

IN THE STUDENT GOVERNMENT ASSOCIATION ELECTIONS COMMISSION
FLORIDA STATE UNIVERSITY
LEON COUNTY, FLORIDA

ALEXIS SHEPARD
SUPERVISOR OF ELECTIONS,

CASE NO.: FALL-2018-1

v.

THE UNITE PARTY

_____ /

Per Curiam
The Opinion of the Commission,

After reviewing the facts, hearing the testimony of both parties, and analyzing the statutes, the Elections Commission unanimously holds that The Unite Party violated SBS § 711.6(A) and The Unite Party violated SBS § 711.7(D), resulting in the assessment of one (1) Schedule 1 Violation, and one (1) Schedule 2 Violations outlined in SBS §§ 711.11 and 711.12 , for a total fine of \$275.00. Consistent with SBS 710.1(B), fines must be paid within two (2) business days of the appropriate body's decision. Failure to do so may result in disqualification.

SUMMARY OF ALLEGATIONS

Alexis Shepard, the Supervisor of Elections (Supervisor), brings allegations of 2 violations of the campaign rules and procedures as outlined in Chapter 700 of the Florida State University Body Statutes (SBS) against the Unite Party. Specifically, the Supervisor alleges one violation of SBS §§ 711.6(A) and 709.1(A). The latter statutory text states in relevant part: "All campaign materials must be approved by the Supervisor of Elections or the Deputy Supervisors twenty-four (24) hours prior to distribution or use." The Supervisor also alleges one violation of SBS §§ 711.7(D) and 705.4, the latter statutory text states that "Campaigning is prohibited prior to 12:00 a.m. on the Wednesday that is one week prior to the date of elections." After reviewing the facts, hearing the testimony of both parties, and analyzing the statutes, the Elections Commission holds that the Unite Party violated SBS § 711.6(A) one (1) time and SBS §

711.7(D) one (1) time, resulting in the assessment of one (1) Schedule 1 violation and one (1) Schedule 2 violation outlined in SBS §§ 711.11 and 711.12.

JURISDICTION

Jurisdiction of this case follows student body statutes 702.2(G) and 702.2(F-11). The Elections Commission has the power to investigate and make findings of fact regarding alleged violations of the Election Code. Chapter 700 of the SBS states "The Election Code, which is in force three (3) weeks prior to an election, shall be the election code used for that election, regardless of changes made in the interim."

OPINION

Facts of the Case

On September 23, 2018, the Unite Party attempted to submit campaign materials to the Supervisor for Elections for approval, but were unable to do so due to technical issues. The Unite Party submitted their campaign materials on September 25, 2018 and thereafter received an automatically generated "Submission was approved" confirmation message. The Unite Party proceeded to use and display the campaign materials that had been submitted on September 25, 2018, on a table during Market Wednesday on September 26, 2018.

First Violation - SBS §§ 709.1(A), 711.6(A)

The Unite Party defends its use of unapproved campaign materials by claiming that: (1) a "clerical error" led Unite Party to believe they had received approval from the Supervisor; (2) a "good faith" effort was made to get the materials approved. After hearing all the relevant evidence and testimony, this Commission finds neither defense to be persuasive.

The Commission considered Unite Party's first defense of "clerical error," which stems from a contention that the automatically generated confirmation e-mail response to uploading campaign materials was mistaken for an approval from the Supervisor. To begin, the Commission finds it substantially unlikely that an automatic response message - usually received by the original sender within a matter of seconds - could have reasonably been seen as an incredibly expeditious approval e-mail from the Supervisor. A reasonably prudent individual would investigate the matter before presuming that the Supervisor, or any human being, works at the speed of light. Furthermore, ignorance is an unreliable defense when faced with a violation of statute; moreover, ignorance is an even weaker defense when the defendant is a sizable

political party that has experience with such an essential political tool - which they have extensively used in the past when submitting campaign materials for approval. The Commission agreed by unanimous consent that the onus fell on Unite Party to properly and reasonably ascertain whether or not the campaign materials had actually been approved before employing their usage.

The Commission then turned to Unite Party's second defense of dealing in "good faith" with the Supervisor. The law of contracts, amongst other essential factors, requires an (a) offer and acceptance; and (b) mitigation of damages. The approval of campaign materials is analogous to the formation of a contract, wherein the submission of campaign materials is an "offer" to the Supervisor, and the Supervisor's approval of the submitted materials is an "acceptance." If an offer is made but there is no acceptance, the contract fails regardless of whether the offer was made with the best of faith. In the present case, the evidence shows that the Supervisor did not accept the offer of the Unite party. Furthermore, a party that is not without a scintilla of doubt pertaining to the validity of the contract is under the duty to mitigate damages. By way of example, a subcontractor who places a bid (offer) to a general contractor for a construction project may not commence said project before receiving approval (acceptance) from the general contractor. The subcontractor is liable for any and all damages if the subcontractor commences the project, incurs expenses, and seeks relief in a court of law against the general contractor for failing to accept the bid. The Commission concludes, based on the evidence presented at the hearing, that Unite Party did not deal in good faith and instead recklessly abandoned their duty to mitigate the possibility of incurring violation expenses as a result of using unapproved campaign materials.

