

FLORIDA STATE UNIVERSITY STUDENT ELECTIONS COMMISSION

No: SPR-2023- 23B

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 argument was brought before this Commission by Petitioner Rawan Abhari on behalf of Surge FSU, an on-campus political party (“Petitioners”). Petitioner Abhari filed two complaints [Violation 23A and 24] after the 48 hour deadline with the Supervisor of Elections (“Supervisor”)—who forwarded them to this Commission—alleging that Forward FSU, an on-campus political party (“Respondent”), is responsible for violating Student Body Statute (“SBS”) § 711.6(C)(1) for bringing false or malicious charges against another candidate or political party,” can bear the interpretation to be a student's best remedy to frivolous suits and charges and SBS § 711.6(C)(6) for offering goods, in this case pizza, in exchange for votes. In her complaint, Petitioner argued that the Commission should hear violation 23A filed after the deadline on an equitable tolling basis. Rather than hear any violations themselves, the Commission heard only the arguments for and against our hearing of the two complaints that were filed after the deadline by Surge FSU against Forward FSU, known as violation 23B.

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: Should the Elections Commission hear violations filed after the 48-hour deadline

II: Should the Commission make an exception for Violation 23A under the doctrine of equitable tolling?

HOLDING

I: No. The language of the SBS is overly broad and does not give clear enough guidance on how the Senate intended for the Elections Code to be enforced all year, so this Commission is unwilling to legislate by interpreting the year round enforcement to mean hearing cases filed late and applying any penalties to the next election cycle.

II. No. This Commission is not bound by the doctrine of equitable tolling and cannot legislate the extension of a deadline into the SBS.

FACTUAL BACKGROUND

The relevant facts are as follows. On or about March 3rd at 8:33pm, Supervisor Greenwood submitted to the Surge party an additional 10, to the already filed 12, violations from the Forward party. The 48-hour deadline for alleged violations is described in SBS § 711.4(E), "All alleged violations and appeals must be presented to the Supervisor of Elections electronically by the end of two (2) business days from their discovery. The 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 of that election." This deadline would be March 3rd, 2023 at 7pm, 48 business hours after the polls closed on March 1st, 2023 at 7pm.

Counsel for the Petitioner was in another state and time zone at the time that she received the violations from Supervisor Greenwood. Though it was after the 48-hour deadline, Petitioner looked over the 10 additional alleged violations that Respondent filed against Surge FSU, and believed that such a large number of violations that she felt lacked thorough statutory and legal theory in many of the violations, Surge Counsel sought relief naming these actions frivolous. To Surge Counsel, it was clear that Forward FSU sought to file enough violations that, if all successful, would result in disqualification of

Surge candidates (*see* 2022-AP-02, *Abhari v. Forward* that each violation occurrence will have an individual penalty).

Petitioner then presented the following argument: “Lastly, the new stipulations of allowing violations to be filed all year round passed in the 74th Student Senate... However, [SBS § 711.4(E) is interpreted]...to mean that any occurrences after this 48-hour mark would assign any found penalties to the next election cycle, a violation if found after the 48 hour mark such as this one can be filed. However, given that this violation was only found and filed upon a mere hour and a half after the 48 hour timeline given the time the SOE compiled the additional 10 violations and simply hit send, not the time the violations were actually filed (within the 48 hour time frame), we argue that since Surge has pursued our rights diligently and that the extraordinary circumstance of a plethora of violations being filed for the SOE to compile before sending to us in time for filing, the court grant equitable tolling and allow any penalties found in this violation, if any, to apply to the [Fall] 2023 election cycle (*see Menominee Indian Tribe of Wis. v. United States* 577 U.S. 250, 255 (2016) for the two requirements).”

SBS § 702.4(E)(2), in the event that the Supervisor of Elections does not dismiss a complaint pursuant to 702.4(E)(1), the complaint shall be forwarded to the Elections Commission for a hearing. The Supervisor of Elections will both notify the petitioner and the respondent(s) of this decision and will forward the full and unedited complaint to the Elections Commission within twenty- four (24) hours of initial receipt of the complaint.”

