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

Case No. 2019-12

Impact UT, Plaintiff

v.

Vols Vote Vision, Defendant

JUSTICE BRYANT delivered the opinion of the Court.

I

To meme, or not to meme? That is the question. Particularly, may a campaign create a "meme" Instagram account for the purpose of gaining followers in the lead up to a potential run for office and thereafter convert the account into one representing their campaign? In this instance, we hold that they may not.

II

"UTK Memes" was a fairly popular Instagram account, posting rather innocuous images related to the University of Tennessee for an audience approaching 1000 followers. Presumably, many of the followers chose to track UTK Memes because they enjoyed the content and found it humorous. UTK Memes operated as a meme page for a few months, until approximately 2:00 PM on March 25, 2019. It was at this point that the switch was made. In an action termed "flipping an account," the account was converted to an Instagram page supporting the Vision campaign. In its flip, the account deleted all existing memes and retained all existing followers, many of whom were likely confused by the sudden shift.

An action was brought to determine whether this bait and switch violates the Election Packet. In their complaint, Plaintiffs pointed to Article E.III.G., concerning the use of certain "mass communications" during the election process. Specifically, they alleged there was a spirit violation of the Election Packet, as Article E.III.G.4. does not allow "campaign websites and partisan posts" to be made public until noon on March 25, 2019. In response, Defendants claimed that the meme page was originally a "speculative" way to gain followers, and that they "were not sure" they would actually utilize it for such

purposes. Moreover, they claim that no violation occurred, as the Instagram page in question was not a "campaign social media site" until the flip.

III

We have determined that there has been both a "letter" violation and "spirit" violation of the Election Packet.[1] While not branded as "@volsvotevision" at the time of the original meme postings, these postings were nonetheless partisan in nature. Absent a specific description of a term in the Election Packet, we turn to its plain meaning in order to divine how we are to interpret it. Webster's Third Dictionary defines "partisan" as "feeling, showing, or deriving from strong . . . adherence to a particular party, faction, cause, or person." While the memes initially posted on UTK Memes may not have in and of themselves carried a partisan message, the ***act of posting the memes*** was itself partisan. This distinction proves key.

Defendants admitted that UTK Memes was originally begun with at least some intent related to "reaching out to students who were not traditionally involved in SGA." While an admirable sentiment, the Election Packet is not concerned, as was repeatedly asserted, with "getting students involved in SGA;" it is about ensuring a fair election process. The self-serving interest that Defendants were feeding through the operation of UTK Memes clearly smacks of partisanship. While this practice may be acceptable to other schools within the SEC, that makes no difference as to how the University of Tennessee operates with respect to its elections.[2] Additionally, Defendants assert that they "did not think [the page] would become a thing" when they first created it; this, too, misses the point. The account was created with the intention to eventually flip it, should it take off. Therefore, it was created with partisan motivation. Each post on the account, then, was a "partisan post" for purposes of our determination. Such action clearly constitutes a violation of Article E.III.G.4. of the Election Packet.

Moreover, there is a clear violation of the spirit of the Election Packet, as well. Just because an action is not expressly listed among possible violations (inevitably due to

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[1] At the hearing, Defendants suggested that, in order to find a spirit violation, this Court should also be required to find a violation of the actual letter of the law. We expressly disclaim this idea and hereby hold that we ***need not find any other violation*** outside of violating the spirit of the Election Packet in order to institute sanctions against any campaign or individual. In light of the latter kind of violation being a less workable and identifiable standard, we also find it appropriate to indicate that, all else being equal, a spirit violation will generally carry with it less severe punishment than a letter violation. This holding in no way obviates our duty to still consider all the facts and circumstances, such as "the relative advantage gained by the violation, the level of damage from the violation to the integrity of the election process and repeatability of instances." Election Packet Article E.II.D.

[2] Indeed, the fact that other schools within the SEC operate under certain election practices may make it even more repugnant to a Volunteer sensibility. Look, for example, at the way "the Machine" works at the University of Alabama.

human beings lacking the ability to see perfectly into the future) does not mean that it does not violate the fundamental principle of running a campaign that begins on equal footing with all others. Allowing Defendants to begin the campaign social media period with a significant number of unwilling followers would place them at an enormous advantage.[3] Such a blatant discrepancy cannot be reconciled with a free and fair election. The language in the Election Packet allowing this Court to consider the "spirit" of the rules was inserted precisely to counteract this kind of sidestepping. Accordingly, the spirit of the Election Packet has also been violated.

