



Villacorta v. Harmon

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

VILLACORTA

CASE NO.: FALL 2020-1

v.

HARMON
_____ /

SUMMARY OF ALLEGATIONS

Ryan Villacorta (hereinafter "appellant") comes before this Elections Commission to appeal a violation levied against him by Alexander Harmon (hereinafter "appellee") for violating SBS § 711.6.C.8. Appellant argues that the Schedule 2 violation brought against him was done so while he was not a candidate for an elected position of the Fall 2020 Elections. The Appellant further alleges that on their defense of not being a candidate at the time the alleged violation occurred SBS § 711.1.A does not apply and therefore is grounds for reversal of the Schedule 2 violation.

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.

On Wednesday, October 28th, 2020 the Florida State University Student Government Association Student Senate (hereinafter "Senate") held its monthly meeting (hereinafter "the meeting"). During the meeting the Senate floor was open for students to speak on non-Senate business, an open forum. At or about minute 59:25 the Appellant was heard making the following statement, "[C]ulture that has been created and exacerbated by . . . the Amplify movement. . . ." The Appellant was a Senate candidate for the November 10th election. On Friday, November 6th, 2020, the Appellee filed an initial alleged violation report against the

Appellant. That same day, the Acting Supervisor of Elections levied a Schedule 2 violation under § 711.6.C.8, which was immediately appealed to this Elections Commission.

OPINION & DISCUSSION

Garcia Marrero, A. for the Majority

The Elections Commission finds that Appellant did violate § 711.6.C.8. The issue at hand is whether the Acting Supervisor of Elections erred in her levying of a Schedule 2 violation against the Appellant under § 711.6.C.8. Although the Appellant brought various novel issues as defenses, they are immaterial to the issue before the Elections Commission on appeal.

In support of his argument, Appellant relied on an elements test: 1) the alleged violator must be a candidate—as deemed by the Supervisor of Elections—within the election cycle that the alleged violation occurred; 2) support for or against any candidate, platform, political party, or ballot item must be expressed; and 3) that Student Government equipment or resources were utilized. 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." Taking the Appellants arguments on its face we will apply this standard of review when weighing the evidence provided to the Elections Commission.

A.

When addressing the first element of the Appellant's defense the Elections Commission must find by clear and convincing evidence that the Appellant was not a candidate, as deemed by the Supervisor of Elections, during the time that the alleged violation occurred. We hold, that the evidence presented by the Appellant was not clear and convincing. First, the Appellant provided the Elections Commission with no direct evidence that on October 28th, 2020 he was not a candidate during the Fall 2020 Election Cycle. The Appellant was a candidate, as deemed by the Supervisor of Elections, when the initial violation report was filed with the Acting Supervisor of Elections on November 6th, 2020. Evidence supporting this fact was provided by the Appellant in the form of screenshots of the "Progress FSU Fall '20 Slate" Groupme, timestamped October 30th, 2020 at 12:41 p.m. Additional evidence was provided by the Acting Supervisor of Elections in the form of a screenshot demonstrating the Appellant's attendance at the § 704.2.G Mandatory Candidate Seminar meeting, timestamped October 30th, 2020 at 12:48 p.m. Furthermore, the Election Commission finds that the Appellant was a candidate on the Fall 2020 Election Ballot for "Undergraduate Studies, Seat 23" as was demonstrated on the Fall 2020 Sample Ballot and under the Appellants own admission during the hearing.

The SBS § 704.2.F provides that "Each candidate shall show understanding and acceptance of all filing procedures, campaign restrictions, and the elections and ethics codes prior to filing." Furthermore, § 704.2.F.1 establishes that the Supervisor of Elections will make available one week prior to the first date of candidacy filing all pertinent information for candidates to file their declarations of candidacy. At this time, the

statute also binds the Election Code to the given Election Cycle, in this case the Fall 2020 Election Cycle. This statutory constraint means that the Election Code was binding as of October 21st, 2020, well before the alleged violation occurred. Additionally, § 705.3 states, “all candidates for office shall file applications with the supervisor of Elections no later than 4 p.m. on Wednesday, two weeks before the elections.” The Fall 2020 Election was held on November 10th, 2020 establishing the final filing date for declarations of candidacy as October 28th, 2020, the same day the alleged violation occurred.

Based on the evidence presented and the statutory constraints provided by the SBS, the Elections Commission rejects the Appellant’s first argument that the Appellant was not a candidate—as deemed by the Supervisor of Elections—when the alleged violation occurred.

B.

The second element provided by the Appellant in his argument; support for or against any candidate, platform, political party, or ballot item must be expressed is easier to address. When defending his position, the Appellant conceded that the statement he made on October 28th, 2020 was against the Amplify party and the party platform. Short of a confession, the Appellant testified during his hearing before the Elections Commission that his statement was against the Amplify party. Therefore, the Elections Commission does not see any material fact in dispute for element two and hold that element two is satisfied.

C.

Finally, the third element, that Student Government equipment or resources were utilized, was not addressed by the Appellant beyond his opening remarks. The Appellant provided no evidence to persuade the Elections Commission that the meeting at which the alleged violation occurred was not a Student Government resource. Absent any evidence, to show that the meeting utilized was not a Student Government resource, the Election Commission finds that the Appellant did not meet his burden of proof and hold that the third element is satisfied.

CONCLUSION

It is critical to restate that the burden of “clear and convincing evidence” is a high bar to reach. While we certainly want to discourage a party or individual candidate from making statements that violate the Elections Code and the SBS, we also do not want to render an opinion that would discourage prospective candidates from exercising their Constitutional right to speech. Hence, why this Elections Commission finds that the Appellant failed to provide clear and convincing evidence demonstrating that he was not a candidate within the statutory periods provided in the SBS.

HOLDING

The Elections Commission holds, in a unanimous decision (5-0), that the Appellant did not provide clear and convincing evidence to satisfy the argument made under the elements test provided. Therefore, the ruling of the Acting Supervisor of Elections to levy a Schedule 2 violation under SBS § 711.6.C.8 is sustained.

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 November 10th, 2020 in conference at the College of Law Advocacy Center in Leon County Florida. Decision electronically filed on November 13th, 2020 on the Elections webpage. Opinion electronically submitted on [Date].
