



The Progressive Party at F.S.U v. F.S.U. Student Government Association and the F.S.U. Supervisor of Elections

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

THE PROGRESSIVE PARTY AT FLORIDA STATE UNIVERSITY

CASE NO.: SPRING 2021-1

v.

FLORIDA STATE UNIVERSITY STUDENT GOVERNMENT ASSOCIATION AND THE FLORIDA STATE UNIVERSITY SUPERVISOR OF ELECTIONS

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**SUMMARY OF ALLEGATIONS**

The Progressive Party at FSU (hereinafter "Plaintiff") comes before this Elections Commission alleging multiple violations of the Student Body Statutes (SBS) by the FSU Student Government Association Supervisor of Elections (hereinafter "Defendant"). Plaintiff argues that Defendant committed four distinct violations of the SBS. Plaintiff alleges (1) a violation of SBS §712.1 (B) for failing to publish three Constitutional Amendments to the official ballot, (2) a violation of SBS §712.1 (B) for failing to correctly list all candidates for office on the official ballot, (3) a violation of SBS §712.1 (G) for altering the official ballot within 24 hours of an election and failing to notify parties of the alteration, and (4) a violation of SBS §713.3 (A) for failing to extend polling hours by 25 minutes to make up for polling time lost during technical difficulties.

**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.

The Spring 2021 Student Government Election (hereinafter “2021 Election”) was scheduled to take place on February 24, 2021 from 8:00 AM to 7:00 PM. On January 27<sup>th</sup>, 2021, Constitutional Amendments 1, 2, and 4 passed the Student Senate with a two-thirds majority vote. The amendments were not published in the campus newspaper at least one week prior to the 2021 Election. The SGA Supreme Court did not issue an advisory opinion on the amendments. The amendments were not placed on the 2021 Election’s Official Ballot.

The Unofficial Ballot for the 2021 Election was released and posted to the SGA website on February 22, 2021. On the Unofficial Ballot, the “Undergraduate Studies” section listed Mateo Guillamont and Jamie Botel, both from the Movement Party, as running for Senate Seat 10. It listed Chase Alan Freeman, from the Progress Party, as running for Senate Seat 8. According to SGA records, Mateo Guillamont filed his candidacy for Senate Seat 10.

At 8:00 AM on February 24, 2021 the polls for the 2021 Election officially opened. However, due to a technological deficiency experienced at Florida State University’s administrative level, ballots were unable to be cast from 8:00 AM until approximately 8:25 AM. The polls closed at 7:00 PM as scheduled.

One student, who is a double-major in the College of Criminology and the College of Social Sciences and Public Policy within Florida State University, was able to vote for candidates in the College of Criminology but not for candidates in the College of Social Sciences and Public Policy during the 2021 Election.

At an unknown time on February 24, 2021 after the polls were open, the official ballot was altered. Mateo Guillamont was removed from the Senate Seat 10 ballot and put on the Senate Seat 8 ballot. This made Senate Seat 8 contested, and Senate Seat 10 uncontested. After the polls closed, Mateo Guillamont won Senate Seat 8 defeating Chase Alan Freeman.

On February 27, 2021, three days after the election, Constitutional Amendments 1, 2, and 4 were sent to the Student Body Attorney General.

## **OPINION & DISCUSSION**

*Woody, J.* for the Majority

The Elections Commission finds that Plaintiff has presented clear and convincing evidence that Defendant violated SBS §712.1 (B) and SBS §704.5 for failing to publish three Constitutional Amendments on the official ballot and SBS §712.1 (G) for altering the official ballot within 24 hours of an election. As such, the Supervisor of Elections must take corrective action consistent with this opinion.

**A.**

The Plaintiff has presented clear and convincing evidence that Constitutional Amendments 1, 2, and 4 should have been on the 2021 Election's official ballot. Once Constitutional Amendments pass in the Student Senate, they are to be published in the campus newspaper at least one week prior to the election. SBS §506 (B) requires that the amendments be sent to the Supreme Court. The Supreme Court is then to issue an advisory opinion on the amendments to make sure they are clear and consistent with Florida law. If an advisory opinion is not received after seven days, the amendments are to be immediately certified and placed on the ballot.

Neither party was able to clearly point to who has the responsibility to send the amendments to the Supreme Court or publish them in the student newspaper. Article VI Section 1 of the Student Body Constitution offers no clarity either. The SBS §704.5 states in relevant part "constitutional amendments...must be submitted to the Supervisor of Elections from the President of the Student Senate...by the filing deadline for an election." Section 704.5 also states "[t]he Supervisor of Elections shall post online all petitions." These duties were neglected. Specifically, the President of the Student Senate submitted the amendments three days after the election was over. This gave the Supervisor of Elections no ability to comply with the Student Body Constitution or the Elections Code.

This Commission directs the President of the Student Senate to immediately send Constitutional Amendments 1, 2, and 4 to the Supervisor of Elections. The amendments must be published in the campus newspaper, sent to the Supreme Court, and postings should comply with SBS §704.5 (B)3. After those requirements are met, the Supervisor of Elections must take appropriate actions under the duties of the office and place the amendments on the official ballot and call a Special Election so they can be voted on as is required by SBS §707.1 and §707.2.

