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

LYNCH

CASE NO.: SPRING 2020-3

v.

AMPLIFY MOVEMENT

#### SUMMARY OF ALLEGATIONS

Connor Lynch (hereinafter "Lynch") alleges that The Amplify Movement (hereinafter "Amplify") has violated SBS § 711.6.C.1 by filing a false or malicious charge against the Legacy party, and more specifically, allegations pertaining to Lynch (in the related case *Amplify v. Legacy* Spring-2020-2). Lynch argues that the Amplify filing in question includes a false accusation that he removed campaign materials illegally from private property. Lynch further argues that he feels slandered and disrespected by these claims and is worried that criminal charges may be falsely levied and this will negatively affect his reputation; and that Amplify's allegation is false or malicious in effort to disrupt the election efforts of Lynch and the Legacy Party.

#### 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."

#### BACKGROUND

The underlying facts in this case are as follows. Amplify originally filed an allegation that claimed a member of the Legacy Party, allegedly identified as Lynch, trespassed onto the Phi Mu house and tore down a banner that was painted by a sister in Phi Mu to support the candidacy of 3 sisters, and the Amplify movement. This allegation was heard in a prior case, *Amplify v. Legacy*, SPRING-2020-2. This alleged act would have been in violation of SBS § 711.6 B1 (removing, obscuring, or damaging another candidate's or political party's campaign materials within a given space such as a bulletin board or general flyer area) and SBS § 711.6 C9 (vandalism or any unauthorized marking of university or private property for campaign purposes, other than poll booths or election related materials).

In support of this allegation Amplify submitted security footage from the Phi Mu house that depicted a man moving on the property sometime after 4:11 a.m. Additionally, Amplify cited numerous statements from multiple persons, who supposedly knew Lynch personally, who identified Lynch as the person in the video evidence. They also included a "sworn" statement that included the same information. According to Amplify there was a pending police investigation being conducted by FSUPD and they were being relayed information about the investigation from members of Phi Mu. Related to this case, this

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In their defense Legacy offered statements on the contrary, that Lynch was not the person on the video. They submitted an email from Lynch's father, Dan Lynch, who is a police commander in Melbourne FL, that stated that it was not Lynch in the video. They submitted a printout of Lynch's Life 360<sup>[1]</sup> location on the night of the incident. And, they also submitted a public records request response from FSUPD that stated there was no suspect at this time in the investigation.

The Elections Commission did not find a violation in *Amplify v. Legacy*, SPRING-2020-2.

### OPINION & DISCUSSION

*Richmond, T.* for the Majority

The Elections Commission finds that Amplify is not in violation of SBS § 711.6.C.1. The issue at hand is whether Amplify's filing in *Amplify v. Legacy*, SPRING-2020-2, was a false or malicious charge against another candidate or political party. Although the Elections Commission held that there was no violation in SPRING-2020-2, that in itself is not dispositive. In turn the Elections Commission requires that Lynch prove by "clear and convincing evidence" that Amplify *knew* they were bringing a false charge or that their filing had malicious intent. In this case, Lynch lacked sufficient evidence and failed to meet that burden<sup>[2]</sup>.

In support of Lynch's allegation he relies on; the results of *Amplify v. Legacy* SPRING-2020-2, a series of photographed "Snapchat" messages between Mr. Driscoll (a representative of Amplify) and Ms. Cohen (a campaign manager of Legacy), testimony from Ms. Cohen, and various assumptions based on the evidence submitted in *Amplify v. Legacy* SPRING-2020-2. As stated above, the burden of proof in any case before the Elections Commission is "clear and convincing evidence" per SBS § 711.4 K. Clear and convincing is defined as "highly and substantially more probable to be true than not." We will address each of Lynch's arguments and evidence within this requirement.

#### A.

In his argument, Lynch relies heavily on the result of *Amplify v. Legacy* SPRING-2020-2, specifically that the Elections Commission declined to find that there was a violation in that case. Lynch argues that because no violation was found in the aforementioned case that must mean the underlying allegation is itself proven false. And therefore, that Amplify should have, or could have, known the allegation was false. However, this is an incorrect assumption. When a court, or commission, finds that an allegation does not meet its' burden of proof that does not mean that the underlying allegation is untrue. It merely means that the burden of proof was not met, and to determine something is false requires further investigation. This assertion offers no new insight into whether Amplify knew that their allegation was false. On the contrary, the testimony proceeding this case, and during arguments before the commission, Amplify was insistent in their belief that Lynch was the perpetrator. This argument is only an assumption as to what Amplify should have known (in Lynch's opinion) rather than what Amplify did know. It does not answer the call of the question and it is not sufficient evidence.

