

Opinion of the Court

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

Case Number: 2018-06

JACK AVERY BLAINE, PLAINTIFF V. IMAGINE UT, DEFENDANT

Decided on 10 April 2018

On April 9, 2018 - Ms. Natalie Campbell, representing the JAB campaign submitted an election complaint against Mr. Ovi Kabir and the Imagine UT campaign alleging that the Election Packet's Mass Communication and SGA neutral space provisions were violated. The event in question involved an email sent by Mr. Kabir on February 12, 2018. Mr. Kabir admitted to sending an email to 43 people on this date, who were all members of FYC to his knowledge at the time. The email extended an invitation to meet with Mr. Kabir and to discuss his own campaign. According to Mr. Kabir, he received very little response to his initial message and only one person that he contacted with that email is now on his campaign. These facts were not disputed by either side. Consequently, this particular case hinges on whether or not the email should be interpreted as violating the 2018 SGA Election Packet's Mass Communication provisions and to what extent (if any) the email benefited Mr. Kabir's campaign or harmed the integrity of the election process.

The plaintiff's challenge that the email was a violation of the Election Packet and resultantly, Mr. Kabir gained an unfair advantage over other campaigns. The plaintiff's reference Article E.III.F. of the Election Packet which places temporal restrictions on sending partisan emails (April 9-April 12), requires such messages only be sent to "consenting individuals," and explicitly prohibits the use of SGA listservs and blanket emails for campaigning activities. Blanket emails are defined as those which are "mass emails going out to non-party members." Further, there was speculation that Mr. Kabir used a directory in order to access the emails of potential contacts. The use of directories to access the names and emails of contacts is explicitly prohibited, per the election packet and relevant State and Federal law.

It is in the view of the Court, based on the facts and arguments presented, that the email sent by Mr. Kabir does violate the *Mass Electronic Communication* provisions (Article E.III.F) of the SGA Election Packet. The fact that the email itself associated Mr. Kabir with a campaign - presumably as a leading candidate of said campaign (implied by his assertion that he is "putting together a campaign")- places this communication within the realm of a "partisan email." This is true, even if his intent was simply to "educate" recipients of the email about one of the options

available to them in the campaign season and to increase “transparency.” Such messages can not be sent prior to April 9 at 7:00 AM per Article E.III.F.3. of the election packet and only to consenting individuals. Testimony and evidence were provided in court which indicated there were multiple individuals contacted that did consent to having their contact information shared with Mr. Kabir, nor to receiving such an email.

While the argument was made by the defense that no campaign existed at the time the message was sent, because no paperwork had been submitted- the Court does not find this to be compelling. Applying such a definition of a “campaign” opens the doors to election rules being violated throughout the year - so long as a campaign had not officially formed. Surely, this is not the intent of the Election Packet, as it could easily compromise the integrity of the election and leave students vulnerable to predatory practices. Further, in the email, Mr. Kabir says he is “putting together a campaign.” One who received this message, particularly a first-year student who may be unfamiliar with SGA election rules, could plausibly have a difficult time distinguishing this status from a bon-a-fide campaign. For this reason and others, the Court holds that the email could properly be classified as a partisan email.

Additionally, while there was lengthy debate about whether a directory was used to collect contact information, the Court finds that this argument is merely speculative and that there is insufficient information to support this claim, at present.

These arguments and facts should also be considered within the context of potential aggravating and mitigating factors. The fact that the emails of recipients were compiled without their consent and the message was intended to go exclusively to members of the First Year Council are two such factors. SGA has a compelling interest in ensuring existing bodies of the organization are not inundated with information about campaign too early in the election season, as this serves to distract from the stated goals/missions of the various branches of SGA. As Mr. Kabir rightly points out in his own testimony, being swept into a campaign without having the opportunity to fully consider the options is potentially detrimental to the experience of SGA members. The election rules are created to prevent such events from transpiring, but circumventing these rules and attempting to defend oneself largely on technicalities does not seem in line with this purpose. If the purpose of the email was truly to inform members of the student body and SGA about the different campaigns as the defense claims, the Election Packet provides for Interest Meetings to be held, under a specific set of circumstances/conditions.

Lastly, the depersonalized nature of the message - featuring plural language and not appearing to be directed towards any one individual is another defining characteristic of “mass” communication as the Court defines it. Taken together, all of this leads the Court to the conclusion that the spirit of the Election Packet’s Mass Communications was violated - as was the literal text of the rules.

As a final side-note, to address a particular point about the statute of limitations on presentation of evidence for a particular case, the particular clauses referenced by the defense (about a 1 week period statute of limitations on the submission of evidence and initiation of

judicial hearings) applies exclusively to challenges of the certification and validity of the election.

THEREFORE, the Court finds that Mr. Kabir did violate the both the spirit and letter of the Election Packet by sending a blanket/mass email to members of the SGA First Year Council. Evidence presented in the hearing suggests that the email did not have much of an effect on the level of support for Mr. Kabir's campaign. However, the Court finds that the email was sent prematurely and perhaps compromised the SGA Neutral Space provisions contained in the election packet by being addressed exclusively to members of the First Year Council. **Consequently, the Court rules that Mr. Kabir and the Imagine UT campaign shall not be allowed to set-up and begin campaigning on Pedestrian Walkway until 9 AM on April 11, 2018.**

It is so ordered.

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

DAVIS, Concurring with the majority opinion, but Dissenting in part...

I concur with the judgment in this case and dissent from the majority's decision regarding the appropriate sanction. I believe the sanction given is too harsh. In seeking to strike a balance between compliance with the Rules and widespread participation of diverse students in the election process, the sanction goes too far. My concern is that we might discourage students who are not part of the SGA "mainstream" or "core" from trying to make connections and share ideas that could benefit this campus. I believe a lesser sanction would be appropriate in encouraging candidates to make such connections in a way that does not potentially harm the integrity of the election process by violating the Rules set forth by the Election Commission.