All 10 of the violations filed by Forward FSU against Surge FSU were made on Friday, March 3rd, 2023 by 3pm, but Surge FSU did not receive notifications of the violations until around 8:30pm, one and a half hours after the 7pm deadline for violation submissions had passed. Petitioner argues that this extenuating circumstance of not receiving approximately half of the violations until after Surge FSU was not allowed to file any violations, including a violation for frivolous suits and charges, which could not have been brought but for Surge FSU’s knowledge that Forward FSU filed twenty-two (22) total violations and Surge FSU’s ability to look at the contents of such violations.

To be clear, Petitioner made two separate arguments: One, that this Commission should hear the late violations and apply any penalties to the next election cycle under the new year-round enforcement amendment to the election code and Two, that the Commission should allow grace under the doctrine of equitable tolling for the late filing of Violation 23A due to the extenuating circumstances of the Supervisor not notifying them of the additional 10 violations until after their deadline to submit violations.

OPINION

VICE CHAIR TARANTO, with whom COMMISSIONERS KENNAMER, KENDALL, BRODIGAN, and KOLASA join,

I.

The 74th Student Senate passed Bill 17 on March 9th, 2022 to amend the SBS Chapter 700(B) to read “The Election Code shall be enforced year round.” There are no further explanations, instructions, clarifications, or indications as to what the Senate intended the year round enforcement to entail. Petitioner argues that this means the Elections Commission can hear violations filed after the 48-hour deadline and just apply any penalties incurred to the next elections cycle. Respondent argues that doing so would punish potentially innocent future parties for the actions of those in the past.

This Commission is part of the judicial branch. Our task is to interpret the law in the fairest way possible in accordance with the principles of justice. It is not our job to fabricate a new set of rules for ourselves based on bare bones instructions in the SBS. This Commission declines at this time to hear violations after the 48-hour deadline. In their amendment to 700(B), which is a very poorly written and executed amendment, the Senate failed to define what parameters the Commission must use to hear after 48-hours violations. If a violation occurs in the last week of the semester, does the Commission hear that violation with the same time constraints as it must hear violations filed in the normal time frame? Would it hear the violations in the next election cycle? What would such mid-year penalties look like? As the SBS currently stands,

here is simply not enough guidance for the Commission to hear after hours violations.

II.

This Commission is very sympathetic to the plight of Surge FSU considering the late notice and lack of ability to submit a frivolous charge violation until after the deadline due to circumstances outside of their control. The doctrine of equitable tolling is a court's discretion in extending a deadline. In *Menominee Indian Tribe of Wis. v. U.S.*, lists the two factors as "the circumstances that caused a litigant's delay must have been beyond its control," and "cannot be a product of that litigant's own misunderstanding of the law or tactical mistakes in litigation." The facts of this case lean towards the granting of equitable tolling and allowing Surge's 23A violation to be heard. The principles of justice and fairness indicate that the deadline be extended, given these unfortunate circumstances. While this Commission would like to grant the extension, we cannot because we have no statutory power to do so.

It is the failure of the Senate in not giving clear enforcement timelines, methods, consequences, and exceptions to when and how the Commission can enforce the elections code. If we granted an extension for this specific circumstance, it would begin the slippery slope and uncertain line drawing process, turning this judiciary into a legislature. The Senate did not mention any exceptions to the 48-hour deadline, nor did it give this Commission any power to manipulate the deadlines for situations such as this. To deliver equity and fairness, we must still be within the bounds of the law we are given.

CONCLUSION

This Commission declines to hear the violations past the 48-hour deadline, but we do strongly encourage and ask the Senate to revise its elections code, with the assistance of those trained in the law, to include such extenuating circumstances, define how they are to be handled, and to clarify its intention in Bill 17, extending the enforcement of the elections code to all year. Without clear sets of rules and boundaries, the judicial branch cannot properly function in this circumstance without legislating. The

Commission is hopeful that once the Senate clarifies the code, that future Petitioners will not suffer this same injustice.