Second Violation - §§ 705.4, 711.7(D)

The Unite Party defends against allegations that they campaigned outside of the statutorily permissible time (violating SBS § 705.4) by claiming that the Florida State University Supreme Court, in the case Ney v. Unite Party, found the entire Election's Code to be unconstitutional, thus this Commission has no authority under which it can levy fines since the statutes lack enforcement powers vis-a-vis their unconstitutionality. However, the Commission found Unite Party's argument of unconstitutionality to imply an absurd conclusion: campaigning may occur at any time and place during any and every part of the school year because the heretofore accepted statutory authority is now completely irrelevant. Accepting the Unite Party's argument would undoubtedly ensue the utmost chaos across Florida State University's campus and contradicts the essential pragmatism for which this predicament calls. Therefore, the Commission concludes, based on the evidence and testimonies presented at the hearing, that until the Senate

successfully passes an updated version of the Code, the current Election's Code remains a relevant and controlling authority when considering any and all political issues on campus.

HOLDING

The Commission finds Unite Party guilty of violating SBS §§ 709.1(A) and 705.4. *HELD* that Unite Party did not commit a reasonable clerical error nor dealt in good faith with the Supervisor and illegally campaigned without the statutorily permissible period of time. Unite is ordered to pay \$275.00. Consistent with SBS 710.1(B), fines must be paid within two (2) business days of the appropriate body's decision. Failure to do so may result in disqualification.

Richmond, Concurring

The Office of Elections contends that the candy the Unite Party distributed was a violation of 711.7(F) of the elections code. The Office of Elections also argues that the candy itself should be considered campaign materials under 701.1(E). I find that both arguments are unsound.

To amount to a violation of 711.7(F) goods or services must be offered in exchange for votes. Essentially a political party must be attempting to bribe students for their vote. The mere presence of candy at a tabling event does not amount to a bribe. A basket of candy on display, especially during a crowded event, is only a benign attraction. The idea that the student body would be so enticed by free food that they are willing to instantaneously give up their political power is absurd. Having candy out for any passerby to grab is not equal to the example of trading money for a student's vote. Accepting the Office of Elections contention would create a host of new issues unreasonably questioning every benign attraction each political party uses.

The Office of Elections also argues that the candy falls under the definition of campaign materials under 701.1(E) and would thus violate 709.1(J). Although the examples given (videos, posters, signs, t-shirts, leaflets, etc.) are not limits, they give insight into what type of materials the statute encompasses. Reading the statute, campaign materials clearly are materials that communicate or publicize a political party for an elected office and calls the action to vote. Store-bought candy does not communicate or publicize a political party or call the action to vote. If the Unite Party had used specially made and/or branded candy that displayed their political symbol,

then that could fall under the definition of 701.1(E). However, in the instant case the Unite Party used store-bought candies which does not constitute campaign materials.

Ravelo, Concurring

Unite at one point argued that their poster board met the definition of campaign material, but said it should not be considered a violation due to the Spring 2018 case Ney v. Unite Party (see: <http://sga.fsu.edu/Reporter/Ney-v-Unite-Party.pdf>). United cited that case in support of a constitutional challenge to the violation, arguing that the opinion cited multiple first amendment concerns. However, Unite conveniently neglected to mention that the case was later appealed to the Vice President of Student Affairs, Dr. Amy Hecht. In the opinion released by the Office of the Vice President, Dr. Hecht specifically found it “...unnecessary to decide the ultimate constitutionality of the Election Code because I agree with the Supreme Court that although language of Chapter 700 falls short of what may have been intended when the Election code was enacted, its words and their plain meaning nevertheless cannot be ignored.” Memorandum on Appeals Related to Spring 2018 Student Government Association Election, p 2, Off. of the Vice Pres. of Student Affairs (March 26, 2018), (see:<http://sga.fsu.edu/Reporter/Appeals-Related-to-Spring-2018-Student-Government-Association-Election.pdf>). Likewise, as part of a campaign, Unite had to sign forms with the Office of Elections pledging to abide by the “student body constitution and statutes”. SBS 704.4(B)2.

Unite’s argument that they were operating on the premise that the election code was unconstitutional and unenforceable appears made up to be utilized in a court proceeding such as this and is thus unpersuasive. Unite clearly understood that they were bound by the code when they were signing the pledges as well as when they were following other sections such as having the Office of Elections pre-approve campaign material. Nonetheless, the Commission is left to interpret the statutes by their plain meaning as we have done so above. It is essential to understand that the election code, even with the flaws that have been reported by multiple Vice President and Supreme Court opinions, is still fully intact and campaigns are bound by it.

RIGHT TO APPEAL

Any decision made by the Elections Commission may be appealed to the Supreme Court no later than twenty-four (24) hours after said decision has been issued, sustained, dismissed or overturned at the Elections Commission meeting. No appeals of

decisions made by the Elections Commission shall be accepted after this twenty-four (24) hour period.

Decided October 4th 2018 in open court in front of both parties. Opinion electronically submitted October 5th 2018.