

**FLORIDA STATE UNIVERSITY
STUDENT ELECTIONS COMMISSION**

No: SPR-2022-1

RAWAN ABHARI, Petitioner *v.* NINMA GABADAGE,
KENLEY ADAMS, and BRANDON LOUIS, as members of
FORWARD, Respondents.

[January 31, 2022]

Argued via Zoom and Decided on 27 January 2022. Jack Rowan and Gabrielle Little for the Petitioner. Jason Puwalski for the Respondents. Opinions delivered electronically on 31 January 2022.

Supervisor of Elections and Chair Spencer Greenwood was in attendance but did not participate (recused). Commissioners in attendance included Nicholas Concilla, Vice Chair (presiding, did not vote); Corey Adamyk, Kelvin Ready, Mackie Taranto, Khamisi Thorpe, and Carter Pope. Commissioner Hank Thompson was in attendance but did not vote.

SUMMARY OF ALLEGATIONS

This action was brought before this Commission in three complaints (here consolidated) filed by Rawan Abhari, a Florida State University (“FSU”) student and member of Surge FSU (“Petitioner”), against Nimna Gabadage, Kenley Adams, and Brandon Louis, FSU students, and Forward FSU, of which they are members, (“Respondents”) separately, for each separately violating Student Body Statutes (“SBS”) §701.1 (A) and §711.6(C)(4) by campaigning prior to one week before the election. The alleged violation occurred on 20 January 2022 at or around 3:00 PM on the respective Instagram pages of the three student Respondents. Ms. Abhari asserts that the captions in each of the student Respondents’ posts were “soliciting support” for their candidacy in the upcoming election, presently set for 23 February 2022.

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.”

OPINION

CONCILLA, V.C., delivers the majority opinion on behalf of the Commission, in which TARANTO, POPE, and THORPE, CC., join. READY, C., filed a dissenting opinion, joined by ADAMYK, C.

This Commission agrees with the Commission in *Amplify v. Legacy*, Fall-2019-1, that Forward, by way of Instagram posts by candidates Gabadage, Adams, and Louis, met the definition of campaigning under Chapter 700. The candidates simultaneously solicited support for the upcoming election, as each of their posts mentioned each other, their party, and the specific date of the election. They each expressly advocated for their own election, in a way that cannot be interpreted as something other than an appeal to vote, and they did so in direct violation of the Statutes. The candidates submitted the posts to Supervisor Greenwood for approval, which he approved before their submission. The Student Supreme Court, in *Walker v. Unite (Free Standing Signs)*, held that approval by the Supervisor of Elections does not absolve the party in violation of the Statute. However, the Commissioners disagreed on whether or not the Commission has the power to enforce violations.

I

No statute is perfect, but interpretation of the sections at hand in conjunction with each other is not exceedingly complicated as to warrant striking or ignoring any part of the statute. Chapter 700 states, under the opening section “Restrictions on Altering the Election Code”: “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.” Clearly, the Code is finalized when the election date is picked and cannot be changed. Violations can certainly still be reported outside of the three-week window.

If we decide that this language isn't clear enough, the heading clarifies that the student legislature is more focused on preventing the alteration of the code and not with preventing the reporting of violations. Mentioning that reporting was not precluded was important enough to include right at the top of the Election Code. The Title-and-headings Canon effectively limits section 700's 3-week limitation to alterations, with the express exception of violations, which are not "preclude[d]." See ANTONIN SCALIA & BRYAN GARNER, *Title-and-headings canon*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 181 (2012)

II

According to §711.6(A), which includes every violation under the Code: "No violations will contest or come in contradiction with Section 711.4." Herein lies the issue. According to §711.4(D): "Beginning three (3) weeks prior to the day of an election, the Supervisor of Elections and the Deputy Supervisor(s) shall have the power to *receive and review* alleged violations pursuant to Chapter 720.4(D) of the Student Body Statutes. The time, place, and manner of such violations shall be recorded and submitted to the Elections" (emphasis added). While §720.4(D) does not exist, we assume that this is a scrivener's error, and that the statute means to indicate §702.4(D), which states: "During *campaigning* the Supervisor of Elections shall receive and review complaints which allege violations of the Elections Code per Chapter 711 of the Student Body Statutes" (emphasis added).

