

**FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION**

No: SPR-2023- 16, 18 and 21

OMER TURKOMER, Petitioner v.
SURGE FSU, Respondent.

[March 8, 2023]

*Argued 6 March 2023 and Decided on 7 March 2023.
Petitioner for Forward FSU. Rawan Abhari for the
Respondent. Opinions delivered electronically on 13 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 these complaints 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”) §§ 709.1(C) and 713.1(B) on three counts for not following the rules and regulations of the Oglesby Union Policy and the University Policy for Posting, Chalking, Advertising and Active Distribution of Materials on FSU Campuses, with these complaints focusing on the Bellamy Building. Petitioner also included on each of these three complaints, a violation of 713.1(B), which prohibits political parties and individuals from campaigning within the designated “no campaign zone” at each polling site as Bellamy has publicly accessible computers and as such is considered a voting terminal.

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: Does the Oglesby Union Policy apply to other buildings on campus?

III: Did Surge FSU members actively distribute literature within 30 feet of any entryway or exit way of a university facility?

IV. Can the Commission enforce 713.1(B)?

HOLDING

I: Yes. Under SBS § 709.1(C), the plain meaning of “in the Union and on FSU campuses” includes all FSU buildings and therefore applies to all buildings. The posting policy applies to all FSU Campuses as explained on the FSU Posting website as well as plainly stated in the name FSU-2.0131 University Policy for Posting, Chalking, Advertising, and Active Distribution of Materials on FSU Campuses.

II. No. It was clear to the Commission that Surge members were indeed actively distributing their campaign literature. However, there was too much uncertainty with both measuring the distance and defining what an “entryway” and “exit way” are in the statute.

III. No. It is too vague and outdated to the point of unenforceability.

FACTUAL BACKGROUND

The relevant facts are as follows. On or about Election Day, March 1st, 2023 at 9:14am, 10:06am, and 1:01pm, Forward FSU alleges that members of the Surge FSU party were seen closer than the required 30 feet campaigning outside the Bellamy Building handing out political literature. University policy on handing out political literature is clear, "Active distribution of literature outside a university facility, including athletic and recreational venues and fields, shall not occur within 30 feet of any entrance or exit way of the facility. Active distribution of literature that is consistent with the educational mission of the university may occur inside a university facility with approval from the director or manager of the facility." For Violation 16, Petitioners presented the Commission with three photos of a Surge member standing outside the lower set of stairs outside of the Bellamy Building, holding light blue small cards in his hand in the first photo. For Violation 18, Petitioners

provided the Commission with two photos taken in the bushes and behind a tree of a Surge member handing out the same cards outside of the walls and doors of the Bellamy Building. Finally, for Violation 21 Petitioners submitted two photos of a Surge member talking to students and holding the same light blue cards in the same area as the first.

Petitioner argued that the clarity of the photos allows for the Commission to see the Surge members, all wearing the Surge FSU shirts, holding the blue campaign cards in their hands and talking to students outside of the Bellamy Building. Petitioner also argued that the stairs are considered part of the entryway/exit way of the Bellamy Building, and therefore the Surge members being just below the outside steps of the building places them well within 30 feet. Respondent argued that the Oglesby Union Policy does not apply to Bellamy Building, so therefore the posting policy also should not. Respondent also argued that the entryway and exit way begin at the door, not including the stairs and walkway outside of the door and that her math calculations based on campus maps placed the Surge members farther than 30 feet from the door to the Bellamy Building.

OPINION

VICE CHAIR TARANTO, with whom COMMISSIONERS KENNAMER, KENDALL, and KOLASA join, including COMMISSIONER BRODIGAN joining in part on Violation 16, Violation 18 Parts, I and III, and Violation 21, but dissenting on Violation 18, Part II.

I.

SBS § 709.1(C) reads: “All material and activity in the Union and on FSU campuses shall be in accordance with rules and regulations of Oglesby Union Policy.” The plain and clear meaning of this statute extends the Oglesby Union Policy to FSU Campuses. The term FSU Campuses is specifically separate and distinct from the Union within the text, which means the inclusion of non-Union locations to be included in the areas regulated by Oglesby Union Policy. Therefore, the University Policy for Posting, Promotions, Advertising and Distribution of Materials on FSU Campuses applies to the Bellamy Building. It states in FSU-2.0131(4)(b): “Active distribution of literature outside a university facility,

including athletic and recreational venues and fields, shall not occur within 30 feet of any entrance or exit way of the facility. Active distribution of literature that is consistent with the educational mission of the university may occur inside a university facility with approval from the director or manager of the facility.”

