IN THE STUDENT SUPREME COURT
IN AND FOR THE FLORIDA STATE UNIVERSITY

THE LEGACY PARTY

Petitioner,

v.

THE AMPLIFY MOVEMENT

Respondent.
_____/

Engelbrecht, J. Delivers the Opinion of the Court. Moorhead, C.J. and Lagos, J. concur in judgment only.

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Syllabus

The case comes before the Court on an appeal by petitioner, The Legacy Party (hereinafter "Legacy"), from a decision of the Elections Commission (hereinafter "Commission). Petitioner alleges that the Commission erred when failing to find The Amplify Movement (hereinafter "Amplify") in violation of section 711.6(C)(4), Student Body Statutes (2019) (Hereinafter "SBS").

Issue

Did the Commission err in finding that Amplify did not violate section 711.6(C)(4), SBS?

Factual Background and Procedural History

Petitioner, a student-run political party on campus, appeals a decision made by the Commission that found Amplify not in violation of section 711.6(C)(4), SBS. Legacy brought an allegation of early campaigning by Amplify. The basis of this allegation is that a dues-paying member of Amplify, Akice Agwa, posted on her Instagram story campaign materials that included a call to vote. Specifically, the post included a painted banner with the phrase "SDT support Amplify Movement" which was immediately followed by the word "vote." This banner would qualify as campaign material under the Election Code and would need approval from the Supervisor of Elections before publishing this call to vote.

Analysis

The question before the Court is whether or not the Election Commission erred in finding that Amplify violate section 711.6(C)(4) of the student body statutes. In support of a finding of no error, Amplify made two arguments: (1) that the statute in question violates Amplify's and its member's First Amendment rights to free speech, and (2) that they should not be held liable for the actions of a dues-paying member that is not a board member of the party, or a candidate. We find neither of these arguments persuasive and find that the Commission erred in its decision.

As the Court is being asked to review a question of law in this case, the standard of review to be used will be *de novo*.

I. Section 711.6(C)(4), SBS does not violate Amplify's First Amendment right to free speech.

The Court does not find section 711.6(C)(4) of the Student Body Statutes in violation of the first amendment. Reaching this conclusion, the court needs to go against prior precedent. However, prior precedent of this Court is merely *persuasive* evidence, not controlling.[1]

Last year, the Court relied on *Tinker v. Des Moines Independent School District,* 393 U.S. 503, 506 (1969), in determining that the Election Code violated the Unite Party's First Amendment right to free speech. *See Ney v. Unite Party*, Fla. St. Univ. Rep. (2018). Yet this reliance on *Tinker* was mistaken, as the court permitted "reasonable regulation of speech-connected activities in carefully restricted circumstances." 393 U.S. at 513.

The United States Supreme Court has upheld the right of state universities to "make academic judgments as to how best to allocate scarce resources," and to determine independently on academic grounds "who may teach, what may be taught, how it shall be taught, and who may be admitted to study." *Widmar v. Vincent,* 454 U.S. 263, 276 (1981) (citations omitted). The justification for having the Florida State University Student Government Association is that it reflects the academic mission of the University. The Court gives deference to the academic mission of state universities and recognizes "university's right to exclude even First Amendment activities that violate reasonable campus rules or substantially interfere with the opportunity of other students to obtain an education." *Id.* at 277.

The proper analysis of the issue at hand is to look at the level of control a university may have over the school-related activities of the students and "whether it is unconstitutional for a university, which need not have a student government association at all, to regulate the manner in which the Association runs its elections." *Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, 867 F.2d 1344, 1346 (11th Cir. 1989). The Court in *Alabama Student Party* held that the Court "should honor the traditional 'reluctance to trench on the prerogatives of state and local educational institutions.'" 867 F.2d at 1347 (citing *Regents of University of Michigan v. Ewing,* 474 U.S. 214, 226 (1985)).

In this case, The Court shall give deference to the school officials who seek to regulate free speech and campus activities, within reasonable limitations, to further the school's academic mission. The holding in *Ney v. Unite Party* is hereby overruled.

II. The Amplify Movement is to be held liable for the actions of its dues-paying members.

During oral arguments, Amplify did not contest that posting banner was a call to vote and that it would violate the Elections Code. However, Amplify contested that they could not be held liable for the actions of their dues-paying member because she was not a board member or director of the organization nor a candidate for office through the party.

[1] Sup. Ct. R. Proc. 4(f)(3) (emphasis added); *but see Payne v. Tennessee*, 501 U.S. 808 (1991) ("*Stare decisis* is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."

This Court has already held that a political party on campus cannot be held liable for the actions of non-members. *Ney v. Unite (Flyer handouts)*, Fla. St. Univ. Rep. (2018). As to if Amplify should or should not be held liable for the Elections Code violations of its dues-paying member, counsel for Amplify argued that holding Amplify argued that this could potentially open up the door to abuse for other political parties to infiltrate and purposefully commit actions to put Amplify, and other campus political parties, in violation of the Elections Code, echoing the opinion of the Election Commission in this case. They cite that they would violate FSU Registered Student Organization (RSO) Policy if they were turn away a student wishing to join Amplify and able to pay the membership dues. This argument, however, is not persuasive as the Student Body Statutes already addresses this issue. Section 711.6(C)(5) states that a Schedule 2 violation is to be found if an individual, political party, or their agent performed "an activity that would place another party in violation." Additionally, if Amplify is truly that worried about potential infiltration and sabotage, they can easily raise their dues to an amount that would deter potential bad actors.

