FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION

Consolidated No.'s:

SPR-2022-15	"SoE #1"	6-0
SPR-2022-16	"SoE #2"	4-2

SPENCER GREENWOOD, as Supervisor of Elections,
Petitioner v. RAWAN ABHARI, Respondent.

[March 6, 2022]

Argued 1 March 2022 and Decided on 1 March 2022. Spencer Greenwood, on behalf of the Office of the Supervisor of Elections, Petitioner. Jack Rowan for the Respondent. Opinions delivered electronically on 7 March 2022.

*****At the time of the hearing, there was no duly appointed Student Attorney General, and thus Supervisor Greenwood represented his office himself. Supervisor Greenwood thereby recused.*

Commissioners in attendance included Nicholas Concilla, Vice Chair (presiding, did not vote); Corey Adamyk, Kelvin Ready, Mackie Taranto, Khamisi Thorpe, Carter Pope and Hank Thompson.

At the time of the hearing and decision, Commissioner Khamisi Thorpe was a voting member of the Elections Commission. Between that time and the publishing of this opinion, Mr. Thorpe has been confirmed as the Student Attorney General, and as such has stepped down from his position. Mr. Thorpe does not join in these opinions in any capacity except for his vote at the time of deliberation.

SUMMARY OF ALLEGATIONS

This action was brought before this Commission in a two-part complaint filed by the Supervisor of Election, Spencer Greenwood, ("Petitioner"), against Rawan Abhari ("Respondent"), alleging a violation of Student Body Statutes ("SBS") § 711.6(c)(1) and § 711.6(c)(5) for filing, as evidence, a video allegedly taken secretly in an effort to place another in violation of the Student Body Election code.

JURISDICTION

The Elections Commission has the power to investigate and make findings of fact regarding alleged violations of the Elections Code pursuant to SBS § 703.2(F) and § 703.2(G). Chapter 700 of the SBS states, "Once the date of an election has been determined, according to 705.4 and 706.5, the election code used for that election cannot be changed. The Election Code will be enforced in a time period beginning three (3) weeks prior to an election and ending upon the certification of that election. This does not preclude the reporting of violations later enumerated in Chapter 711."

RIGHT TO APPEAL

According to SBS § 703.2(I), "Any decision made by the Elections Commission may be appealed by a party to the hearing to the Student Supreme Court no later than thirty-six (36) hours after said decision and all accompanying opinions have posted to the SGA website pursuant to Chapter § 703.2(F)(1) of the Student Body Statutes. No appeals of decisions made by the Elections Commission shall be accepted after this thirty-six (36) hour period."

OPINION

COMMISSIONER READY, with whom ADAMYK, THORPE, and POPE, CC., join. COMMISSIONERS THOMPSON and TARANTO join with regard to SPR-2022-16, however, THOMPSON, C., filed a dissent regarding SPR-2022-17, with whom TARANTO, C., joins.

I

We begin our analysis with Chapter 711.6(C)(6)(1). That statute states that the violation results from, "Bringing false or malicious charges against another candidate or political party." SBS 711.6. We focus only as to malice under the statute as that is what the complaint plead.

As it currently stands, no definition of malice is defined in the Elections Code. We immediately therefore have an issue as to which level of malice applies. While the statute does not define the term malicious, in Florida there are two definitions of malice.

One is "legal malice", the other is "actual malice." *Tomlinson v. State*, 322 So. 3d 212, 214 (Fla. 3d DCA 2021) (quoting *Reed v. State*, 837 So. 2d 366, 368 (Fla. 2002)). Legal malice means "wrongfully, intentionally, without legal justification or excuse," and actual malice means "ill will, hatred, spite, an evil intent." Id.

We must therefore decide which definition should be applied to Chapter 711.6, Student Body Statutes.

Instructive to this commission is the Florida Fourth District Court of Appeals analysis of the use of malicious in *Alonso v. State*. There the Court had to determine whether actual malice or legal malice was the standard in a case on extortion. The pertinent factor in this case was the Fourth District's observation that an "extortionist need not hate his victim." *Alonso v. State*, 447 So. 2d 1029, 1030 (Fla. 4th DCA 1984). The same can be said for Chapter 711.6, a person need not hate, bear ill will towards, or have evil intent to file a charge.

Further, the distinction to this Commission is also based in the very text of the elections code statute. The statute states again, in relevant part, that, “Bringing false or malicious charges…” constitutes a violation. The plain meaning of false we think is that something is “Erroneous, wrong.” "false, adj., adv., and n." Oxford English Dictionary Online. Oxford University Press, December 2021. T

Under this definition, someone could make a charge that is erroneous or wrong but have sincerely believed that the charge was true and still violate the statute as to falsity. However, something more is needed for the malicious to be given any affect beyond just strict liability, which the word false already provides. For without this distinction, one could be found to have violated the statute in two different ways; a false charge and malicious charge.

We therefore think it correct, as it with extortion, that filing a charge wrongfully, intentionally, or without legal justification or excuse is enough to find a filing malicious. That at least requires a level of intent to be proven. We think this necessary because, to us, there is a difference between a charge being leveled under a mistaken belief that turns out to be false, which would violate the statute as to falsity but not malice, and an intentional filing of a false charge, which would result in a double violation of the statute.

It is therefore left for the Commission to decide if plaintiff's acts show legal malice. However, we do not reach the application of this standard in this case as we have articulated a new standard. The need for fair notice of what the rules entail requires us to not apply this new rule against this Respondent.

We therefore hold that Chapter 711.6(c)(1), Student Body Statutes, is satisfied under the legal malice standard, however, due to fair notice concerns, we do not hold this respondent as having violated Chapter 711.6(c)(1).

