

Violation 2: The Legacy Party v. The Amplify Movement –Spring 2019

Case No.: SPRING-2019-2

McDonough, P. for the Majority of the Commission,

After reviewing the facts, hearing the testimony of both parties, and analyzing the statutes, the Elections Commission holds that The Amplify Movement did not violated SBS § 701.1(A) or SBS § 701.1(B). The alleged violations are dismissed.

The Legacy Party brought an allegation of early campaigning against The Amplify Movement. The allegation is based on an Instagram Story post on February 9th, 2019 by a member of Amplify showing a party in which campaign materials were being created by a group of supporters. One of the items being created was a painted banner. The banner contained the phrase “SDT support Amplify Movement” immediately followed by the word “Vote”. Under the Election Code, this banner would be construed as campaign material needing approval from the Supervisor of Elections. The “publishing” of this banner on Instagram could also be construed as the publishing of campaign materials. However, the individual who created the post is neither a candidate for any SGA political office, nor is she a political party. The Legacy Party contends that because this individual is a dues paying member of The Amplify Movement Party’s Recognized Student Organization (RSO), that the Party itself should be held responsible for the publishing of campaign materials. The Commission disagrees.

FSU has strict guidelines on how RSO’s are to be formed, registered, and operated. One of the core pillars of the system is that an RSO cannot deny membership to any student at FSU. Since political parties at FSU are RSO’s, the parties must adhere to the rules and guidelines of all RSO’s.

The Amplify Movement testified that it has held multiple trainings on the Election Code, as well as sent out emails explaining how and when campaigning can be done. Despite this, an Amplify member posted what could be construed as campaign material outside the allowed campaigning window. Some member of this Commission would like to hold the party accountable, I however cannot. This would create a system that would be ripe for abuse. Since political parties cannot discriminate on who they allow to join as dues paying members, any student of FSU could join each political parties RSO and “post campaign materials” outside of the allowed window, resulting in actual monetary fines for the political parties, and after enough violations could disqualify the entire political party. It would take mere minutes to post enough materials that could result in the disqualification of a party. To hold a political party accountable for the actions of a member they cannot control would be contrary to the express meaning of the election code and create potential liability for political parties which they could not shield themselves from. Furthermore, to hold a dues paying member accountable would be a violation of free speech. For these reasons, this claim must fail.

Once again, it comes down to the rights of individuals on campus to express themselves freely vs a poorly written Election Code attempting to find equity in the sharing of information, something that has rarely been accomplished. Each time we find ourselves asking for meaningful changes to the Election Code, but here we are again with a Code even more confusing and convoluted than last.

Rosenthal, M Concurring

I agree with the outcomes and reasoning of this claim to the extent that it relies on the applicable statutes. This decision is undoubtedly a victory for student government insofar as the

issues that they felt were important enough to be addressed were addressed. However, this case has brought to light the existence of a potential danger which has gone unaddressed by statute, the danger that political parties will circumvent election code by using private organizations and individuals to engage in what would otherwise be considered campaigning.

The banner making event at which this claim arose was a joint event between sorority members and political party members. Based on testimony given, some members of the Amplify Party were also members of the sorority. Further testimony indicated that the Amplify Party supplied materials for the banner and may have directed the banner to be created as well, though it is unclear what degrees of control the sorority members and political party member had over the project.

Private individuals and organizations have the right to free speech, including the right to support a political party, candidate, or cause of their choice. Political parties are not granted the same expansive protections regarding free speech used for campaigning as the times and places they can engage in such activities are constrained. But how much of a nexus between a private entity and a political party is required before a political party is considered to have usurped the speech of a private individual or organization for its own campaigning purposes? A private entity speaking of their own accord is outside the jurisdiction of election law, and there is nothing to stop a political party from abusing that immunity for political gain. If a political party provides materials and directions to a private entity, there is nothing to then stop that private entity from engaging in activity that would otherwise be considered campaigning prior to one week before the election. Left unchecked, the use of private entities for campaigning could become the primary strategy for political parties wishing to become totally immune to liability.

The statutes are silent regarding this danger, and because testimony provided implied that all political parties fund similar banner making events, they will likely stay that way. They should not.

Richmond, T. Concurring

I agree with the majority opinion that this was not a violation and its reasoning behind that decision, I only want to explain my thought process and theory.