IV

Much like "Pizzagate" before it, it remains to be seen whether "Memegate" becomes a storied event in the annals of SGA history. The Election Packet exists to ensure that all parties and individuals wishing to run for a position within the Student Government Association are ensured an equal opportunity and fair election proceedings. To hold that one campaign, by means of an admittedly ingenious (though still violative) workaround gets off scott free because they think, via some "new" idea, they can circumvent the rules set forth by the Senate, would be to make a mockery of the very reason the Election Packet exists and denigrate SGA as a whole.[4]

When we evaluate the proportionality of an appropriate punishment, the Election Packet requires us to consider a myriad of factors, such as "the relative advantage gained by the violation, the level of damage from the violation to the integrity of the election process and repeatability of instances." Election Packet Article E.II.D. The violation here is incredibly severe; it follows that an appropriate sanction must be rendered in order to firmly impress upon Defendants that creative disobedience will not be tolerated, let alone rewarded. As such, we hold that "@volsvotevision" must be deleted from Instagram within **four hours** upon receipt of this opinion. Additionally, the account must cease all posting **immediately** (with the sole exception below). This does not prevent the campaign from creating a new account, but it must do so beginning with zero followers, as all other campaigns have done. Additionally, the campaign may, prior to deletion, make one final post alerting its followers of the necessity to migrate to the new Instagram page. These timing requirements must be strictly adhered to, and the Election Commissioner shall verify that this sanction has been fully complied with. Failure to delete the account within the specified time will result in a harsher sanction, such as a

[3] Defendants assert that, had every party or individual candidate done the same thing, there would be no issue. While it may be true that no claim would be brought were that the case, such hypostatization has no place in this Court or in any valid legal argument. Indeed, this Court would instead likely find each person who flipped an account to be violating the Election Packet.

[4] To this end, Defendants at one point during the hearing asserted they "are not going to seek an opinion . . . every time they try something new." The Court would advise Defendants, and, indeed, all SGA candidates, not to adopt this line of thinking.

ban on Instagram during the remainder of the campaign period or a proportional vote reduction.[5]

It is so ordered.

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

JUSTICE PAWLACZYK, concurring in part and dissenting in part.

I concur with the Court in the conclusion that the VISION campaign violated the spirit of the Election Packet. However, I do not agree that there was a violation of the "letter of the law," and subsequently believe the sanction imposed is not appropriate. First, it is important to note that in the hearing request filed by Ms. Kaylee Sheppard of the Impact UT Party, there was no citation of the Election Packet, and the only alleged violation was that of the spirit of the packet. Actual citations of the packet were found by the Court, not by the Impact UT Party, as that was not their argument or allegation. Along with this, all reasoning for finding a violation of the Election Packet in this opinion was not provided by the plaintiff in this case. Instead, it was provided by the Court in an effort to find a violation of the Election Packet that did not exist. This opinion abuses the context

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[5] Justice Pawlaczyk takes issue with our approach to this case, finding it "unwarranted, inappropriate, and not representative of the spirit of the Student Government Association." However, we fail to see how this accusation is grounded in anything other than personal dissatisfaction with the result.

The part concurrence/part dissent takes issue that violation of the letter of the Election Packet was not specifically alleged by Plaintiffs, and that this Court has "actively search[ed]" for one. However, we question what kind of Court we would be if we did not pursue a thorough assessment of the rules when reaching a well-reasoned conclusion. Indeed, the Election Packet commands that we do as much. Article E.II.D. requires us to "consider both the spirit and the letter of the statutes presented ***in the Election Packet***." It does not tell us to only consider those ***in the Complaint***. To accept such a proposition would constrain our ability to effectuate justice based on the drafting ability of any given complainant, none of whom are likely to be experienced attorneys. Moreover, just because the Court has adopted an internal procedure "in previous years" that is not explicitly codified does not (and should not) affect the way we conduct business now.

