

**FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION**

No: SPR-2023- 9

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, on-campus political party (“Respondent”), is responsible for the actions of its members who violated Student Body Statute outlined in (“SBS”) §§ 701.1(A)(1) which reads, “Solicitation of support shall be defined as publishing the name or likeness of any candidate or political party to expressly advocate the election or of defeat of a candidate; that cannot be interpreted as something other than an appeal to vote, through publishing, for or against a specific candidate” and §§ 711.6 (B) which prohibits the use of chalk for campaigning as this action constitutes a schedule 1 violation. It is further stated that under §§ 711.6(B)(8) a schedule 1 violation of this code shall be assigned when using chalk in any form for campaigning defined in Section 711.6(B)(8)

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: Has the burden of proof been met clearly and convincingly that a member of the Surge party used this chalk?

HOLDING

I. No. Although, the Commission found that it was more likely than not that a Surge member used the chalk, the Petitioner did not meet the burden of proof that would establish guilt clearly and convincingly.

FACTUAL BACKGROUND

The relevant facts are as follows. On or about Tuesday, February 28th, 2023 at 3:57 PM, Forward FSU candidate Anthony Benn was near the integration statue where he discovered chalk on the ground that was soliciting support for Surge. University policy prohibits the use of chalk , Furthermore, under 701.1(A)(1), “Solicitation of support shall be defined as publishing the name or likeness of any candidate or political party to expressly advocate the election or of defeat of a candidate; that cannot be interpreted as something other than an appeal to vote, through publishing, for or against a specific candidate.” For Violation 9, Petitioners presented the Commission with three photos of the chalk that said “Vote for Surge.”

Petitioner argued that the clarity of the photos allows for the Commission to see the Surge members were more likely than not to have used this chalk and wrote near the integration statue. Petitioner also argued that why would anyone other than an affiliated party of Surge go out of their way to write in chalk to vote for Surge. Respondent argued that the evidence is not clear and convincing. Respondent also argued that the burden of proof cannot be met.

OPINION

VICE CHAIR TARANTO, with whom COMMISSIONERS, KENDALL, and KOLASA join, including COMMISSIONER BRODIGAN joining and in which KENNAMER dissents.

I.

The relevant statutes of SBS § 701.1(A)(1) read: “Solicitation of support shall be defined as publishing the name or likeness of any candidate or political party to

expressly advocate the election or of defeat of a candidate; that cannot be interpreted as something other than an appeal to vote, through publishing, for or against a specific candidate.” Additionally, § 711.6(B)(8) states “Using chalk in any form for campaign” as defined in Section 701.1(A) is a violation of code.

Based on the evidence presented from the three photos and the argument that failed to find whether a Surge member was involved in the use of the chalk, it was unclear to the Commission that Surge members were indeed the ones who used the chalk. The photos presented only gives us context as to the location of where the chalk was written, and the words used. The photos do not provide proof that a member of Surge used the chalk nor do the photos provide evidence that a person was present at the scene.

There was too much uncertainty in determining who used this chalk. Petitioner would have us believe a nonmember of Surge would not go out of there way use chalk to campaign. Petitioner argued that the location in which chalk was used in front of the integration statue does meet the burden of proving that a member of Surge did this in solicitation of support. Respondents would have us believe it there is no way to prove that Surge member participated in this conduct of using chalk to campaign. This Commission declines to make assumptions about who wrote with the chalk.

Based on the evidence presented, Petitioner did not meet the clear and convincing burden that a member of Surge was an active participant in this.

CONCLUSION

This Commission enters judgment 1-4 in favor of the Respondent for Violation 9. Surge FSU is not in violation of the Elections Code, as Forward FSU failed to meet its burden of proof for the violation it filed regarding the chalking found near the integration statue.

DISSENT

COMMISSIONER KENNAMER writes,

To distinguish this act from posting flyers or actively handing out campaign literature, sidewalk chalk does not incur multiple points of transfer, which disseminates the accountability of a bad actor. I,

therefore, do not think this commission should require the same threshold of proof that it requires for literature. Chalk art by its nature is more time and labor-intensive. Its placement is more purposeful than the mere transfer or misplacement of a flyer and was strategically located in an area with high foot traffic. The art used the party's most current logo scheme and included the date of the vote.

All are indications that if it was not a member of the party, then it was someone directed by a member. It seems that the legislative intent supports holding parties more accountable for chalk than other materials since chalk is already categorically prohibited not just restricted. To require proof essentially equating to a photo of the actor committing the act undermines the most fundamental purposes of these codes: minimizing disruptions on campus and ensuring the safety of participating students. Allowing future "artists" to go unpenalized so long as they chalk at odd times of the day or late at night when the area is more deserted is inherently more dangerous. Similarly, encouraging private surveillance of the most popular areas takes students' focus away from their educational pursuits.

This Commission is already seeing evidence that is toeing the line of what is acceptable versus unacceptable behavior in terms of invasions of privacy and borderline harassment. In considering the constraints of the available resources to these parties in terms of discovery tools, following this standard seems unreasonable.