**B.**

Plaintiff's second allegation is that Defendant failed to correctly list all candidates on the ballot. Plaintiff asserts that multiple students had limited voting abilities because they are members of multiple colleges within FSU as dual and multi degree students. These students were only able to vote for candidates in one college. Plaintiff says that this is a violation of SBS §712.1 (B). The Commission rejects this assertion.

The Commission was presented evidence that at least one dual degree student was able to vote in only one college and was unable to pick the college in which they casted their vote. While the Commission is sympathetic to the policy arguments offered, we have no authority to change substantive voting procedures. No evidence was presented that students were unable to vote for candidates in at least one college. Absent that evidence, there is no violation that the Commission can address. The aforementioned substantive changes to the voting procedures are questions best left to SGA's legislative body and appropriate FSU administration. As such, this allegation fails.

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### C.

Plaintiff's third allegation is that Defendant altered the official ballot within 24 hours of the election in violation of SBS §712.1 (G). The ballot was changed to allow Mateo Guillamont to appear on the ballot for Senate Seat 8 instead of Senate Seat 10. It is unclear who exactly authorized the change. Defendant admitted that the official ballot was altered within 24 hours, but contends that the alteration was simply to correct a technology error. Section 703.2 describes the powers and duties of the Elections Commission and §703.2 (F) 16 provides:

Should a conflict in statutes, an emergency, or an otherwise unforeseen circumstance render it infeasible for someone to comply with the Election Code, or it be a miscarriage of justice to enforce the 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. Such a ruling may also be appealed to the Supreme Court.

If the ballot change was simply a technology error, the Commission has the power to allow the change to avoid a miscarriage of justice. However, Plaintiff has presented clear and convincing evidence that the change was not simply correcting an error.

According to SGA filing records, Mr. Guillamont filed his candidacy for Senate Seat 10. The Unofficial Ballot was made available and posted on February 22, 2021, two days prior to the election. This gave all candidates the ability to view their ballot spot prior to the 24-hour violation window provided in the Elections Code. The Election's Code does not indicate a time frame for when the unofficial ballot must be made available. The Commission finds that the two-day window gave candidates a reasonable amount of time to correct ballot inconsistencies. No evidence was presented that Mr. Guillamont asked for the ballot to be changed prior to the 24-hour time restriction. Furthermore, this ballot change cannot be deemed a simple error or mistake that would allow Section 703.2 (F)16 to apply. Mr. Guillamont filed for Seat 10 and was correctly listed on the ballot for Seat 10. It was his duty to correct the ballot 24 hours prior to the election if he perceived the ballot to be in error.

The Commission instructs the Supervisor of Elections to call a Special Election under SBEC §707.1 for Undergraduate Studies Senate Seats 8 and 10. Mateo Guillamont and Jamie Botel shall be listed as running for Senate Seat 10. Chase Alan Freeman shall be uncontested for Senate Seat 8.

### D.

Plaintiff's fourth allegation is that Defendant violated SBS §713.3 (A) for failing to extend polling hours by 25 minutes to make up for polling time lost during technical difficulties. Both sides acknowledged that voting was unable to take place between the time of 8:00 AM and 8:25 AM. However, no evidence was presented that any student was unable to vote due to this delay. Affidavits filed stated that students were able to submit their votes at 8:25 AM. While the Supervisor of Elections had the power to extend voting and should have done so, Plaintiff has not shown by clear and convincing evidence that an actual injury was caused do to the delay. As such, this allegation fails.

### **CONCLUSION**

The Supervisor of Elections must call a Special Election pursuant to SBS §707.1 and §707.2. This election must have Constitutional Amendments 1, 2, and 4 listed on the ballot. The amendments should be published in the campus newspaper, sent to the Supreme Court, and postings should comply with SBS §704.5 (B)3. The Special Election must also include Undergraduate Studies Senate Seats 8 and 10. Mateo Guillamont and Jamie Botel shall be listed as running for Senate Seat 10. Chase Alan Freeman shall be uncontested for Senate Seat 8.

### **HOLDING**

The Elections Commission holds, in a unanimous decision (6-0), that failing to publish Constitutional Amendments 1, 2, and 4 on the official ballot constituted a violation of SBS §712.1 (B) and that changing the ballot within 24 hours of the election with the specific aforementioned facts constituted a violation of SBS §712.1 (G). The results for Undergraduate Studies Senate Seats 8 and 10 are deemed invalid. This holding in no way invalidates any other SBA election results from February 24, 2021 other than the ones specified in this opinion. The alleged violations of SBS §713.3 (A) and SBS §712.1 (B) are dismissed.

### **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 March 17th, 2021 in conference at the College of Law Advocacy Center in Leon County Florida. Decision electronically filed on March 19th, 2021 on the Elections webpage. Opinion electronically submitted on March 18<sup>th</sup>, 2021.*

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