

Opinion of the Court

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

Case No. 2019-08

Owen Flomberg et. al., Impact UT, Appellant v. The Judicial Branch of the Student Government Association, Respondent

JUSTICE MARSH delivered the opinion of the Court.

I. Introduction

The Impact UT Campaign (“Appellant”) brings this case as an appeal of alleged procedural issues arising from case 2019-06. Appellant alleges that the case violated several procedures that the Judicial Branch of the Student Government Association (“Respondent”) is obliged to uphold. Namely, Appellant alleges that the ruling is a violation of the principles of double jeopardy and ex post facto rulings, that the complainant in 2019-06 poses a conflict of interest, and that there was no evidence submitted during the hearing for 2019-06 that would warrant any penalty for Madison Woods, the Appellant’s candidate for Student Services Director. The Court will address each of Appellant’s claims individually.

II. Examination of Claims

A. Double Jeopardy

Appellant argues that the case brought before this Court in 2019-06 was previously ruled upon in 2018-11. The representative for Appellant stated that no new evidence was provided to the Court in 2019-06, and, as such, the Court’s ruling on the case presented an issue with the principle of double jeopardy. There exists no provision in the Constitution of the Student Government Association, the Bylaws of the Judicial Branch, the 2019 Election Packet, or the Student Code of Conduct which provides that this Court should operate under the auspices of the Constitution of the United States or any of the civil rights and liberties enumerated within. However, we understand the difficulties presented by this lack of specification and will discuss the double jeopardy claim in light of its established history in the United States judicial system. There exists a portion within the Fifth Amendment which states as follows, “No person shall . . . be subject for the same offense to be twice put in jeopardy of life or limb” However, the principle of double jeopardy does not apply to all sanctions or rulings of the Court. “Typically, only sanctions which can be considered as “punishment” would qualify under the rule” (Legal Information Institute, Cornell Law). 2018-11 imposed no “sanctions, punishment, or injunctions” (2018-11) upon Appellant. As such, the penalties arising from the Court’s opinion in 2019-06 would not be in violation of the double jeopardy principle.

B. Ex Post Facto Ruling

Appellant claims that the Court having ruled upon 2019-06 was an ex post facto ruling, making it improper. This Court has established precedent in this area. Combined cases 2018-01, 02, and 03 were similar situations in which the Respondents had engaged in campaign activity prior to the beginning of the 2018 “Campaign Period.” It was decided that the Court did have jurisdiction to rule upon alleged violations which occur outside of the “Campaign Period,” but that the Court did not have the ability to sanction or otherwise penalize Respondents prior to the commencement of the current “Campaign Period” as outlined in the Election Packet governing elections for that year. Rather, the Court has authority to rule on pre-campaign period violations when plaintiffs provide “information detailing how they (or another party) may be placed at a disadvantage (once the campaign period commences) due to the alleged infractions (that occurred before the campaign period)” (2018-01, 02, 03). This Court has found the same to be true, as is outlined in 2018-11. That being said, the governing document which was in effect at the time of the violation was the 2018 Election Packet. The only restriction upon interest meetings found in this document states as follows: “A political party/individual candidate may host their own interest meetings beginning at 5:00 PM on Monday, March 19, 2018” (2018 Election Packet, E, III, H). Based upon this fact, Appellant has not violated the letter of the law contained in the 2018 Election Packet. Rather, the violation here is a violation of the spirit of the law. In the interest of maintaining the integrity of the Student Government Association elections, it is imperative that no campaign obtains an unfair advantage at any point – including prior to the official “Campaign Period.” While *technically* Appellant’s campaign was not in violation of the prohibition upon interest meetings prior to a certain time, the intention of the provision and its counterpart in the 2019 Election Packet is to ensure that each campaign is allotted the same amount of time to gauge and increase interest in their respective campaigns. Appellant’s actions disregard the spirit of the law in this regard. However, as is urged in 2018-01, 02, 03, this Court also strongly urges the Undergraduate Student Senate to consider these potential “gaps” in jurisdiction when passing all future versions of the Election Packet. It is important that the Judicial Branch be able to adjudicate claims which provide evidence of potential harm to the integrity of the Student Government Association elections *as they arise* so that such integrity can be maintained to the highest degree.

