

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

LEGACY PARTY

CASE NO.: FALL-2019-2

v.

AMPLIFY MOVEMENT

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SUMMARY OF ALLEGATIONS

The Legacy Party alleges that The Amplify Movement has violated SBS § 711.6(B)(10) by failing to remove campaign materials within twenty-four (24) hours of the closing of the polls. The alleged violation occurred on the 17th of October, 2019 at 10:40pm at the Players Club Apartments. The Legacy Party asserts that The Amplify Movement had a banner, classified as a campaign material, still posted at the Players Club Apartments more than twenty-four hours after the closing of the polls.

JURISDICTION

The Elections Commission has the power to investigate and make findings of fact regarding alleged violations of the Elections Code pursuant to Student Body Statutes 703.2(G) and 703.2(F-11). Chapter 700 of the SBS states "The Election Code will be enforced three (3) weeks prior to an election" and "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."

OPINION

Mathesie, Blake for the 7-0 majority opinion of the Elections Commission.

The Elections Commission finds The Amplify Movement not in violation of the elections code under SBS § 711.6(B)(10). There is no dispute of the facts of the encounter that gave rise to this claim brought against the Amplify Movement, by the Legacy Party. The issue at hand was not whether the banner was a campaign material, but rather was the banner property of and hung by a candidate or a dues paying political party member. While the Commission agrees that the banner constituted a campaign material the Legacy Party did not meet the burden to prove the violation by “clear and convincing evidence.”

The only evidence submitted by the Legacy Party to the Commission in the filing of the alleged violation was a video that shows a banner hung from a balcony that overlooks the courtyard, of a private residential apartment. The video seems to be taken from another balcony on the other side of the courtyard, that faces the balcony that had the banner hanging. The video starts by filming the screen of another iPhone that shows a time stamp of 10:40pm on Thursday, October 17, which would be over twenty-four hours after the closing of the polls. The video then pans over to the hand painted banner, hanging from the balcony, which states “VOTE AMPLIFY.” As this was a “banner” that “publicized a political party” and “called the action to vote,” the banner would constitute a campaign material under SBS § 701.1(E). The Legacy Party submitted no further evidence during the Elections Commission hearing. The Legacy Party never brought forth a claim asserting who, muchless if that person was a candidate or dues paying member, was responsible for making and hanging the banner, but rather just stated they “assume” only a member of the Amplify Movement would hang up such a banner.

While the Commission notes that SBS § 701.1(Y), along with the whole Code is poorly written and confusing, one part is clear: under SBS § 701.1(Y)(2) “Non-candidate or non-dues paying political party members’ posts shall not be considered advertisements.” The Commission holds that we cannot consider a non-candidate’s or non-dues paying political party members’ posts, in this case a banner, an advertisement or campaign material. If we did this would create a dangerous precedent and opportunity for abuse of the system; any person, student or not, could post “campaign materials” or “advertisements” anywhere in Tallahassee, on or off campus, outside of the allotted window, resulting in monetary fines and violations for the political party or candidate stated on those materials. It would take a very insignificant amount of time and money to post enough materials to accumulate an abundant amount of violations that would result in exorbitant monetary fines and disqualification of a candidate or party from an election.

In the case that the SBS § 701.1(Y) would be interpreted differently than stated above or the Commission’s reasoning in the previous paragraph was appealed, we would refer to the Supreme Court’s holding that it is not “reasonable to hold a political party accountable for potentially random students.” Ney v. Unite (Flyer handouts), Fla. St. Univ.

Rep. (2018). In Ney, the Court ruled that a political party “could only be held liable for members or agents of their party.” Id. The Court also specified that “the burden is on the Plaintiff to establish who these people are and that they are members or agents of the [alleged political party]. Id.

The Amplify Movement claimed that they did not create or post the banner, that they had never seen the banner, and that they had no knowledge of the banner. The Amplify Movement also stated that as soon as they received notification of the alleged violation and evidence, they had checked their records of all members and candidates finding no members or candidates living at the address where the banner was posted. Even in the case that the Amplify Movement had awareness of the banner before the alleged violation, it would not be possible for them to gain access to the banner for removal both legally and physically, making it infeasible for them to comply with the Election Codes. Under SBS § 703.2(F)(16), should it be “infeasible for someone to comply with the Election Code, the Election Commission shall have the power to rule if a “good faith effort” was rendered by the specified party and adjust the ruling as necessary.” The Commission finds that, since the Amplify Movement only gained knowledge of the banner after the alleged violation, a “good faith effort was rendered” through their actions of searching through their records in an attempt to find any information about if any members or candidates may have lived at the address the banner was located at.

According to the “Procedures” listed under SBS § 711.4(K), “The burden that a party alleging a violation of the Student Body Election Code must meet in order to prove a violation shall be by “clear and convincing evidence.”” The Commission believes that the Legacy Party fell exceptionally short of the burden of “clear and convincing evidence,” to prove this alleged violation.

It is also worth noting that under SBS § 703.2(F)(11), Powers and Duties of the Elections Commission, after an alleged violation passes SBS § 703.2(F)(11)(a) the Commission then has the power to decide under SBS § 703.2(F)(11)(b) “whether or not the alleged violation should be sustained.” Due to all of the above stated reasons, we do not believe that this alleged violation, when proved, should be sustained. Lastly, we reject the Legacy Party’s argument and reasoning that “only a dues paying member or candidate” would hang a banner like this. This would suggest that no other student or person in Tallahassee, other than dues paying members or candidates, could have any interest in the FSU SGA elections. This assumption is just asinine, seeing that the SGA represents over 41,000 students and controls a \$13,790,000 annual budget that comes from those students’ activity and service fees. Activity and Service Fee Budget, S. 2019, 70th Cong. (2019). This argument, coupled with their admittance of having no proof of the banner being a product of a dues paying member or candidate, we believe that under

SBS § 703.2(F)(16), it would be “a miscarriage of justice to enforce this code” otherwise, given the circumstances of this alleged violation.

In conclusion, this comes down to the issue of whether the banner was property of or hung by a dues paying member or candidate. Private individuals have the right to free speech, this includes the right to support a political party, candidate, or cause of their choice. The election code does not regulate the political free speech of private individuals or entities. 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. To hold a political party accountable for the actions of a private individual engaging in political free speech, that they cannot control would be contrary to the express meaning of the election code and create potential liability for political parties, from which they could not shield themselves. The Commission cannot make a ruling, setting precedent, that parties are responsible for campaign materials that are physically and legally out of their control. To do so would create a host of legal issues, especially that we cannot compel political parties to trespass onto the balcony of an apartment on private property to take down a banner. The Unite Party v. The Amplify Movement, Elec. Comm’n. Op. (SPRING-2019-3). The only way that the Amplify Movement could be held accountable for a banner displayed on a private apartment balcony was if that banner was the property and responsibility of the Amplify Movement. In combination with the lack of evidence, failure to prove by “clear and convincing evidence,” the FSU Student Body Statutes, Supreme Court precedent, past Elections Commission rulings, and the powers of this Commission; we cannot find the Amplify Party in violation of SBS § 711.6(B)(10).

HOLDING

The Amplify Movement is not in violation of the Elections Code § 711.6(B)(10) of failing to remove campaign materials within twenty-four (24) hours of the closing of the polls. The Commission therefore dismisses the alleged violation, not sustaining any fines or points.

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 22nd 2019 in conference at the College of Law Advocacy Center in Leon County Florida. Decision electronically filed on October 23rd 2019 on the Elections webpage. Opinion electronically submitted on October 24th 2019.