

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

Case No. 21-14

SGA VICE PRESIDENT, Plaintiff

v.

, Defendant

CHIEF JUSTICE TURLEY and JUSTICE MAJORS delivered the opinion for a unanimous Court.

I. Introduction

This case was filed by the plaintiff, *SGA VICE PRESIDENT REGGIE WILLIAMS*, over an alleged violation of the University of Tennessee Student Code of Conduct §6, FYLC bylaws Art. 1 §1 (4), FYLC bylaws Art. IV §2 (a) by the defendant. The plaintiff claims that the defendant was referenced using racist and homophobic remarks in their dorm room after dinner, and other members of FYLC that have reported the defendant to have these tendencies. This accusation would be a violation of the outlined rules and regulations. The Judicial Branch granted a hearing for Case No. 21-14.

II. Analysis

Oftentimes, gestures and words have unexpected or even unintended consequences. In the past year, the University of Tennessee updated its Student Handbook to prohibit students from discriminating against protected classes. Today, we must decide whether an SGA member can make negative comments about someone who is homosexual or express a prejudiced attitude toward members of a marginalized group. The answer is clear. Any SGA member who discriminates against any person protected by law will be subject to sanctions, including expulsion. Discrimination is clearly not tolerated by law, the University of Tennessee, and it will not be tolerated by this Court. Furthermore, First-Year Leadership Council members are representatives of students of the University of Tennessee at Knoxville. Simply put, serving on this council is a privilege and we cannot tolerate misconduct.

In reaching this decision, we first will look at the allegation of a violation of FYLC Bylaws Article IV §2 (a) for disregarding University of Tennessee at Knoxville rules and regulations.

a. A member or officer of the First Year Council may be removed from the council for failure to meet any of the continuing qualifications as specified in these bylaws; for disregarding University of Tennessee – Knoxville rules and regulations; blatant neglect of duty; disregard of SGA directives; and/or willful and intentional violation of the SGA Constitution or First Year Freshman Council Bylaws; and/or the failure to meet the conditions of attendance as specified in Article III.¹

Typically, the Student Court does not interpret the University of Tennessee - Knoxville Student Handbook or any other university rules and regulations for that matter, as we do not have the express authority to interpret said rules. However, this court recognizes that it does have the implied authority to interpret University rules and regulations when it is necessary for the disposition of a claim before this Student Court. In the present case, the basis of the complaint was a violation of FYLC Bylaws Article IV §2 (a) for disregarding University of Tennessee at Knoxville rules and regulations. Here, the plaintiff alleged that member(s) of First Year Leadership Council reported the Defendant using racial and homophobic slurs in their dorm room after dinner. The Plaintiff supported their allegations using testimony from Witness A and Witness B.²

Test for Discriminatory Conduct

The University of Tennessee defines discrimination as: *Conduct that discriminates against any person(s) or organization(s) based on a characteristic protected by federal, state, or local law prohibiting discrimination; or conduct that violates the University's rules or policies prohibiting discrimination.*³

While this statute defines what the University deems as discrimination, the University did not go as far to define what “conduct” means. For this reason, we will adopt the Lexicio definition of the word to be applied, which states that conduct *is the manner in which a person behaves, especially on a particular occasion or in a particular context.*⁴

We note that this is the first case before this court, in which a member of the Student Government Association has been accused of violating the Discrimination Section of the Student Handbook. Also, the University does not define discriminatory conduct. Accordingly, we do not have a binding precedent for what actions are deemed as discriminatory. For this reason, we must

¹ FYLC Bylaws Article IV §2 (a)

² The Court used its discretion to allow the witnesses to remain anonymous given the severity of these allegations

³ University of Tennessee Student Code of Conduct §6

⁴ "Conduct."Lexico.com. 2011. <https://www.lexico.com/en/definition/conduct> (14 Dec 2021).

create a reasonable standard for what is deemed discriminatory conduct. This court is aware that by creating a too loose rule, we would subject members to sanctions for innocent comments. Contrarily, the court is aware that by creating a too strict rule, we would allow members to act inappropriately and offensively towards others with impunity.

In light of these considerations, **we hold that discriminatory conduct shall be defined as any action directed towards person(s) based on a characteristic protected by federal, state, or local law that is verbal, physical, or digital that would cause a reasonable person to be offended, in light of the circumstances in which the conduct occurred.** Additionally, we hold that discriminatory conduct may be, but is not limited to, slurs, offensive remarks, signs, jokes, microaggressions, intimidation, physical contact, harassment, or violence.

A. Whether there was a violation of FYLC Bylaws Article IV §2 (a)?

We find that the Defendant violated FYLC Bylaws Article IV §2 (a) for disregarding University of Tennessee Knoxville rules and regulations, particularly Section §6 of the University of Tennessee Student Code of Conduct.

Homophobic Comments About Lesbians

Both Witnesses A and B, corroborated the Plaintiff's claim that the Defendant made homophobic comments. First, Witness A testified that ■■■■■ said that "she doesn't like gay people because it goes against ■■■■■ religion and beliefs." She then added that "it's not so much gay men that bother ■■■■■ but more so gay women because she does want to see two women kiss." Second, Witness B testified that ■■■■■ also said "gay people make ■■■■■ uncomfortable, she thinks they are unnatural, and homosexuality goes against ■■■■■ beliefs." Witness B also testified that ■■■■■ specifically stated that gay women make ■■■■■ uncomfortable and she hates when they were affectionate in public. "When she said this, I told ■■■■■ ----- was gay and she didn't seem remorseful at all."

