

Violation 3- The Unite Party v. The Amplify Movement- Spring 2019

PER CURIAM

There is no dispute of the facts that gave rise to this Unite Party bringing the claim against Amplify Movement. Unite Party dropped their claim involving the painting on a stone wall, and as such that matter is not discussed. A video submitted by Untie Party clearly shows two banners bearing the phrases “Chi Omega Supports the Amplify Movement” and “Alpha Delta Pi Supports the Amplify Movement” displayed on the Chi Omega and Alpha Delta Pi sorority houses respectively. The timestamps on each picture in the show that each picture was taken past 7:00 p.m. on February 21, 2019. Unite Party alleges that the displaying of these banners past 7:00 p.m. constitutes two separate violations of SBS §711.6 (B)(10). This commission holds that there are no violations.

The election code of the Student Body Statutes does not regulate the political free speech of private individuals or entities. Additionally, the Election Commission cannot hold a political party accountable for the actions taken by a private individual or entity engaging in political free speech. The only way that Amplify Movement could be held accountable for a banner displayed on a private sorority house was if that banner was the property and responsibility of the Amplify Movement. Based on testimony from the Amplify Movement, the banners hung at the sorority houses were gifts requested by the sororities and made by the combined efforts of the Amplify Party and sororities. Once the banners were given to the sororities, the Amplify Party had no claims over the banners or how they should be used and no expectations of getting them back. Unite Party failed to present evidence to prove that the Amplify Movement had any lingering control over the banners, and as such the banners must be considered the political free speech of the sororities and not campaign materials of the political party.

Next evidence presented by Amplify Movement shows that at 5:57pm on February 21, Jessica Bartoga, the Amplify Party campaign manager, informed a group chat of 139 members to remove the Greek banners. It is contended that members of Greek organizations are part of this group chat and would have been put on notice of Amplify Movement’s desire to have the banners removed. Unite Party argued that individual messages to executive members of Greek organizations are required to demonstrate good faith. We are not convinced that such messages are required and are willing to defer to the expertise of the Amplify Movement Campaign manager in her determination that a group message was a reasonable medium with which to convey information to Greek Organizations. We are convinced that the group message alone constitutes a good faith (albeit unnecessary) effort by Amplify Movement to have the banners taken down.

In conclusion, due to Amplify Movement’s lack of ownership of the banners and good faith effort to have them taken down regardless, the Commission finds that there was no violation of the election code.

Rosenthal, M. Concurring

I agree with the decisions and reasoning of the above opinion and write this concurrence to address a conflict in interpretations over when the election code is enforceable.

In the 2018 decision of Walker v. Cortez, the Supreme Court found “that since the election code is only in effect three weeks prior to elections, and the alleged violation occurred prior to that window, the claim is barred by the statute of limitation found within Chapter 700, Student Body Statutes (2018).” In its most basic interpretation, this decision limits the enforceability of the election code to a three-week period starting 3 weeks prior to the Election Day and concluding on the Election Day. However, SBS §711.6 (B)(10) states that “Failing to remove campaign materials within twenty-four (24) hours of the closing of the polls” shall be considered a Schedule 1 violation. By its nature, this violation can only occur after Election Day. This means that this violation can only occur after the window of enforceability of the election code has ended.

So should the Election Commission interpret what is clearly written as a “period of three weeks” to mean “a period of three weeks and one day?” If yes, then a dangerous precedent will be set as the election commission usurps legislative power by expanding their authority past delegated boundaries. If no, then the election commission will not be able to charge any entity with violating SBS §711.6 (B)(10) due to the window of enforceability closing.

The election commission did not have to answer this question and avoided potentially acting in a legislative manner, but it would be better if this issue was fixed before the question needed to be answered. After all, it is the place of the Senate, not the election commission to rewrite Chapter 700 of the Student Body Statutes to say something similar to, “Once the date for 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 starting three (3) weeks prior to an election and ending two (2) days preceding an election.”

Richmond, T. Concurring

I agree entirely with the majority. I only write to note that although SBS §711.6 (10) states that a violation occurs when a party does not “remove campaign materials within twenty-four (24) hours of the closing of the polls”, and that SBS §709.1(B)(1) states that “private property must still be in compliance with all applicable provisions of this code”, it does not give instruction to parties about standards of reasonableness. We cannot make a ruling telling parties they are expressly responsible for campaign materials effectively out of their control. To do so would create a host of legal issues, especially that we cannot compel political parties to trespass onto sorority houses to take down the banners. The most reasonable thing a party could do, when concerning campaign materials they cannot access legally, is for the party to ask that entity to take them down in a timely manner. If that private entity refuses or does not respond, we cannot hold the party responsible.

In today’s case Amplify did the reasonable thing and asked the sororities to take down the banners. It is unfortunate that the sorority did not comply with the request in a timely manner, but that failure is not Amplify’s fault. Therefore, there is no violation under SBS §711.6 (10) concerning the sorority banners.