According to §711.6(A), we're to defer to the definition under 702.4(D) by way of 711.4(D). In that case, what does "campaigning" mean, as a time period, according to the Statutes? According to §701.1(A): "Campaigning shall begin the Wednesday at 12 a.m., one week prior to the Election Day." If this was meant to be the only time the Code is enforceable, then §711.6(C)(4): "Campaigning prior to one (1) week before the election" directly contradicts and thus this cannot be the proper interpretation – the Code infers two different meanings on the word "campaigning."

Otherwise, the closest we get to a definition is under §701.1(X): "Election Cycle – When Title VII [the Election Code]

goes into force for an election until the Supervisor of Elections' deadline for filing violations according to 711.4J." Another scrivener's error as §711.4(J) does not exist – we presume it references §711.4(E), which defines the filing deadline as such: "...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." Therefore, the "Election Cycle" starts when the Code is finalized (i.e., when the election date is selected – discussed above) and persists until two days after the election. The Code would thus not apply to the entirety of the established "Election Cycle." This is nonsensical. The doctrine of absurdity is meant to "correct obviously unintended dispositions of the code," such as the acceptability of campaign violations that occur 4 weeks before the election, rather than 3. ANTONIN SCALIA & BRYAN GARNER, *Rule of Lenity*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 193 (2012).

Finally, under the existing definition of "campaigning," any activity that solicits support is expressly prohibited before 12 a.m. on the Wednesday one week prior to Election Day. The Specific/General Canon operates as a control to conflicting provisions and "the specific provision is treated as an exception to the general rule." See ANTONIN SCALIA & BRYAN GARNER, *Rule of Lenity*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 156 (2012). In other words, the specific exception that the 3-week window of receiving complaints "does not preclude" the reporting of violations is to be understood as an exception to the general rule limiting the applicability of the election code and this bodies' jurisdiction. Just because the definition describes a one-week window during which campaigning is permitted (this reading is more in agreement with the violation language in §711.6(C)(4)) does not prevent any other campaigning as being described as campaigning, it merely reinforces the established permitted period for doing so.

CONCLUSION

Rarely will you see a court argue that it does not have jurisdiction. However, the dissenting Commissioners are rightly concerned about the time frame for enforcement by the Commission. Commissioners Ready and Adamyk's valuable previous experience and potentially their affiliations within the Student Government Association itself lends itself to their opinions.

If this Commission waited to hear this violation until exactly 3 weeks before the election, on the 2nd of February 2022 (that is, 4 business days later than the hearing, held on 27 January 2022), then there would be no issue holding Respondents in violation of the Statutes. As it turns out, this opinion and holding will be officially filed on 31 January 2022. Respondents will have until 2 February 2022 to pay the fine under this order. Assuming that this Commission does not have the ability to enforce the holding on that date, would the Respondent then not be required to pay the fine on the 1st, but they would be required to do so on the 2nd (exactly three weeks before the election)?

The practical issue at hand is that the Commission was required to hold a hearing within 5 days of the filing of a complaint according to §703.2(F), and the enforcement window for any complaint is purportedly only within 3 weeks of the election. The conflict lies more narrowly within the specific time restrictions of different rules, and not with the enforcement powers of the Commission. The only way to reconcile these statutes against each other, without disposing some of the language entirely, is to recognize that there is a period in which the Code is in force, violations can still occur, and that the Elections Commission in the future will not review those violations until the beginning of the three-week period.

Either way, the practical effect of not holding the Respondents responsible for this violation allows future candidates and parties to campaign, unrestricted, for 49 weeks a year (we recognize that we'd need to subtract 3 weeks for any other elections that occur that year). Only once the three week "enforcement period" began would candidates face any

restrictions or regulations on campaigning. Such an interpretation can't be the intent of the statute – allowing 49 weeks of veritable lawlessness would effectively immunize all parties from campaign finance violations outside of the weeks leading into an election, alongside leading to a 52-week election cycle. This Commission shall not go to such lengths as to create questionable precedent to absolve the Respondents of a clear violation.

