Opinion of the Court

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

Case Number: 2018-10

TOGETHER WE ARE UT, PLAINTIFF V. IMAGINE UT, DEFENDANT

Decided via Summary Judgment on 10 April 2018

At 10:44 AM on Thursday, April 12, Mr. Dalton Teel of the Together We Are UT campaign filed an election complaint against Mr. Ovi Kabir of the Imagine UT campaign. The incident in question was whether an email sent by Imagine UT at 1:18 AM on April 12 violated the Election Packet's Mass Communication Policy, as outlined in Article E.III.F. The election complaint challenged that this email violated the blanket email and consent to receive provisions of this Article. Further, it was challenged that inclusion of a link to the Imagine UT Facebook page in the message was a violation of Article E.V.A.4.

Due to the pressing nature of the alleged violation and the dwindling time remaining in the election, the Judicial Branch convened for an emergency session to discuss the case at 11 AM among members that could attend. The conclusion reached in that meeting was that we would hold an *informal* hearing where both parties could convene and present evidence/testimony. A formal hearing was not called, as this would have required 5 justices to be present and 12 hours of notice to be given. Additionally, we did not feel as if either side would be able to properly prepare evidence and testimony and formal hearings, as defined in the Judicial Branch's bylaws, are a privilege not a right. Instead, both parties were invited to present brief opening and closing statements and answered questions posed by the justices present. Justices present were WHITE (CJ), CLINE, MILLER, and STOGSDILL.

Through the course of this informal hearing, which both sides agreed to participate in and affirmed that they were comfortable with, it was disclosed that at least 3 members of the Together We Are UT campaign had received the email in question from Imagine UT. The email itself indicated that at some point these individuals had given Imagine UT their email address to "stay updated [on Imagine UT and the campaign]." Two of these 3 witnesses were present in the informal hearing and informed the Court that at no point had they supplied their emails to the Imagine UT campaign and that they, at no point, consented to receiving partisan emails from the Imagine UT campaign. The email did contain information of a partisan nature (a fact neither side disputed), including: The campaign name, campaign policy points, a link to the campaign's facebook page, and mentions of Imagine UT's other social media accounts.

Representatives from Imagine UT (Presidential Candidate, Ovi Kabir, and Campaign Manager, Don Black) were asked how these *could have* received the email in question. Imagine UT informed the Court that the list of email addresses compiled and used for this email was roughly 200 addresses long. The specific addresses were supposedly supplied during the course of senatorial candidates asking members of the student body for signatures to complete Appendix E - Election Petition Form. Imagine UT stated that they instructed their senate candidates to ask Appendix E signees if they would also like to provide their email to again, "stay informed" about the campaign. Mr. Black and Mr. Kabir said that only if a student agreed to this request would their email be added to a paper spreadsheet that senate candidates were individually using to keep track of the emails they had collected. Imagine UT's position was that no one was forced to provide their email address and that each person who provided their email did so freely and with consent to receive messages for Imagine UT.

The 3 members of Together contended that they never signed appendices for any members of Imagine UT and consequently, never signed-up/consented to receiving emails. Because of the short time frame, it was impossible to inspect all of the sheets that were used to collect email addresses - as each member of the Imagine UT campaign kept their own sheet and only added emails they collected to a centrally run google sheet. In the absence of this evidence, Mr. Kabir was asked by WHITE (CJ) if he felt that anyone would provide their email without also signing the appendix. Mr. Kabir responded by saying no, he did not believe such a situation could have arisen. ***Mr. Kabir agreed with the sentiment that no one's email would have been collected if they had not also signed the Appendix E for a senate candidate.*** It was then decided - and agreed to by all parties - that the appendices would be pulled for all senate and executive candidates from Imagine UT that could have been signed by the individuals claiming they did not consent to receiving the email.

