

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

SURGE FSU,

No. 23-SP-SC-08

Appellant,

v.

OMER TURKOMER, in his official
capacity as General Counsel for
FORWARD FSU,

Appellee.

*ASSOCIATE JUSTICE CEVERE
delivered the unanimous opinion of the
Court.*

SYLLABUS

This action was brought before this court on appeal from 2023-EC-SPR-08 wherein the Elections Commission determined that the evidence presented clearly and convincingly demonstrated that Appellant was in violation of Florida State University Student Body Statutes § 709.1(C) by placing a freestanding sign in an unauthorized location.

FACTUAL BACKGROUND

On March 1, 2023 at about 8:43 am, a member of Appellee’s campus political party found evidence that Appellant’s campus political party placed a freestanding cardboard cut-out featuring

the Appellant’s candidates for Student Body President, Student Body Vice President, and Student Body Treasurer in an unauthorized location. This member of Appellee’s campus political party photographed the scene. The photograph was properly authenticated by stipulation of the parties, but did not show explicit evidence that the cardboard cutout was freestanding.

There were four possibilities as to which external structures kept the cardboard cutout from falling over. First was a lamppost located directly behind the cardboard cutout. Second was a box located behind the cardboard cutout. Third was a table located behind the cutout. And fourth was Appellee’s candidate for Student Body President, also located behind the cutout.

As to the lamppost and the location of Appellee’s candidate for Student Body President, the photograph indicated that the head of Appellee’s candidate was in between the cardboard cutout and the lamppost.

As to the cardboard box, the photograph indicated that it was not used as any support structure, as its flaps were loose and unimpeded by any pressure which would result from the cardboard cutout

being placed against it for support. Likewise, the shadows from the morning sun clearly indicate a gap between the box and the cutout.

Regarding the table, the shadows cast by the morning sun indicate ample space between it and the cutout. Likewise, these shadows indicated that Appellant's candidate for Student Body President was standing between the cutout and the table.

Finally, in respect to whether Appellant's candidate for Student Body President was holding the cutout up with his right hand was inconclusive in the photograph. However, Appellant's candidate made no claim as to whether or not their right hand was holding up the sign, nor were they called to testify in this appeal by counsel.

ISSUES

1. Was the case presented to the Elections Commission sufficiently persuasive so as to satisfy the clear and convincing evidentiary standard?
2. Does the FSU Posting Policy's language in respect to freestanding signs apply to matters sued upon under § 709.1(C) of the Elections Code?
3. Did the Election Commission err in their designation of the cardboard cutout as a

freestanding sign pursuant to FSU Posting Policy 2.0131?

HOLDINGS

1. Yes, the Elections Commission was presented with sufficiently persuasive evidence to satisfy the clear and convincing standard.
2. Yes, due to the express delegations of authority represented by the language of § 709.1(C) to the Oglesby Union Policy and to the University's own regulations regarding freestanding signs, FSU Posting Policy 2.0131 is applicable to this case.
3. Yes, the Election Commission did err in their designation of the sign as "freestanding." However, this error was harmless and did not impact the resolution of this case in any meaningful fashion.

OPINION

We now turn to an analysis of how the Court made the conclusions of law as enumerated above.

THE BURDEN WAS MET

Evidence is "clear and convincing" when it is "precise, explicit, lacking in confusion, and of such weight that it produces a firm belief or conviction, without hesitation, of the matter at issue." *In re Standard Jury Instructions In Civ. Cases-Rep. No. 09-01 (Reorganization of the Civ. Jury*

Instructions), 35 So. 3d 666, 726 (Fla. 2010). As indicated in Appellee’s Exhibit 1, the photograph clearly and explicitly showed that the lamppost, the cardboard box, and the table were not keeping the cardboard cutout upright. While analysis of the photograph may include an indicia that Appellant’s Student Body President candidate may have been touching the cardboard cutout, this was discovered only after rigorous analysis of the photograph.

Important to this Court’s lack of hesitation in determining that Appellant’s candidate for Student Body President was not holding up the cardboard cutout is the fact that this theory was never proffered as a defense to the claim at issue. Appellant’s candidate did not testify as such, nor were they called by Appellant’s counsel to testify as such. The very possibility never seemed to cross Appellant’s mind as a potential defense.

Moreover, when pressed by the Court in oral arguments, Appellant’s counsel – in a remarkable demonstration of candor and restraint – did not provide any argument other than the photograph may be indicative of some external support. However, even if Appellant’s candidate were touching the cardboard cutout, that in and of itself does not demonstrate that

the cardboard cutout would have fallen absent the support provided by gently touching it.

All of the preceding in mind, this Court finds that the Election Commission correctly decided this case by the correct evidentiary standard.

