



Associated Student Government Judiciary

ASGJ-2018-GE11

Election Violation Complaint Decision

March 13, 2018

Associate Justice Spencer George authoring for the Majority decision where the majority rules.

I. Introduction

The Court has ruled in favor of the defendants, J.P. Gairhan, Abigail Walker, Isamar Garcia, and Luke Humphrey, in that they were not in violation of ASG Code Title VII, Section 1, § H, (O), stating that “candidates must follow all University Policies and guidelines for posting and flyer distribution, including any policies which may exist within individual buildings”. The complainant, Jack Dennis, did not meet the burden of proof to show a violation based on his complaint.

II. Facts of the Case

The Court was asked to determine if the defendants were in violation of Title VII, Section 1, § H, (O) of the ASG Code. Due to unexpected circumstances, this case was heard by four justices of the ASGJ. Both parties agree to waive the quorum requirement so that the hearing could proceed. The complainant also waived his right to appear at the hearing, as he believed he would appear to be speaking in his official role as a University Housing employee.

During the complainant’s opening statements, Complainant notes that he is acting a student rather than as a university employee, and is exercising his right to file the complaint. In his statement, he notes that banners for both the For The Hill and the Make Your Mark campaigns were hung at Walton Hall on Stadium Drive. Both banners were removed, as it was deemed a University Housing violation, because there was not, to his knowledge, prior approval for either ticket to hang campaign materials from the building. The act in question was the fact that a second banner, or the initial banner was hung or rehung at Walton Hall, which allowed the Make Your Mark ticket an unfair advantage, while also in violation of University Housing policy. Photographic evidence and email chains were included in the written statement in defense of the violation occurring. A separate allegation was made regarding obstruction of justice by a phone call that was stated to be made by witness Zack Spero on behalf of presidential candidate J.P. Gairhan to Treasurer candidate Marco Gargano to drop the complaint as it was a “waste of time.”

The defendants began their opening statements by stating that they had received permission at some point, and were unaware that the banners were hung without that permission. The banner was passed off to campaign staff where it came into possession of witness Zack Spero, President of Beta Theta Pi.

Prior to a period of questioning, the defendants produced photographic evidence of an email thread between Catherine Reid, the graduate assistant at Walton Hall for

University Housing, Parice Bowser, the head of IFC, as well as Eric Woelke, president of Sigma Pi. In these statements, as well as other email chains, neither banner was directly named and stated to be in violation of University Housing policy, but rather was stated vaguely.

During a period of questioning the witness, it was determined that witness Zack Spero hung the banner without permission, assuming it would be approved by University Housing, where Beta Theta Pi is currently situated. He stated that this was his second year in the position as President, and therefore was “extremely well versed” in housing policy. Photographs of a text message conversation between witness Zack Spero and GA Catherine Reid proved that the banner was hung without permission, but permission was granted retroactively to the party who hung the banner. The language of the complaint states that students must receive “prior approval” rather than retroactive approval, which occurred in this case.

The attention was then somewhat shifted to the accusation of an obstruction of justice. In the complainant’s opening statement, it is noted that witness Zack Spero had requested Marco Gargano to forward the message to drop the violation to the complainant. Spero was stated to have “reiterated multiple times throughout the phone call that the call was not due to his own personal bias or opinion, but that it was at the request of Mr. Gairhan.”

III. Discussion

After the hearing and period of discovery was complete, there were two questions that the Court determined needed to be answered to determine if the violation occurred as reported.

1. Was the complaint of permission on the banner that was hung initially, which was stated to have been hung early, or on the second banner which would have had permission by Catherine Reid to be hung?
2. At what time was the complainant aware of the violation occurring?

These questions are the basis in the validity of the complaint. If the complaint was on the initial banner that was hung without prior permission, which was hung on Monday in the afternoon around 1 pm, the complainant must have filed by the close of the first business day following the alleged violation or awareness of the violation. If the complainant had filed the complaint on the second banner that was approved by University Housing, but was unaware of the approval, then a violation did not occur. Should the complainant have filed a complaint without knowledge of the approval, the complaint would be invalid and thus a violation would not have been committed. The complainant stated on his submitted complaint form that he alleged the violation occurred on the afternoon of March 7, at which time the defendants had received permission to hang a banner at Walton Hall. Because the complainant waived his right to appear before the Court, these questions could not be accurately answered without exterior postulation.

IV. Conclusion

The Court has determined that as a result of the complainant waiving his right to appear before the court to give testimony and clarification of his allegations, there was a lack of evidence that would indicate sufficient awareness. The written statement of the complainant could not prove if prior confirmation for either banner was given, despite the witness admitting to hanging the banner without prior permission. The ambiguity as to which banner the complaint alleges was hung without permission does not allow the Court to have any firm indication of how to answer the questions, “which banner is the complaint lodged against?” and “at what time was the complainant aware of the violation?” The inability of the complainant to be present in the hearing process made it impossible to determine the answers to said questions, therefore his written statement alone as well as the email chains submitted as evidence were not able to meet the burden of proof to determine if permission was granted at the time of the alleged violation. A lack of clarification regarding the language of the complaint and the nature of the potential violation in relation to the language of the complaint caused the Court to find those questions inconclusive, and therefore did not meet a preponderance of the evidence.

Based on the vagueness of the complaint, and his failure to appear at the hearing to provide clarification, the complainant did not meet the burden of proof. Awareness of the violation could not be accurately determined, and there was not sufficient evidence to suggest that the filing was made at a time that falls within the limitations of awareness, or twenty-four (24) hours after the complainant had become aware of the violation.

V. Decision

The Court voted with a unanimous vote (4-0) that defendants J.P. Gairhan, Abigail Walker, Isamar Garcia, and Luke Humphrey did not commit an election violation. As the decision was ruled in favor of the majority, the Majority rules. The decision stands as is.

IT IS SO ORDERED

Authored by Justice Spencer George _____

Joined by Justice Pierce Teeuwen _____

Joined by Justice Brandon Turner _____

Joined by Justice Proxy Cassady Curtis _____