Additionally, issue was taken with this Court's announcement of sanctions not being delivered until a few days after the hearing, insinuating an "intent" to do so in order to make the punishment more severe. While certainly open to this interpretation, it can also be argued that an additional delay is actually a less severe punishment, as Defendants have been able to spend the time between the two pronouncements freely operating the account (also, the opinion gives us no reason why any distinction should be made between this decision and a sanction imposed within twenty-four hours requiring deletion a few days later, which is certainly within our broad powers in how to fashion punishments). Furthermore, prior to beginning the hearing, notice was given to all parties that a decision would not likely be issued within twenty-four hours; no one objected. Notwithstanding all this, judgment was, in fact, "rendered" within the proscribed time period, as the Justices stayed after the conclusion of the hearing the very same night to reach a decision. The only thing occurring outside this window is the imposition of the sanction, which is not bound by the same constraints.

While differences of opinion come with the territory, impugning the ethics of this Court or any of its members serves no constructive purpose and only damages the institution.

of the Election Packet by using the definition of "partisan," and misapplying it to Article E.III.G.4.

In regard to the sanction, not only do I disagree with the severity as I do not believe there is a violation of the "letter" of the packet. But moreover, it was decided by this Court to give the sanction at the same time of providing the opinion in its entirety. It should be noted that in previous years when dealing with a difficult timetable, the Court would provide sanctions within the 24-hour timespan as prescribed by the Judicial Bylaws and provide the full opinion later on. The Court intentionally waited 4+ days to provide the sanction in order to have a harsher impact. This is not appropriate as it clearly violates Article V, Section 2.D.3 of the Judicial Bylaws: "Regarding complaints filed prior to the election, the Judicial Branch will meet within 24 hours of the time that the complaint was registered and promptly render judgment."

This dissent is not about the ethics of the VISION or Impact UT Party, but that of the SGA Judicial Branch. The intent of this Court to actively search for violations of a defendant, and intentionally violate its own bylaws in providing a sanction is unwarranted, inappropriate, and not representative of the spirit of the Student Government Association.

JUSTICE COOK, concurring in part and dissenting in part.

The Election Packet and the Judicial Branch's ethical responsibilities exist for two reasons: ensuring a fair election with clear rules; and protecting the student body/government from any over-aggressive campaigning. Take, for example, Article E.III.E.4 of the Election Packet, which, among other things, states "campaign materials may not be placed under doors, on the door, or at the doorstep of individual residents," or Article E.III.G, which prevents "contacting more than one individual through an electronic message." Both cases demonstrate the Election Packet's restrictions which attempt to protect students from campaigns too eager to reach every potential vote, regardless of potential consequences. And while I do not wish to discredit a fair election's importance, it pales in comparison to our responsibility to serve as students' shield.

The University of Tennessee Student Government Association maintains a weak student mandate if we can even claim we have one at all. Of course, we can credit such a weakness to many factors, but it should seem evident our largest failure lies in a continued failure to communicate with our peers. Let me be clear—this is not due to a lack of effort from any particular body. Our organization runs social media accounts, our Senators are supposed to spend time "tabling" in their respective districts, and our Executive Branch sends out frequent updates. Yet, regardless, we continuously fail to engage students not currently involved in SGA or directly connected to peers who are. Consequently, most students only hear from our organization as campaigns vie for their votes.

Such limited contact has major repercussions regarding our student mandate or accrued trust, and any negative interaction stands to remove that student from the SGA process. Any act of apparent deceit stands to lose their trust. Both cases are detrimental to our organization, and we cannot tolerate any actions constituting a breach to either our student engagement or their trust. In this Justice's eyes, the self-serving moves perpetrated here do just that.

Largely for these reasons, I respectfully—but strongly—disagree with the Judicial Branch's decided sanction. Such blatant breach of trust does not hold a place in the University of Tennessee's Student Government Association and, in my opinion, warrants a much harsher sanction than what I equate to a few days' penalty for the campaign's Instagram efforts. The Majority's sanction properly assesses damage afflicted to other campaigns but fails to recognize the damage imparted upon the overall Student Government Association and our efforts. Instead, I would require the Vision campaign to cease use of their Instagram account for the remainder of the campaign and issue an apology for their decisions. Imposing this strict sanction would account for all possible damages while also sending a clear message to future campaigns seeking to find and exploit possible loopholes that are so clearly against the Election Packet's spirit.

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