FSU’S POSTING POLICY APPLIES

Appellant argued, at length, that it would be improper for the Court to apply FSU Posting Policy 2.031 to this case. This argument asserted that the Posting Policy was too far removed from the Oglesby Union Policy to have any binding affect. This Court disagrees. We are unpersuaded that the Oglesby Union Policy’s delegation to the Posting Policy renders it null.

The binding effect of the Posting Policy is a result of multi-level delegation. § 709.1(C) contains an express delegation to the Oglesby Union Policy. Fla. St. U. Student Body Stat. § 709.1(C) (“[a]ll material and activity in the Union and **on FSU campuses** shall be in accordance with the rules and regulations of the Oglesby Union Policy”) (emphasis supplied).

This sort of delegation to an additional and external source of authority is standard

fare, not only in the law, but also in our Student Government Association's governing documents. *See id.* at § 806.4(C) (“[a]ll monies shall be spent in accordance with the Finance Code and A&S Fee Guidelines”); *id.* at § 808.3(C)(3)(a)(ix) (requiring the Chair of the Sports Club Distribution Council to abide by the SGA Senate Rules of Procedure); *id.* at § 907.3(B)(1)(a) (requiring Executive Officers of the Inter-Residence Halls Council to abide by their own by-laws).

Next, we turn to the Oglesby Union's delegation of authority to the FSU Posting Policy, which does so in two separate provisions. *See* THE OGLESBY UNION POLICY MANUAL (2016-17) at 35 & 38. Notably, the Union policy provides that “all organizations must adhere to the Florida State University Posting Policy.” *Id.* at 35. For good measure, the Union policy includes the entire policy in an addendum to the document. *See id.* at SECTION VII: ADDENDUMS.

While the face of Appellant's argument - that the Union policy is absent an explicit delegation of authority to the Posting Policy - seemed to have merit, upon review of that policy it became abundantly clear that not only was this policy applicable, but also this Court has limited jurisdiction

over its terms in respect to any policy regarding freestanding signs.

In fact, FSU's Posting Policy is explicit about who is permitted to alter any of its regulations which apply to freestanding signs, and it is not this Court nor the SGA Senate. *See* FSU Posting Policy 2.031(11)(d). Rather, only a special committee appointed by the University President or their designee may “update” the locations as to where freestanding signs are permitted. It so follows that even though the posting policy is silent about where freestanding signs are expressly not permitted, this Court lacks the authority to recognize any locations not explicitly mentioned as permissible within the policy, full stop.

Hence, this Court rejects Appellant's arguments on this issue. As long as § 709.1(C) contains an express delegation to the Union policy and the Union policy delegates authority in a fashion that impacts all organizations, the Posting Policy and its provisions are to be read as if it were part of the Election Code itself.

While this Court lacks authority to add locations where freestanding signs are permitted under the posting policy, it does not prevent this Court from addressing the

plain meaning of freestanding to be applied by subsequent Election Commissions and Courts of our Student Government Association.

THE PLAIN MEANING OF “FREESTANDING”

The relevant opinion from the Election Commission asserts that a sign is “freestanding” when it “stands alone without the need for interference by another party.” *See* 2023-EC-SPR-8 at 6. The Court rejects this definition and replaces it with the following: a sign is freestanding when it is unsupported by any other structure. Further, the Court rejects the Election Commission’s analysis that if a sign was once “freestanding,” it must always be classified as such in an analysis of FSU’s Posting Policy.

Reasoning by analogy regarding what it means to be freestanding, consider a felled Kapok tree of the Amazon rainforest canopy. These trees stand nearly 200 feet tall, unsupported by any other structure. Once felled, however, the Kapok tree cannot become upright without the assistance of heavy machinery. It would be wrong to consider it to be capable of being a “freestanding” tree.

However, if the Election Commission’s

opinion – which essentially posits that if a sign was once freestanding it remains as such despite any damage it may incur – is applied to this felled tree, then somehow a felled tree is simultaneously prone on the ground and “freestanding.”

Clearly, one cannot be dependent upon heavy machinery for movement and be considered “standing” in any capacity which would indicate freedom of movement or the ability to withstand gravity absent help from an external structure. Hence, the definition of “freestanding” as put forth by the Election Commission is clearly erroneous. However, this definitional error has no impact on the merits of the case, which we hold was correctly decided by the lower tribunal.

CONCLUSION

Having found no substantive error by the Election Commission, the lower tribunal’s finding of responsibility in 2023-EC-SPR-07 is **AFFIRMED**. The Elections Commission is hereby ordered to enforce the collection of the penalty levied against Appellant in conjunction with any other penalties so levied after the resolution of proceedings in all subsequent matters before the Elections Commission and this Court related to the Spring 2023 SGA elections.

DONE and **ORDERED** on March
30, 2023 in Tallahassee, FL.