

Opinion of the Court

**THE JUDICIAL BRANCH OF THE STUDENT
GOVERNMENT ASSOCIATION OF THE UNIVERSITY
OF TENNESSEE-KNOXVILLE**

Case Number: 2018-07

JACK AVERY BLAINE, PLAINTIFF V. TOGETHER WE ARE UT, DEFENDANT

Decided on 10 April 2018

Summary of Facts

On Monday, April 9, 2018, Xavier Greer of the Together We Are UT campaign was seen allegedly campaigning in an academic classroom by passing out a Together We Are UT's push card to student Vanyssa Marlin. The JAB campaign first began by providing a video of Greer handing what appears to be a campaign push card to a student. Greer himself recalled the facts of the case as such: after campaigning at the Whirlwind of Opportunity, Greer was headed to his class in the Haslam Music Building. Around 11:05, Greer had to approach his professor about missing class last Friday, April 6th and then walked up to his seat when his friend, Vanyssa Marlin, asked about his campaign shirt and his whereabouts at the Sigma Kappa meeting last Saturday. According to Greer, Marlin requested one of the push cards in Greer's hands and he agreed while pointing out Together's policy points. He immediately sat back down beside Vanyssa and class began afterwards at 11:15. Josh Kitts, the student and owner of the Snapchat video of Greer, said Greer and Marlin's conversation was not loud enough for him to hear and he took a video of Greer out of his friendship with him, not his campaign affiliation. The main points agreed upon by both Together and JAB: this interaction was not during the middle of a lecture and no professor was speaking at the time of alleged violation. Greer handed one push card to a student who requested the card. The student in question, Vanyssa Marlin, was close friends with Greer and sat next to him every class. No one in the JAB campaign was present during the class.

Relevant Provisions of SGA Election Packet

The two sections of the Election Packet in question are III.E.5 and V.A.4. Article III, Section E, Subsection 5 defines campaign material as "campaign materials for the purposes of the SGA elections shall be defined as any paraphernalia bearing the name of a candidate/political party or the colors of that political party, including but not limited to, flyers, food, literature, pamphlets, buttons, clothing, table tents advertisements, and electronic communication as defined in the 2018 Election Packet." Furthermore, this section states in subsection 5 that "campaign materials may not be *placed* in classrooms."

In article V, Section A, Subsection 4, the Election Packet defines campaigning as, “Campaigning for the purposes of the Student Government Association election is defined as, but not limited to, any statement, display, or distribution of any campaign material and/or activity that is intended to *promote* an individual candidate or specific political party. Campaigning is not permissible before 8:00 AM on Monday, April 9, 2018 except in certain areas where the packet explicitly states that it is permissible.” Furthermore, this section states, “Campaign including, but not limited to, speaking engagements, or *distribution of campaign material*, is prohibited to students gathered for the purpose of an *academic class session*.”

Analysis of Election Packet

The Judicial Branch interprets “campaigning” as used in the Election Packet to require intent to promote a candidate or political party, as noted in Section III.V.A. This intent requirement is incorporated into all mentions of “campaigning” throughout the Rules. Further, a plain language reading of “distribution” as used in Section III.V.A.4 indicates that distribution requires multiple recipients. One Google definition of “distribution” is “the action of sharing something out among a number of recipients.” The Merriam-Webster definition of “distribute” reads: “to divide among several or many.”

Plaintiff complained specifically of Mr. Greer’s distribution of a campaign “pushcard” in an academic setting. Evidence at the hearing revealed that only one pushcard was distributed by Mr. Greer to his friend, Vanessa Marlin. Based on the plain reading of Section III.V.A.4, this conduct does not constitute distribution because there was only one recipient.