In support of its Argument, Amplify moved into evidence an affidavit from the violating member. However, this affidavit was not a typical affidavit. The affidavit submitted by Amplify, was an unsworn, unverified *Microsoft Word Document*. In this document, the author (presumably Akice Agwa), stated that they acted on their own accord, with no direction from anyone else in Amplify. The author deleted the post promptly after becoming aware that it would be a violation of the Elections Code. The author admitted that they did not attend any informational sessions put on by Amplify discussing the Elections Code. Although it is noble of the author here to admit to their ignorance and to the wrongdoing, Amplify is still in violation. A RSO at FSU is responsible for the actions of its members. *Ney v. Unite (Flyer handouts)*, Fla. St. Univ. Rep. (2018); *see FSU Student Organization Handbook*, at 11 ("RSOs at FSU are responsible for their events and activities, as well as the actions or negligence of the organization membership."). This should not suggest that parties may utilize third parties to commit campaign violations on their behalf. In addition to the actions of its members, an organization may be held liable for the actions of its agents as well. *Ney v. Unite (Flyer handouts)*, Fla. St. Univ. Rep. (2018). Therefore, Amplify is liable for the actions of its dues-paying member.

Conclusion

The Elections Code, and more specifically, section 711.6(C)(4), SBS, is found to not violate Amplify's First Amendment right to free speech. Deference should be given to the University regarding its rules and regulations, as long as they provide a reasonable restriction on free speech. A Registered Student Organization at FSU is to be held liable for its members, regardless if that member is a director, board member, or candidate for office. The Amplify Movement is hereby found to have one violation of the Florida State University Student Body Statutes § 711.6(C)(4). The decision of the Elections Commission is hereby *reversed* and to be *remanded* to the Elections Commission to levy the appropriate fine under §711.

It is so ordered.

Moorhead, C.J., concurring in judgment only, with whom Lagos, J. joins.

I concur with the judgment of the Court, that the finding of no violation should be reversed, but I cannot agree that *Ney* should be overturned in order to do so, as the majority has done. The case this Court relies on to overturn our prior decision dealt with "whether it is unconstitutional for a university, *which need not have a student government association at all*, to regulate the manner in which the Association runs its elections." *Alabama Student Party v. Student Gov't Ass'n of the Univ. of Alabama*, 867 F.2d 1344, 1346 (11th Cir. 1989) (emphasis added). The flaw in reliance on this case is that Florida statutorily requires public post-secondary institutions to have a student government association. § 1004.26 *et seq.*, Fla. Stat. The Florida Statutes are written such that Florida State University is required to form a student government, and form its student government in the three branch manner it has. *See id.* In other words, the *ratio decidendi* of *Alabama Student Party* does not apply here, since it does not deal with Florida law, and it does not address a situation where state law *requires* a student government to be formed, and to operate in the way our system does, specifically as it relates to elections for the Executive and Legislative branches. § 1004.26(2), Fla. Stat.

Rather, the appropriate way to deal with Respondent's constitutional argument was to dismiss it all together, since the argument was either not brought or abandoned below. *See Estate of Herrera v. Berlo Industries, Inc.*, 840 So. 2d 272, 273 (Fla. 3d DCA 2003) ("issues not presented in the trial court cannot be raised for the first time on appeal"). When the constitutional argument was raised, what we should have done was stop the argument dead in its tracks, since it is hornbook appellate procedure that one does not raise an issue not presented below. Granted, our rules allow for the "introduction of evidence during an appellate hearing when the record is insufficient upon a showing of good cause from a party;" however, there was no showing of good cause that the record should be "extended" to include a constitutional argument, since an argument is not evidence, unlike the hearsay statements of Akice Agwa which admitted the violation alleged, and were admitted upon Respondent's motion. *See* Sup. Ct. R. Proc. 5(c). This Court should not have overturned *Ney* where this case can be resolved, with the same outcome, based solely on the analysis given in II, *supra*.

I turn now to the opinion of the election commission, and to the commission itself. The commission is not tasked with making policy decisions, and quite frankly nor is this Court. We are both tasked with applying the law as written, unless a successful challenge to the law itself is brought in our Court. The opinion sets forth a clear policy decision which the election commission has no statutory authority to make. The commission says:

> The alleged violations are dismissed…The banner contained the phrase "SDT support Amplify Movement" immediately followed by the word "Vote". Under the Election Code, this banner *would be* construed as campaign material needing approval from the Supervisor of Elections. The "publishing" of this banner on

> Instagram could also be construed as the publishing of campaign materials. However, the individual who created the post is neither a candidate for any SGA political office, nor is she a political party. The Legacy Party contends that because this individual is a dues paying member of The Amplify Movement Party's Recognized Student Organization (RSO), that the Party itself should be held responsible for the publishing of campaign materials. The Commission disagrees…This would create a system ripe for abuse…this claim must fail.

Violation 2: The Legacy Party v. The Amplify Movement – Spring 2019, at 1-2 (2019) (emphasis added).

My question is: how would it not be? The commission needed to talk out of two sides of its mouth to rule in the way they did. They essentially said, "the only reason this does not constitute campaign material is because we say it does not, although it technically meets all the criteria." That reasoning is so beyond asinine: that an otherwise *dispositive fact* is not, simply because you think following the law "would create a system that would be ripe for abuse" with no showing anyone would abuse it, and conveniently forgetting there is a statute to punish that same abuse, if it even happened in the first place. That is *pure policy*, looking at the evidence, and finding that the evidence turns an allegation into fact, and that the fact would normally constitute a violation, but then deciding not to impose a violation based on the facts because you cannot stomach the plain text of the law. Simply astonishing, simply asinine, simply outside what the statutes require of you.

For these reasons, I concur in judgment only.