This issue reminded me of the popular tort theory of vicarious liability (vicarious liability is the process of holding a person accountable for the actions of another person). The present situation mirrored this legal theory in that a non-candidate due paying member of Amplify had clearly violated the elections code. Amplify acknowledged this violation but argued that they are not, and cannot, be responsible for their non-candidate members. I will disagree with this contention, however. I do think that the parties should be responsible for their due paying members, and would be vicariously liable for their violations, especially if they are as involved as the person in this case. But, a common defense to the theory of vicarious liability is that the employer (or party leadership in this case) took reasonable precautions to limit an employee's (member's) offending behavior, such as providing proper training.

Given that it's even easier to become a due paying member than an employee I would expand this defense further. I would only require a party to advertise a code of conduct. So long as a party advises its' members of aspects of the election code (typically through email) and provides optional training, then they would not be vicariously liable. I do not think sending instructional and warning emails would be difficult. This would be a very easy defense to reach.

Because Amplify did offer optional training programs, and because they did send out emails explicitly advising against the exact actions of their due paying member; they are not be

in violation of the elections code for electronic communication (SBS § 701.1(B)) or for advertisement (SBS § 701.1(Y)).

Ravelo, J. Dissenting

The violators before the Commission are not new to Student Government or elections at Florida State University. Amplify Movement has numerous members in various offices and have actively touted their high ethical standards as part of their campaign as well as their defense before the Commission. What comes before the Commission is a simple case of a party not ensuring that its members are informed of the Elections Code. While the majority takes issue with the fact that anyone can join a campaign and seek to purposely, or negligently, violate the elections code, that is not what occurred and is an issue that should be left to the legislature and other campus administrators.

SBS § 701.1 Y(2) states “Non candidate or non-dues paying political party members posts shall not be considered advertisements”. While the majority reads this statute to believe that the post at issue would not be liable for a violation, it defies the clear meaning of the statute to interpret that only candidates can violate advertisement rules under the elections code. Specifically, the individual who committed the violation is a dues paying member. While the individual is not a candidate, the statute was made with the express purpose of excluding “non-dues paying” members, and therefore it must include dues paying members such as this individual. Furthermore, if the Commission is to proceed under the logic of the majority, then campaign managers and other party executives are free to post whatever advertisements they want so long as they are not actual candidates, which would defeat the entire purpose of the elections code.

The statute was written under the basic concept of respondent superior and vicarious liability. This was a dues paying member of the campaign at an official campaign event organized by the campaigns senior staff. While it is difficult to ensure that everyone follows the Elections Code, the campaign opened themselves up to members who give campaign contributions through membership dues and ought to take responsibility for the violations of those members, even if they are mere innocent mistakes.

Riveras J., Dissenting

The Commission veered from its duty of interpreting the statute that it has been given and instead chose to read meaning into the plain language of the statute, which states: “Non-candidate or non-dues paying political party members posts shall not be considered advertisements.” It is clear that the violation in question was committed by a dues paying member of the Amplify party. The majority contends that “hostiles” may take advantage of this reading by paying dues for an opposing party and thus exercise the issuance of malicious advertisements that automatically make the party liable for such violations.

However, this argument is a red herring because it is particularly simple for a victim party to employ an affirmative defense in the case of such a hostile attack. Before and/or after the victim party reaches out to a violator and asks him/her to remove the post/campaign material, for example, it may also issue a Cease and Desist letter to the dues paying individual stating that s/he has not been authorized to post advertisements on the party’s behalf. By disclaiming any and all responsibility in the form of proper documentation, the victim party may provide an affirmative defense that the post was hostile and thus a violation not of the statutes but instead of the party’s own code of conduct. Paired with providing proper education to its dues paying members, any and every victim party may effectively avoid liability should it produce appropriate

documentation evidencing the hostility and impropriety of a violation in question. As a corollary, if we take the majority's decision to its logical conclusion, then the potential hostility should regulate itself in one of two ways: (1) each party fines the others into oblivion, which is highly unlikely; (2) each party fears retaliation from the other and does not conspire to attack any other party. The latter would likely become the unwritten consensus between political parties.

Furthermore, the argument that dues paying members should be allowed to exercise their "free-speech" does not apply in this case because the poster was created at a party-funded event where party members/candidates were present and facilitated the conception and posting of campaign materials by dues paying, non-candidate members. If the facts were that a dues paying, non-candidate member made the poster in her room, for example, and posted on her social media without the help of the party in any way, shape, or form, then the member's free-speech should not be infringed upon. However, that is not the case here, wherein the party was actively involved in facilitating the creation and possibly the publicizing of the campaign materials in question.