Distribution of materials is not the only form of campaigning; however, we hold that the conduct in question was not campaigning, as defined in Section III.V.A. Ms. Marlin had previously directly requested campaign information. Mr. Greer was not able to provide the information earlier because of a delayed flight. When Ms. Marlin asked for a pushcard before class started, she was following up with her previous request and Mr. Greer complied. It is the Judicial Branch’s position that the writers of the Election Packet did not desire the rules of campaigning to override reasonable social convention and norms, thus they included an intent requirement in the definition of “campaigning” found in Section III.V.A. In this case, Mr. Greer’s intent was not to promote himself, seeing as he had a preexisting relationship with Ms. Marlin and Ms. Marlin herself requested the material. Mr. Greer presented ample evidence that his sole intent was to comply with a request from a friend. Mr. Greer did not communicate with anyone but Ms. Marlin regarding the campaign, did not provide any materials other than the one pushcard, and did not speak loudly enough for the person recording the Snapchat video to hear, suggesting he made no announcements intended for a broader audience. He did not perform any acts specifically to be published via Snapchat for promotional purposes; his conduct was recorded simply because Mr. Kitts had his phone out already and is a supporter of Mr. Greer.

Section III.V.A.4 prohibits, specifically, campaigning in an academic setting. Campaigning is therefore a required element of a cause of action for violation of this Section. Because the conduct is not considered campaigning, there can be no violation of the “academic setting” portion of this Section.

Even if the Judicial Branch did find a violation in this case, which it does not, the impact of the conduct in question is minimal or nonexistent. Because the two non-defendant persons involved—Josh Kitts and the friend—were already supporters of Mr. Greer when the conduct occurred, there is no evidence of any voter influence (aside from the influence stemming from wearing a campaign t-shirt, which is currently allowed under the Rules). We recognize that due to the large amount of votes cast on the same day, the Plaintiff was suspicious that an indeterminate amount of those votes could be for Mr. Greer solely due to his alleged campaigning in a class. The evidence presented at the hearing does not support this suspicion, but the Judicial Branch appreciates the Plaintiff’s vigilance in maintaining the integrity of our election process.

THEREFORE, we find Mr. Greer NOT GUILTY of the alleged violation. We caution others, however, in taking this opinion as an invitation to campaign in academic settings. All decisions on such matters must be deeply *fact-specific* and we encourage candidates and campaign members to keep the election process separate from the classroom. The specific facts of this case and the evidence presented did not warrant a guilty finding or sanction, but due to vague definitions in the Rules similar conduct could potentially be actionable in the future.

It is so ordered.

DAVIS, CLINE, MILLER, and STOGSDILL delivered the opinion of the court. WHITE (C.J.) concurs in part. GIACOMINI dissents.

GIACOMINI, Dissenting...

I believe that Mr. Greer's intentions were not to campaign in an academic setting; however, he did. His act of giving a push card to a student is clearly campaigning in an academic setting, whether that was the intention or not. Intent versus reality are not up for debate when votes for an election are at stake. Because of the reality of the situation, regardless of intent, I believe the appropriate disciplinary action should be taken. If such disciplinary action is not taken, I worry for the precedent it will set. Are we going to allow others to do such action? If the answer is no, then I believe Mr. Greer needs to face consequences for his actions.

WHITE, concurring in part...

While I agree with the ultimate finding of the majority as it relates to intent and the controlling passages of the Election Packet, I disagree strongly with the definition of "distribute" that is used. Distribution, in my mind, does not require multiple recipients to be labeled as such. To say that it does would preclude any one-on-one interaction from falling within the scope of distribution of materials. This does not sit well with me, as I liken distribution of materials to dissemination of materials - sharing information from one person to the next. If Mr. Greer had given a push card, in the middle of the lecture to a non-friend, completely unprompted - I don't think we would be having a discussion over the meaning of the word "distribute." I think perhaps there is something to be said for "active" and "passive" campaigning/distribution in this case - Mr. Greer did not actively seek to promote himself or his campaign. Rather, by fulfilling the requests of a friend in an inconspicuous manner, before class, he did give out - *distribute* - campaign materials, but in a manner no more disrupting to the learning process than wearing a shirt in class (and the Court has no interest in mandating wardrobe changes before classes for campaign members).