II.

Based on the evidence presented, it was clear to the Commission that Surge members were indeed actively distributing their campaign literature. In photo 1 of those submitted in Violation 16, photo 1 of Violation 18, and photo 1 of Violation 21, the light blue campaign cards of Surge FSU can be seen in the hands of the Surge members. In photos 1 and 2 of Violation 16, both photos of Violation 18, and both photos of Violation 21, Surge members can be seen talking to students who are in the area. However, there was too much uncertainty in determining how to define “entryway” and “exit way” are in the statute to properly enforce it. Petitioner would have us believe the University’s specific use of the word “entry way and exit way would include the stairs leading out of the building and extending out to the courtyard. Respondents would have us believe it strictly means the door. This Commission declines to interpret the meaning of a separate policy made by the University. To compound this issue, the actual distance of where the Surge member was standing was unclear. Respondent attempted to explain the distance using square footage listed in the university maps of the building, but the Commission believed that the explanations of the calculations were too uncertain to decide either way.

Based on the evidence presented, Petitioner met the clear and convincing burden for the Respondent’s active distribution of campaign materials, but failed to meet the burden for within 30 feet of Bellamy’s entry or exit way.

III.

Regarding SBS § 713.1(B), the Commission declines to enforce this provision. It reads, “Political parties and individuals shall be prohibited from campaigning within the designated “no campaign zone” at each polling site.” Petitioner included the reasoning for

this violation being “ as Bellamy has publicly accessible computers and as such is considered a voting terminal.” In the SBS, there are two definitions for “Voting Terminal” in §§ 713.1(A) and (H). 713.1(A) reads “Voting terminal” shall be any computer terminal on the FSU Campus Intranet - ICP network, where the Supervisor of Elections can ensure and enforce voter privacy and identify verification, excluding any Fraternity or Sorority houses or private establishments. There shall be a minimum of one (1) said poll designated at the discretion of the Supervisor of Elections. In the case that there are more candidates than there are seats for election to the Campus Recreation Board or Oglesby Union Board the total number of seats up for election shall be considered as contested.” 713.1(H) reads “Voting terminal” shall be defined as any immediate area on campus in which there are publicly use of computers.” The SBS makes no indication which definition is correct. Petitioner would have us use (H). We decline to pick which definition applies.

Additionally, SBS § 713.1(c), “No Campaign Zone” shall be defined as the area twenty-five (25) feet away from any voting terminal, or as otherwise reasonably specified by the Supervisor of Elections. This shall include University owned computer lab or library and the area within twenty-five (25) feet of its doors, as well as any dedicated computer laboratory used for elections. The Supervisor of Elections shall mark with RED duct tape or with chalk the words, “No Campaign Zone” in front of voting terminals.” According to the Supervisor of Elections, this practice is no longer standard and has not been done by Supervisors of Elections in years, therefore the Commission considers violations based on it unenforceable.

CONCLUSION

This Commission enters judgment 0-5 in favor of the Respondent for Violations 16 and 21 and 1-4 for Violation 18, dismissing all charges. Surge FSU is not in violation of the Elections Code, as Forward FSU failed to meet its burden of proof for the three counts of violations it filed regarding the distribution of literature outside of Bellamy. We additionally request that the legislature attempt to

clarify the language of the Code in the next iteration, as elections continue to become more competitive.

DISSENT

COMMISSIONER BRODIGAN writes,

I believe there is clear and convincing evidence in alleged violation 18 that Respondent violated FSU-2.0131(4)(b) and thus violated SBS §§709.1(C). While the majority correctly concludes that the photos presented in alleged violation 18 show Respondent actively distributing literature, they stop short of holding that such prohibited activity was occurring within 30 feet of an “entrance” or “exit way” of Bellamy Building, a university facility. But no matter how “entrance” or “exit way” are defined under FSU-2.0131(4)(b), photo two clearly shows a member of Surge FSU actively distributing literature within 30 feet of Bellamy, with the doorway directly in the background. In a case like this, the clear and convincing evidence standard does not require something like a tape measure for proof, just common sense. I dissent in part.