II

Turning our attention to Chapter 711.6(c)(5), which states a violation will result from, “Performing an activity

that would place another party in violation," we find a violation for two reasons.

First, the video submitted by Petitioner was filed as a part of violation filed by the Respondent against a third party. The video shows no discernable image but the audio it captured was filed as evidence against the third party allegedly showing that the third party offered ice cream in exchange for votes. Critical here to us is the audio portion of the video quoted by Respondent as the violating statement does not come until after some unidentified individuals engaged with the third party.

The audio included with the video submitted by Respondent is the evidence we find shows clear and convincing Chapter 711.6(c)(5) violation. The audio quoted in the complaint only results from these unidentified individuals prompting a conversation with the third party. This is the activity that was performed that we find was an attempt at placing another party in violation.

We note that to us the dividing line in this case is where there is an active violation occurring, a video and audio showing the active violation taking place would not violate Chapter 711.6(c)(5).

For example, if Party X was placing A-Frames in an area where they are not zoned to be placed, a passerby noticing this would not violate Chapter 711.6(c)(5) by videoing the placement of those A-Frames. However, if Party X was out placing A-Frame signs and a passerby noticed that activity and proceeded to go over and help place signs in designated areas but then proceeded to place signs in areas not designated for A-Frames there would be a violation. Why?

The difference here is that, in the first example, the passerby took no action to interfere or interact with what they were observing. They were simply documenting an observed activity in active occurrence. However, in the second example, the passerby engages with and interferes with the placement of the signs in such a way that placed the other party in violation.

To bird lovers the difference is obvious; One can either photograph a bird naturally going about its day, or one can place bird seed on the back porch hoping to alter the bird's behavior to get a photograph.

Having established the critical difference between what activity will result in a Chapter 711.6(c)(5) violation, we note that the content of the audio itself does not to us reflect a violation. That is, what the third party said did not amount to a violation itself.

However, as the Respondent submitted the video/audio as evidence of the third party's violation, for the purposes of Chapter 711.6(c)(5), we therefore find that Respondent conceded that they consider the content of the audio to be a violation whether it truly was or not.

These two factors together show, we think, that the conversation reflected in the submitted video and audio was an activity performed to place another party in violation.

However, the last issue for us is that the Respondent is not readily identified as being one of the voices on the video. However, this Commission asked at the hearing if Respondent knew who created the video but was not given that information. Therefore, we are left only with the clear and convincing evidence that the origin of this video was the Respondent. This Commission had before it a signed complaint with the video and corresponding audio included as evidence. For us to say that more is needed would result in Chapter 711.6(c)(5) being useless. For example, at an event with hundreds of individuals, running for half a day, a conversation such as the one in this case secretly recorded could be passed off to another for submission and the defense, we anticipate would be that the submitting party was not the one who engaged in the activity shown. The actual party shielded by the submitting party, and practically unidentifiable by anyone at the event due to the sheer number of attendees, would also likewise be unidentified and escape with impunity. We do not think this can stand without effectively extinguishing Chapter 711.6(c)(5).

We therefore find that the Respondent is the only clear origin of this video and audio, and thus as it shows an activity performed to place another party in violation, the Respondent violated Chapter 711.6(c)(5).

In accordance with this Commission's holding in SPR-2022-17 (a/k/a "Connexion"), this Commission has found that the entirety of "TITLE VII, The Student Body Election Code" is unconstitutional. As such, any finding of a violation would be contradictory. As such, we would have no authority to find or enforce any violations. If, however, on appeal, the Student Supreme Court finds that Commissioner Ready's holding in SPR-2022-17, or any other holding by a Commission, Court, or other body that supersedes our holding, this Commission finds the following:

This Commission enters judgment 4-2 on behalf of the Petitioner in SPR-2022-16, under SBS § 711.6(C)(5)), and 6-0 on behalf of the Respondent in SPR-2022-17, under SBS § 711.6(C)(1). Accordingly, Ms. Abhari committed one (1) instance of a Schedule 2 violation. This constitutes Ms. Abhari's first violation. The penalty under SBS § 711.10 is 3 points and this Commission will allow Ms. Abhari to select either a $40.00 fine or 7 approved work hours. According to SBS § 711.7(B), the fine must be paid within two (2) business days, that is, by the end of the business day on Thursday, 10 March 2022. In the case of an affirmed appeal, the same penalty would be due within two (2) business days of that holding.

COMMISSIONER THOMPSON, with whom TARANTO, C., joins, dissenting regarding SPR-2022-16.

In his complaint, Petitioner alleges that the Respondent violated SBS § 711.6(c)(5), which states: "performing an activity that would place another party in violation" is a Schedule 2 violation of the FSU Elections Codes. Our issue with this is that Petitioner has shown no evidence that the Respondent is the one who engaged in this activity. Supervisor Greenwood appears to have filed the charge against the Respondent because the Respondent used the recording as evidence of a violation in a previous complaint filed by Respondent. This lack of evidence not

only fails to meet the clear and convincing evidence standard that we as a court are bound to follow under SBS § 711.4(F); it also fails to meet any standard of evidence commonly used to convict an accused party.

Petitioner seems to argue that because the Respondent is the one who filed the complaint in which the recording was used, and because Respondent knows the real identity of the recording party but refuses to divulge their identity, Respondent assumes all responsibility and ownership for the recorder's actions. Petitioner failed to produce any statute or case law or evidence in general that allows or promotes this shifting of responsibility from one party to another and thus we remain unconvinced. We agree with Petitioner and the majority that the action of secretly campaigning a political candidate is a violation of SBS § 711.6(c)(5), but without clear and convincing evidence that respondent engaged in the activity, we do not see how we can hold the respondent liable for the violation. We respectfully dissent.