

**FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION**

No: SPR-2023- 2

OMER TURKOMER, Petitioner v.
SURGE FSU, Respondent.

[March 10, 2023]

*Argued 10 March 2023 and Decided on 10 March 2023.
Petitioner for Forward FSU. Rawan Abhari for the
Respondent. Opinions delivered electronically on 17 March
2023.*

*Supervisor of Elections and Chair Spencer Greenwood was
in attendance. Commissioners in attendance included
Mackie Taranto, Sam Brodigan, Kole Kolasa, Taylor
Kendall, and Katie Kennamer.*

SUMMARY OF ALLEGATIONS

This action was brought before this commission by Omer Turkomer on behalf of Forward FSU, an on-campus political party (“Petitioners”). Petitioner Turkomer filed this complaint with the Supervisor of Elections (“Supervisor”)—who forwarded them to this Commission—alleging that Surge FSU, an on-campus political party (“Respondent”), is responsible for the actions of its members who violated Student Body Statute (“SBS”) §§ 711.6(C)(1) and (2) for bringing false or malicious charges against another candidate or political party and for issuing a social media posting that is publicly libelous against a candidate for an elected office of the student body.

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.”

ISSUE

I: Did Surge FSU bring false or malicious charges against another candidate or political party in violation of SBS §§711.6(C)(1)?

II. Did Surge FSU issue a social media posting that is publicly libelous against a candidate for an elected office of the student body in violation of SBS §§711.6(C)(2)?

HOLDING

I: No. Surge FSU's statements are not "charges" under SBS §§711.6(C)(1).

II. No. Surge FSU's statements are not "publicly libelous against a candidate for an elected office of the student body" under SBS §§711.6(C)(2).

FACTUAL BACKGROUND

The relevant facts are as follows. On or about February 28th, 2023, Petitioner alleges that the Surge FSU party made a post on their Instagram account bringing "false or malicious charges" against the Forward FSU party and its candidates, and that the post was "publicly libelous" against Forward FSU party candidates. While the Instagram post contained multiple images with different messages and graphics, Petitioner takes issue with only the following messages: "The majority party failed you"; "These senators are empowered by their party... even while advocating against vulnerable populations"; "We are done being gaslit by the majority party"; "In the midst of political upheaval, they have yet to speak up and fight for what is right"; and "They are silent. They are complacent. They are also complicit." Petitioner claims that the intention behind these statements was to bring false and malicious charges against Forward FSU and its members and is also publicly libelous against Forward FSU candidates, violating SBS §§711.6(C)(1) and 711.6(C)(2) both of which are designated as a Schedule 2 Violation. §711.6(C)(1) reads: "Bringing false or malicious charges against another candidate or political party." SBS §711.6(C)(2) reads, in relevant part: "The issuing or utilization of

any...social media posting... that is publicly libelous against a candidate for an elected office of the student body.” Petitioner asserts that the Instagram post clearly refers to Forward FSU party and its candidates and satisfies the clear and convincing burden of proof for finding a violation.

OPINION

COMMISSIONER BRODIGAN, delivers the opinion on behalf of the Commission, with whom KENNAMER, KENDALL, KOLASA, and TARANTO, VC., join.

I.

This Commission does not consider the challenged statements in Surge FSU’s Instagram post to be “charges” within the meaning of SBS §711.6(C)(1) and thus Respondent has not violated that statute. In these situations, we must be careful not to trample on students’ First Amendment rights. Given the context of the messages, including when they were posted, who they were posted by, and the fact that Surge FSU sought prior permission for the posting from Supervisor of Elections Greenwood, it is clear and convincing that the messages in question refer to and levy certain accusations against Forward FSU and its candidates. We also agree with Petitioner that the term “malicious” within the statute refers to legal malice: “that filing a charge wrongfully, intentionally, or without legal justification or excuse is enough to find a filing malicious.” *Greenwood v. Abhari*.

However, we stop there. The statements in question are so vague that it is impossible to consider them “charges” under §§711.6(C)(1) and thus we do not need to consider whether they are “false” or “malicious.” Given that the statute deals with the vast and well-protected realm of Free Speech, we do not construe its language broadly in order to avoid unduly restricting that right. For a violation to be shown with “clear and convincing” evidence under the statute at hand, the “charges” would need to be more concrete and detailed. Classifying the vague statements that Petitioner challenges as false or malicious “charges” would give us grounds to restrict almost any statement criticizing another candidate or political party. That is beyond our

authority. Given the need for “clear and convincing” evidence and the implications of restricting Free Speech, we will not classify broad, vague accusations as “charges” within this statute.

In the alternative, even if we were to find the statements made in the Instagram post to be charges against the Forward FSU party, the charges would still need to be false or malicious. Regarding the falsity, the Commission finds that the evidence produced by Surge FSU to back up the statements in the post is, while extremely inflammatory, not false. Regarding maliciousness, the Commission finds that given the political climate on campus and the events of the recent past, that the comments were not malicious. This does not mean that the Commission endorses or encourages such inflammatory language with no actual evidence presented in a post like this. We urge parties in the future if they are making posts with broad claims, to back them up with evidence for the public to judge themselves. As Respondent argued, such evidence does not need to be endless. However, as the entire point of a University is to educate the students and encourage them to read and analyze information, and independently come to conclusions, it is strongly suggested by this Commission that the parties allow them to do so.

II.

For similar reasonings above, we hold that Surge FSU has not violated SBS §§711.6(C)(2) as the Instagram post was not “publicly libelous against a candidate for an elected office of the student body.” The evidence merely showed that there was a social media post, made by Surge FSU, and directed toward Forward FSU and its candidates. The challenged statements are simply too vague to be “publicly libelous” under the “clear and convincing” evidence standard, and in the alternative, they are not untrue enough to be considered libel.

CONCLUSION

This Commission enters judgment 0-5 in favor of the Respondent for Violation 2. Surge FSU is not in violation of the Elections Code §§711.6(C)(1) or (2) as Forward FSU

failed to meet its burden of proof for the violation it filed regarding a Surge FSU social media post.