C. Complainant Conflict of Interest

Appellant argued that the Complainant in 2019-06, Mickayla Stogsdill, posed a conflict of interest to the ruling of the Court. Ms. Stogsdill is a former member of the Judicial Branch and a co-writer of the opinion in case 2018-11. As such, Appellant argues that her involvement in 2019-06 is a violation of the principle of neutrality demanded of all Justices of this Court. This Court realized the potential conflict of interest posed by Ms. Stogsdill’s participation in 2019-06 during the hearing of the case. As such, Ms. Stogsdill was sequestered for questioning by this Court following the presentation of evidence in 2019-06. It was determined during questioning that Ms. Stogsdill’s involvement as a Complainant in 2019-06 did not begin until after she had resigned from her position in the Judicial Branch. Therefore, we concluded then and affirm now that Ms. Stogsdill’s involvement in this case poses no conflict of interest or violation of the principle of neutrality demanded of this Court.

D. SSD Candidate Penalty

Appellant’s final claim spoke to the penalty placed upon Madison Woods, the Student Services Director of the Appellant’s campaign. Appellant claims that, because Ms. Woods was not part of the Impact UT campaign in any capacity during the course of the violation which was found in 2019-06, she

should not be subject to the same penalty as the Presidential and Vice-Presidential candidates. However, the intention of the sanctions ascribed to Appellant's campaign was *not* to punish each individual member of the campaign. Rather, this Court intended to sanction the campaign as an entity. Each of the "top three" candidates receive votes from every member of the student body, making them the most representative individuals of the campaign as a whole. While a sanction such as the removal of campaign time would have affected each member of the campaign, (i.e. potentially taking votes from the Senatorial candidates involved in the campaign who do not receive votes outside of their constituencies), the proportional vote deduction applied to the direct representatives of the campaign penalize only the leaders of the campaign who violated the spirit of the Election Packet. Upon examination of Appellant's argument, this Court finds that although Ms. Woods did not participate in the event in question, Ms. Woods joined the campaign in the capacity of a "top three" candidate – a primary leadership role for any campaign. As such, she should be held accountable for the actions of her fellow campaign members and the actions attributed to the campaign as a whole.

III. Conclusion

Because the Court finds that the spirit of the law was violated in this case, we affirm in part and vacate in part. The sanction placed upon Appellant's campaign shall instead be a 2% reduction in the votes acquired for each of the "top three" candidates – President, Vice President, and Student Services Director. Further, the Court wishes to reiterate here that we *strongly encourage the members of the Undergraduate Student Senate to evaluate all relevant provisions of the Election Packet so that issues such as these do not arise in future years*. The ability of the Judicial Branch to effectively perform its duties as the Ethics Committee overseeing Student Government Association elections need not be limited by unfortunate loopholes found in the Election Rules and Procedures.

It is so ordered.

DAVIS, C.J., and COOK, PAWLACZYK, and BEDFORD, JJ., concur in the opinion.

JUSTICE BRYANT, concurring in part and dissenting in part.

I agree with the Court's judgment that there was still a violation of the 2019 Election Packet, and that penalties must continue to be imposed on the Petitioners. However, because I believe that such a vague term as "spirit" is harder to quantify, the punishment must correspondingly be less than that of an actual "letter" violation. I therefore concur in the judgment but dissent with respect to the corresponding sanction revision.

Petitioners raise a point that cannot be ignored: there was *actually no literal violation of the Election Packet*. The 2019 Election Packet did not go into effect until it was ratified in February. Therefore, at the time of the alleged violation, the governing rules were that of the 2018 Election Packet. This version provided that "[a] political party/individual candidate may host their own interest meetings beginning at 5:00 PM on Monday, March 19, 2018." The alleged violation occurred many months after the fact. While it may appear that this allows the Petitioners to get off on a technicality, we are constrained by the rules of each Election Packet as passed by the Senate. Perhaps including a retroactivity provision in next year's packet will prevent a similar muddying of the waters from occurring in the future.

Since there is no violation of the letter of the Election Packet, we must then turn to the "spirit." Article E.II.D. requires us, in determining an appropriate sanction, to "consider both the spirit and the letter of the

statutes presented.” While “spirit” remains a nebulous term, it is not difficult to determine that the spirit of this current Election Packet has indeed been violated. The audio recording provided to this Court, indeed, indicated that the alleged interest meeting was moved in order to avoid legal implications. This kind of willful circumvention is precisely the kind of “not-technically-illegal-but-still-clearly-something-is-up” event that the “spirit” provision in the Election Packet is designed to catch. It is clear, then, that the spirit of this current Election Packet has still been violated.

Because of the difficulty in pinning down exactly how a violation of the “spirit” impacts an election, I believe that the punishment currently imposed is too harsh. Furthermore, I believe that violations of the spirit of the Election Packet should be punished less severely than letter violations, as finding a spirit violation requires us to reach beyond the text. This kind of extratextual analysis invariably affords less notice as to what actions constitute a “violation.” For these reasons, I would reduce the penalty to a one percent reduction in the total vote count for each of the top three candidates.

HOPKINS, J., took no part in the consideration of this case.