HOLDING

This Commission enters judgment 3-2 in favor of the Petitioner. Forward FSU is in violation of the Elections Code as they were campaigning outside of the established one-week window. As the three posts in question were posted within minutes of each other in what appears to be a coordinated effort, the Commission finds that Forward FSU committed one Schedule 2 violation under SBS §711.6(C). As this is the first violation, the penalty is 3 points and a fine of one hundred (\$100.00) dollars. According to SBS §711.7(B), the fine must be paid within two (2) business days, that is, by the end of the day on Wednesday, 2 February 2022. We additionally request that the legislature attempt to simplify the language of the Code in the next iteration, as elections continue to become more competitive.

DONE and ORDERED, this 31st day of January 2022.

COMMISSIONER READY, with whom COMMISSIONER ADAMYK joins, dissenting.

A. The Irreconcilability Canon Necessitates the Rule of Law Favor the Respondents.

Few facts are necessary to establish the issue before the Commission in this case. Petitioners, Surge, a political party on campus, and Rawan Abhari, a candidate for Student Body President, filed three alleged violations of the Elections Code by Respondents, Brandon Louis, Kenley Adams, and Nimna Gabadage – also candidates for office. The alleged violations occurred well beyond three weeks before an election.

This brings us to the exact issue before this Commission: When can alleged violations be filed/received?

We begin our analysis with Chapter 700, Student Body Statutes, which states, in relevant part:

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.*

(emphasis added) 700 SBS.

We begin here because “only the words on the page constitute the law adopted by Congress and approved by the President,” or in our case the Student Senate and the Student Body President. *Bostock v. Clayton County*, 140 S. Ct. 1731, 1738 (2020).

It is as clear to us, as it was to the Student Supreme Court in *Ney v. Unite*, that the elections code is only in effect three weeks before an election and up to the certification of that election. However, what of the exception?

The Student Senate subsequently amended Chapter 700 after *Ney v. Unite* to include the provision, “This does not preclude the reporting of violations later enumerated in

Chapter 711.” See Bill 41 of the Seventy First Student Senate¹; See also Rules and Calendar Committee minutes on Bill 41.² Therefore, Stare decisis would not apply in this case as the effect of the new language is not an issue considered by this Commission or the Student Supreme Court. Therefore, we must consider what the plain meaning of the new provision is.

To us, the plain reading here is that violations may be filed at any time; however, they may not be enforced until three weeks before an election. This would logically act to preserve violations that occur outside the enforcement period for later enforcement once the Elections Code goes into effect.

However, this logic comes into conflict with later provisions in the code.

First, we analyze Chapter 702.4, Student Body Statutes, for any contradictions. Chapter 702.4, Student Body Statutes, states in relevant part, “*During campaigning* the Supervisor of Elections shall receive and review complaints which allege violations of the Elections Code per Chapter 711 of the Student Body Statutes.” (emphasis added) 702.4 SBS. It is clear to us that under the definition of “campaigning” provided by Chapter 701.1, Student Body Statutes, “Campaigning shall begin the Wednesday at 12 a.m., *one week prior to the Election Day.*” (emphasis added) 701.1 SBS. However, this is not a true contradiction. The plain reading of this statute merely requires the Supervisor of Elections to receive and review complaints during campaigning. This can be done without a conflict with Chapter 700, Student Body Statutes.

The true contradiction arises when examining Chapter 711.4, Student Body Statutes, which states in relevant part:

Beginning three (3) weeks prior to the day of an election, the Supervisor of Elections and the Deputy Supervisor(s) shall have the power to receive and review alleged violations pursuant to Chapter 720.4(D) of the Student Body Statutes.

¹ <https://sga.fsu.edu/archives/71st-Senate/bills/04.17.19-bill41.pdf>

² <https://sga.fsu.edu/committee-minutes/spring19/Rules-and-Calendar-Minutes-4-17-19.pdf>

(emphasis added) 711.4 SBS.

As an aside, we must deal with a clear scrivener's error. Our analysis of Student Body Statutes does not reveal at any point in time that a Chapter 720.4(D) existed. However, Chapter 702.4(D) does exist and moreover it specifically deals with review and receipt of alleged violations. Therefore, we conclude that a scrivener's error is present and that 720.4(D) is really a reference to 702.4(D).

With that resolved, the statute is clear. The Supervisor and Deputy Supervisors only have the **power** to receive and review alleged violations beginning three weeks before an election.

We therefore have a clear contradiction.