Microaggressions Towards Ethnic Students

Another issue that was brought up was the alleged microaggressions towards two students with ethnic-sounding names. Witness B, corroborated this by stating that the Defendant mispronounced/mockered the pronunciation of two minority students' names. Witness B testified that when going to let two of ■■■■■ friends up into their residence, they told ■■■■■ their names, and ■■■■■ said "are they Indian?" with a disturbed look on ■■■■■ face. Witness B further testified when they came upstairs, she kept pronouncing one of their names incorrectly without recognition or apology for doing so. Witness B was not sure if this conduct was intentional. Similarly, Witness A testified that two of their friends have ethnic names. "As I left to let them up, I told ■■■■■ their names and she said "oh are they Indian or something?" and I said, "I mean one is Indian and the other is Greek" and then I left the room." Witness A did not believe the question had malicious intent.

Prior Use of the N-Word

Witness A testified that the Defendant said "I don't know guys, I think I am just a little racist," and when asked to clarify, the Defendant added "well my friends and I say the n word to each other sometimes because we think it's funny." However, Witness A did not personally observe the Defendant use the N-word. Likewise, Witness B testified that the Defendant said "yeah guys, I'm kind of racist," and when asked to explain, the Defendant added "I say the N word with my friends because I think it is funny." And the Defendant just laughed it off. Normally, the use of the "N-word" would be offensive to a reasonable person, regardless of the circumstances. However, the Witness' did not personally observe the Defendant say the slur. Thus, we will not make a determination on this situation because there is a lack of evidence to support this allegation.

Application of the Discriminatory Conduct Test

Few facts are needed to appreciate the legal question we face. It is clear that the Defendant engaged in discriminatory conduct on this specific instance by verbally stating "gay people make ■ uncomfortable, they are unnatural, and homosexuality goes against ■ beliefs." Sex and race is a protected class under Tennessee state law.⁵ Likewise, sexual orientation and race is a protected class under Federal law.⁶ We find that a reasonable person would be offended by the Defendant's statements. Being called unnatural and being told that you make a person uncomfortable for simply being homosexual would offend a reasonable person.

Also, the Defendant engaged in discriminatory conduct when she repeatedly mispronounced a student's "ethnic-sounding" name. The repeated mispronunciation of a person's given name is offensive given the circumstances of this situation. Specifically, the Defendant asked "are they Indian?" with a disturbed look on ■ face, and when the students came upstairs, the Defendant kept mispronouncing one of their names without recognition or apology of doing so. It is worth noting, that the Defendant was informed of the correct pronunciation of the students' names prior to them arriving, yet, she still elected to mispronounce them. We find that a reasonable person would be offended by their name being repeatedly mispronounced, and given the circumstances surrounding the incident; these subtle gestures by the Defendant is viewed as a microaggression towards these students because of their racial identities.

In viewing the circumstances in which the statements were made, we find no mitigating factors. The defendant's statements and actions were made around other students, and directed towards persons of protected classes.

B. Whether there was a violation of FYLC Bylaws Article 1 §1 (4)?

⁵ Safeguard all individuals within the state from discrimination because of race, creed, color, religion, sex, age or national origin in connection with employment and public accommodations, and because of race, color, creed, religion, sex or national origin in connection with housing; Tenn. Code Ann. § 4-21-101 (West)

⁶ Bostock v. Clayton Cty., Georgia, 140 S.Ct.1731,1741, 207 L.Ed.2d 218 (2020)

The First Year Council is an equal opportunity organization. Applicants for membership are not discriminated against on the basis of race, sex, color, religion, national origin, age, handicap, sexual orientation, gender identity, marital status, pregnancy status, and covered veteran status.⁷

III. Discussion of Constitutional Protections

IV. Conclusion

⁷ FYLC Bylaws Article 1 §1 (4).

⁸ “Student organizations are voluntary associations of University of Tennessee students, which are legally separate entities from the University. Student organizations are student initiated and student run.” <https://hilltopics.utk.edu/policies-processes/>

witnesses who did remember. The actions of the defendant also violate the spirit of the SGA Constitution and FYLC bylaws. This organization encourages accepting diverse viewpoints and cultures. Negatively targeting certain groups based on sexual orientation and race are not acceptable. Allegations as such need to be treated with the utmost importance and seriousness. Individuals within the SGA are student leaders that represent their constituents at the university both in and out of session. These leaders should actively fight against racism and homophobia, not offer excuses that it is legally protected speech. Words carry weight and using it to put down others is not tolerated. Through the power invested to the Court by the SGA Constitution (Art. VII §4 [a])⁹, the defendant is hereby **removed from all positions held in the Student Government Association and prohibited from holding any further positions within the organization.**

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*It is so ordered.*

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<sup>9</sup> To address all grievances which may be brought before the Court through hearings, which may end in grievance resolution, member probation, or member impeachment.