applied in this case.

In addition, multiple statutory provisions in Florida's equitable tolling statute are met by this case. *See* Fla. Stat. § 95.051 (2023). Of consideration is that Appellant's counsel was out of the state when first receiving notice of the second batch of eleven (11) election complaints filed against them. *See* Fla. Stat. § 95.051(1)(a) (2023).

Yet, Appellant's counsel filed their counterclaim within two (2) hours of receiving notice of these additional accusations. While this is indicative of the due diligence of Appellant's counsel (and in stark contrast to any argument which insinuates that Appellant's filings were late due to negligence), it also demonstrates that being out of the state poses little complications to participating in the litigation process in the context of student government.

More appropriately, subsection (1)(c) of Florida's equitable tolling statute squarely applies to the facts of this case and subsection (1)(g) of the same statute is relevant to certain arguments made by Appellee. As discussed previously, the common law doctrine of equitable tolling may hinge upon whether a litigant has been lulled into inaction. Florida statutes directly confront this issue by tolling any applicable statute of limitation when there

is concealment of a cause of action "so that process cannot be served." Fla. Stat. § 95.051(1)(c) (2023). That the Supervisor of Elections did not serve process on Appellant until after the relevant filing deadline had passed fulfills this condition, and the limitation period should therefore be tolled accordingly.

In response to this particular fact, Appellee's counsel argued at the Election Commission's hearing and before the Court that equitable tolling should not be up for discussion until Appellant successfully sued and received a judgment against the Supervisor of Elections for untimely noticing Appellant of the final eleven (11) election complaints filed by Appellee.

Even if it were true that successfully litigating a separate cause of action against the Supervisor of Elections were a pre-suit requirement for filing an action against Appellee (and it most certainly is not), the limitations period would nonetheless be tolled pursuant to subsection (1)(g) of Florida's equitable tolling statute. *See* Fla. Stat. § 95.051(1)(g) (2023) (holding forth that equitable tolling is automatically recognized during "the pendency of any arbitral proceeding pertaining to a dispute that is the subject of the action").

Regardless of whether the source of authority is statues or the common law, this Court has a duty to the FSU Student Government Association to uphold the principles of equity, justice, and fair play. And whether or not Appellee strategically tried to railroad Appellant in a round of good-old-fashioned political trickery is beside the point at this juncture. A robust justice system must take efforts to prevent the unfair and inequitable outcomes which all too often result when squabbles in student government more closely resembles a blood sport than a cooperative environment which is supportive of doing good work that benefits the entire FSU student body.

For the reasons as outlined above, though the Court need not recognize and extend the common law and statutory conceptions of equitable tolling to any specific statute of limitation in any of the FSU Student Government Association's governing documents, we hereby extend their applicability to all such deadlines for the consideration of future SGA Student Supreme Courts.