One such individual was a CCI major living in West Campus. WHITE (CJ) and another individual in the SGA office (who had permission to review appendices) then consulted Appendix E for each Imagine UT senator running for a seat in CCI or West Campus, as well as the Executive candidates of Imagine UT. Both WHITE and this other individual in the SGA office independently checked every list to see if the witness's name appeared in any list. As a result, each list was checked twice. The name of the individual who stated she did not consent to receiving emails, did not appear in any of these appendices. The Court agreed that if the name did not appear in any appendix, there was strong reason to believe consent to receive the email had also not been given - thus violating Article E.III.F.3. of the Election Packet which reads, " Partisan emails may be sent out after 7:00 AM April 9 until 5:00 PM Thursday, April 12, 2018 to consenting individuals, having freely provided their email address."

WHITE then reported his findings to the Court via GroupMe. GroupMe was used because as the time was 1:05 PM - most of the other justices were in class. WHITE instructed the other justices to "like" a message if they agreed - given the evidence - that a campaign violation occurred. There was unanimous consent by the Court that the election packet was violated. Some

of the considered options for punishment were: 1.) restricted to campaigning only in HSS, with no tent or structures, only handbilling, 2.) Ban from pedestrian walkway and pedestrian bridge, 3.) Complete ban on in-person campaigning. The majority of the court agreed that a complete ban on in-person campaigning was an appropriation sanction for the following, but not limited to, reasons: while WHITE only checked to see if one of the mentioned Together campaign members had signed on an Imagine senator petition form, several other individuals (at least three) came forward to say that this email was non-consensual. This evidence tells the Court that either Kabir was not honest when saying that they had checked to make sure all email recipients were indeed signed on his campaign's petitions or the Imagine campaign did not do their due diligence to ensure these emails were consensual. The Court agrees that a strict sanction should be enforced; the Court is also aware that if we were to sanction a punishment such as a ban on campaigning on Pedestrian Walkway/Pedestrian bridge only is hardly a punishment considering the many places on campus that Imagine could relocate to. This violation could have been easily avoided if these email addresses were indeed collected consensually, or if members on the Imagine campaign had double checked to verify these specific addresses like the Court had to eventually do itself to rule of this case. The Court would finally like to address the impact of this violation: it is of the utmost importance when sending an email to 200+ students that you carefully evaluate and analyze the addresses you are sending. It is absolutely possible this email, sent to multiple people unwillingly and nonconsensually, could affect the outcome of this election in favor of Imagine if students choose to follow the directions laid out in the email. Because of these factors, the Court felt like limiting in-person, not including any kind of social media ban, was the most fair and equitable solution to a time-sensitive violation.

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THEREFORE, the Court finds that Imagine UT violated Article E.III.F.3. of the Election Packet, by sending a mass email to at least one person who did not appear to give consent to receiving a partisan email. Consequently, Imagine UT is ordered cease all in-person campaigning by 2:45 PM on April 12, 2018.

It is so ordered.

CLINE, COOK, GIACOMINI, and STOGSDILL delivered the opinion of the court. WHITE (C.J.), DAVIS, and MILLER concur with the majority, but dissent in part.

WHITE (C.J.), DAVIS, and MILLER, concurring with the majority opinion, but dissenting in part…

While we agree with the majority that the Election Packet was violated, we disagree with the severity of the punishment inflicted by the majority's opinion. While there was ***strong evidence*** that the Election Packet was violated by Imagine UT (by sending an email that all recipients had not consented to receive), definitive ***proof*** was not found. Only 1 name of the 3 individuals who claimed they did not consent to receiving an email was checked against the list of signatures included in the appendices for the relevant candidates. While there reasonably could have been others, because of the time restrictions facing the Court- other claims were not investigated fully. Thus, while we had ***strong evidence*** that at least one person had been contacted via this email without giving their consent - we still did not have undeniable ***proof*** that consent was not given by this individual, or others making similar claims. The punishment to end *all* in person campaigning from 2:45 PM until the closing of polls at 5:00 PM is a stiff punishment - one that could reasonably affect the outcome of a close electoral race and cause harm to Imagine UT candidates who played no part in the collecting of emails addresses and sending of the email in question. While the violations of the Election Packet are quite serious, we advocate that a lesser punishment (perhaps, a ban on campaigning on Pedestrian Walkway/Pedestrian bridge or containment to one particular area of campus) would have more appropriately fit the facts and evidence that the Court had to consider and would have been more mindful of the rushed (but proper) nature that these events were considered and handled.