In total we have two statutes that contradict. Chapter 700 declares alleged violations of Chapter 711, Student Body Statutes, may be received outside the three-week enforcement period. Chapter 711.4, Student Body Statutes, tells us neither the Supervisor of Elections, nor their Deputies have the power to "receive or review alleged violations" until three weeks before an election. 711.4 SBS.

The Supervisor and Deputies are explicitly not given the power to **receive** alleged violations until three-weeks before an election. Absent the word receive, and there would be no contradiction. In that case, a finding that the alleged violations in this case were just unripe at this time would be the correct resolution.

However, the word receive is present and therefore we find ourselves squarely locked between two contradictions that require an immediate answer.

In a case such as this, where there is such a clear contradiction, the Irreconcilability Canon must be followed. *See* ANTONIN SCALIA & BRYAN GARNER, *Irreconcilability Canon*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 189–91 (2012). Where irreconcilability occurs within penal provisions, the rule should favor the accused in accordance with the Rule of Lenity. *Id.* We therefore must determine whether we are dealing with a penal provision.

“A statute that penalizes an act makes it unlawful.” *Id.* at 229. Chapter 711, Student Body Statutes, the statute Respondents are accused of violating, penalizes violators with either a deprivation of a liberty or property interest. Either a violator pays a fine or they complete mandated work hours. If they pay the fine, they lose their property. If they render the requisite time of service, they lose their liberty for that time. Either way it is clear we are dealing with a penal provision.

As such, the Irreconcilability Canon necessitates that we must follow the rule that most favors the Respondents in accord with the Rule of Lenity. Clearly, the most favorable rule for the Respondents in this case is adherence to the provisions of Chapter 711.4, Student Body Statutes, over Chapter 700, Student Body Statutes.

This is the source of our main disagreement with the majority of our colleagues. They have decided that violations can be received beyond three weeks before an election. Thus, following the rule least favorable to the Respondents.

However, considering the contradiction creates an ambiguity as to what the true rule of law is, we feel, as the late Justice Scalia did, that “the consequences should be visited on the party more able to avoid and correct the effects of shoddy legislative drafting.” See ANTONIN SCALIA & BRYAN GARNER, *Rule of Lenity*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 232 (2012). In this case, that is not the Respondents.

We also believe, again like the late Justice Scalia, that “when government means to punish, its commands must be reasonably clear.” *Id.* The presence of the conflicting statutes tells us that the commands of the Student Government Association are not reasonably clear in this case.

We would therefore have held that the alleged violations should be dismissed, for such alleged violations may only be received by the Supervisor or their Deputies within three weeks before an upcoming election following the rule most lenient to the Respondents. We respectfully dissent.

B. Enforcement of Alleged Violations Should Not Have Occurred at this Time.

Our second disagreement with our colleagues in the majority is their finding of a violation. It is clear that enforcement can only begin within three weeks of an election. No contradiction occurs between Chapter 700, Student Body Statutes, and Chapter 711.4, Student Body Statutes, on that point. Yet the majority finds a violation, thus enforcing the alleged violations beyond three weeks before an election. They have thus read out the provision of Chapter 700, Student Body Statute, that reads, “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.” 700 SBS.

It is one thing to find alleged violations can be received beyond three weeks before an election. It is another to find that enforcement can also be had beyond three weeks before an election. The majorities finding of a violation effectively repeals portions of Chapters 700 and 711.4, Student Body Statutes – An arguable use of legislative power by the Judiciary.

Even if, for the sake of argument, we agreed with the majority that violations can be received beyond three weeks before an election, we would have ruled that the issues in this case were unripe for judicial remedy. Such a finding, without prejudice, would have at least allowed the Petitioners to keep their alleged allegations on file. The Supervisor could then have waited to review the alleged violations until three weeks before the next election in compliance with Chapters 711.4 and 702.4, Student Body Statutes. Then a hearing could have been scheduled during the enforcement period while also ensuring the law was given it’s proper effect. We respectfully dissent.

C. Recommendation to the Senate.

We do, however, join with our colleagues in exercising our right to recommend changes of the Elections Code to the Student Senate. 703.2 SBS. The Senate is the only party able to “avoid and correct the effects of shoddy legislative drafting.” See ANTONIN SCALIA & BRYAN GARNER, *Rule of Lenity*, in *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 232 (2012). We recommend simply that the Senate mend the conflicting statutes to eliminate the conflict.