#### B.

Lynch also relies on a series of "Snapchat" messages between representatives of Amplify and the Legacy party, as well as the testimony given by a representative of the Legacy party. He argues that this

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parties could be, and what the potential ramifications could be. Lynch is correct that these messages show that Amplify was aware of the potential harm the allegation could bring. However, he is incorrect that this is evidence of malicious intent. Ironically, the series of “Snapchat” messages seems more like evidence in favor of the defense of Amplify rather than Lynch. For example, in the message timestamped at 8:27 p.m. the following exchange transpired:

*Driscoll: He does now... He didn't know to my knowledge before last night.*

*Cohen: Oh before the violation was filed [sic] so he wouldn't have time to prepare?*

*Driscoll: No because I wanted to ensure it was him...Once we Id'd [sic] I filed with the SOE*

This exchange clearly shows that Amplify had attempted to ensure that Lynch was the person in the video evidence. What this evidence shows us is that Amplify truly believed it was Lynch before filing the initial allegation, and the filing was not malicious. If there was actual evidence of malicious intent in this conversation, we see something along the lines of Mr. Driscoll answering in the affirmative to Ms. Cohen's question.

The rest of the exchange, as mentioned before, included a discussion where Driscoll advising Legacy to ask to be removed from the case if they do not want to represent Lynch<sup>[3]</sup>, and a conversation about how Amplify is cognizant of the potential ramifications of their allegation. None of these messages, or the discussion on them, showed that Amplify had malicious intent when filing their allegation in the preceding case. This evidence certainly does not meet the burden of proof required and in fact seems to support the defense of Amplify.

### C.

Finally, Lynch relied on various assumptions made in connection with the evidence submitted in Amplify v. Legacy SPRING 2020-2. He first contends that Amplify's lack of sufficient evidence, and Legacy's evidence submitted in his defense are enough to assume that Amplify should have, or could have, known they were submitting a false allegation. Second, Lynch argues that the evidence submitted by Amplify is, due to their related attempts at identifying Lynch, evidence of their malicious intent and an attempt to harm his reputation with the student body.

Regarding the first contention, the argument from section A is appropriate here. This argument is only an assumption as to what Amplify should have known (in Lynch's opinion) rather than what Amplify did know. It does not answer the call of the question and it is not sufficient evidence.

On the second contention, although it is unfortunate that a rumor may travel fast, this whole process is open to the public. Any person in the FSU student body can know, and is likely to find out, if there is an allegation filed with the SOE. In fact, the school newspaper often publishes articles on the Elections Commission hearings. We cannot stop rumors from spreading. However, if Lynch had offered evidence of Amplify intentionally spreading the rumor, and represented it as true, then Lynch would have a better claim that Amplify had malicious intent. But this is not the evidence that was submitted. Instead Lynch argued that Amplify's attempts to identify the person in the video is evidence of malicious intent. From each Party's argument before the Commission, all we can determine is that Amplify members asked people who they thought was in the video to identify the perpetrator. There is no evidence as to how Amplify was asking the question or presenting the video. There is no evidence that Amplify was telling people that it was Lynch in

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arguments put forth do not provide us with any insight into the underlying intent or knowledge of Amplify.

### CONCLUSION

It is important to reiterate that the burden of “clear and convincing evidence” is a high bar to reach. It is equally as important to remember the potential ramifications of finding a false or malicious violation. While we certainly want to discourage a party from filing false or malicious charges, we also do not want to render an opinion that would discourage a future party from filing an allegation in the first place because of fear of retaliation. Hence, why we require that high burden of proof. Lynch failed to provide sufficient evidence. Assumptions and speculation fall incredibly short of what this Commission requires. No evidence, circumstantial or direct, has been offered that could prove that it is highly and substantially more probable to be true than not that Amplify knew their filing was false or that they had malicious intent.

### HOLDING

Amplify is not in violation of the Elections Code SBS § 711.6.C.1. of filing a false or malicious charge against another candidate or political party. The Commission therefore dismisses the alleged violation, not sustaining any fines or points, on a vote of four to three.

### 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 February 27th, 2020 in conference at the College of Law Advocacy Center in Leon County Florida. Decision electronically filed on February 27th, 2020 on the Elections webpage. Opinion electronically submitted on March 4, 2020.*

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[1] Life 360 is an app that provides location-based services, sharing and notifications. Essentially it is a GPS tracker that publishes the location of an individual’s phone.

[2] Although we did not deliberate this issue, and neither party argued it, I personally believe it may be prudent to recognize that Lynch may not have standing in this case at all. SBS § 711.6.C.1 reads as “bringing false or malicious charges against another candidate or political party.” Reading this under a strict interpretation, as the Supreme Court has ordered in the past, there were no charges brought against Lynch personally. Although the Amplify Movement did single out Connor Lynch in their complaint in *Amplify v. Legacy*, SPRING-2020-2, the official charge was levied against the Legacy Party.

[3] It is important to point out that Amplify was not telling Legacy they should stop representing Lynch. In fact, Driscoll goes as far to say, “but that’s not my side of the case.” Clearly this is a discussion between Amplify and Legacy about their anxieties with the preceding case and Amplify is informing them that they would not be opposed to Legacy attempting to withdraw their representation of Lynch.