FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION

No: SPR-2022-17 "Connexion" 6-0

Megan Bettley on behalf of SURGE FSU, a campus political party, Petitioner v. FORWARD FSU, a campus political party, Respondent.

[March 6, 2022]

Argued 1 March 2022 and Decided on 1 March 2022. Gabrielle Little and Ashley Ferraro for the Petitioner. Jason Puwalski for the Respondent. Opinions delivered electronically on 7 March 2022.

Supervisor of Elections and Chair Spencer Greenwood was in attendance but did not participate (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 one complaint filed by Surge FSU ("Petitioner"), a campus political party, against Forward ("Respondent"), a campus political party, alleging a violation of Student Body Statutes ("SBS") § 711.6(d) for filing a final expense statement that either did not reflect the true price paid for an off-campus billboard or, in the alternative, reflected a discount of the fair market value of a billboard which was not reported as a gift under § 710.2(A).

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, POPE, TARANTO, THOMPSON, and THORPE, CC., join.

I

As to the allegation of a violation of Chapter 711.6(d) for filing a false expense statement, the evidence by Petitioner did not arise to the level of clear and convincing evidence that the amount paid for the billboard was false. There is a strong possibility that the amount could have been a discount. Thus reporting the true price paid, whether it was a discounted price for a billboard, would not be a falsified or fraudulent expense statement.

II

This leaves the Commission with the alternative theory that the billboard price was discounted and, therefore, under Chapter 710, the expense statement would have needed to reflect the difference between the amount paid and the fair market value.

The Commission begins and ends its analysis of this alternative theory with the First Amendment to the Constitution of the United States. As explained below, this Commission finds that Chapter a violation of Chapter 711.6(d) cannot be sustained under Chapter 710.

This Commission turns first to caselaw from within our Student Judiciary. In *Ney v. Unite Party*[1] the Respondent's First Amendment rights were found to be unconstitutionally restricted under the Title VII (The Student Body Election Code). Our Student Supreme Court stated years ago that:

> There are limitations upon the campaigning, which are permissible, that ensure that a disruption is not created for fellow students.

Ney v. Unite Party. This statement is in line with the holding of the seminal case on this issue within the Eleventh Circuit, *Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, which held that, "The University should be entitled

[1] https://sga.fsu.edu/Reporter/Ney-v-Unite-Party.pdf

to place reasonable restrictions on this learning experience. 867 F.2d 1344, 1347 (11th Cir. 1989).

A.

First, there is the threshold issue of whether the Florida State University Student Government Association is a state actor.

As the Student Supreme Court found in *Ney v. Unite Party,* "student government associations are generally considered state actors since they act under the color of state law in their adoption of rules and regulations regarding SGA elections." *Ney v. Unite Party.*

In Florida, student government associations are creatures of state statute. *See* § 1004.26 Fla. Stat. (2021). Moreover, they are a part of the university. *Id.* Therefore, a student government association in Florida is "a state actor subject to the same constitutional restrictions as the University itself." *See Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, 867 F.2d 1344, 1345 (11th Cir. 1989).

B.

Having established that the Florida State University Student Government Association is a state actor, we turn to the application of the First Amendment of the United States Constitution in this case.

We acknowledge that there are special considerations that must be considered in this case due to the nature and context of the environment in which it exists. We must consider first that student government associations exist to support the "educational mission of the University." *Id.* This consideration of the purpose of having a student government association is of the upmost importance as it serves as the justification for "a University's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education." *Widmar v. Vincent*, 454 U.S. 263, 277 (1981). *Alabama Student Party* articulates no different a standard, adhering to the standard of "reasonable restrictions," as well. 867 F.2d at 1347.

However, the facts of this case are distinguishable from *Alabama Student Party*. For starters, the regulations at issue in *Alabama Student Party*, dealt with on-campus restrictions. The facts of this case make it clear that we are dealing with the regulation of off campus activities. The facts are also distinguishable here from the above-mentioned case in that it is 2022, not 1989. The advent of fundraising apps, and money exchange/payment services like PayPal, Cashapp, or Venmo necessitate a different standard we think than the reasonableness standard articulated by the majority in *Alabama Student Party*. We turn to the point made by Judge Tjoflat in his lone dissent in *Alabama Student Party* for the standard applicable to such off-campus activities.

C.

Judge Tjoflat, ahead of his time we would say, recognized the issue of off campus regulation by a Student Government during its elections.

> First, I would note that the district court focused solely on the regulations' effect on the University's campus, as if it were the only property subject to the restrictions. The SGA regulations, however, are not confined to expressive activity on campus: they govern all SGA campaign activity, whether on or off campus. Thus, campaign literature cannot be distributed on the streets and sidewalks of Tuscaloosa, nor in its parks—areas that are certainly public fora—until three days before the election. Because the regulations control expressive activity in these public fora, they are subject to the constitutional standard applicable to such fora: the "compelling state interest" test. A university's interest in furthering its educational mission, if reasonable in scope, may be a "compelling state interest." See *Widmar v. Vincent*, 454 U.S. 263, 267 n. 5, 277, 102 S.Ct. 269, 273 n. 5, 278, 70 L.Ed.2d 440 (1981). The sweeping range of the election restrictions, however, prevents any conclusion that the SGA regulations are "reasonable in scope."

Alabama Student Party, 867 F.2d at 1352 (Tjoflat, J., dissenting).

We agree that the compelling state interest prong of the strict scrutiny test can be satisfied by the compelling interest to further Florida State's educational mission. However, we received no evidence on, nor has any official university policy, that we are aware of, provided an argument outlining such a compelling interest. In an off campus setting, where we enter the public forum, "the government must justify its regulatory action as either reasonable or necessary to further a compelling interest." *Id*. at 1350. No such justification was made to us, nor provided for in a reasonably easy manner for this Commission to take judicial notice of.

We also agree that the restrictions imposed by the Student Government Association at Florida State University are so sweeping as to be impossible to find reasonable.

Therefore, we hold that any enforcement of TITLE VII, The Student Body Election Code, in so far as it regulates off-campus activities, such as, but not limited to, social media or private party transactions, or activities held in public or limited public forums, is unconstitutional, as no compelling state interest was shown. We also find that TITLE VII, The Student Body Election Code, is so sweeping that it is impossible to find it reasonable, and, therefore, strike TITLE VII, The Student Body Election Code, as unconstitutional.

We note that this remedy may seem drastic, however, in light of the Senate's authority to craft a new code consistent with the United States Constitution, we find the remedy perfectly reasonable.