



JUDICIAL COURT OF TEXAS A&M

McIntosh v. Election Commissioner Keathley

No. | 69-02

March 8th, 2017

Syllabus

COMES NOW the second case in the 69th session of the Student Senate. The Appellant, Robert McIntosh brought forth claims that the Appellee, the Election Commissioner (“Commissioner”), wrongfully disqualified him from the 2017 Texas A&M Student Body President election due to a lack of receipts or failure to submit a Fair Market Value form pertaining to all campaign materials associated with the McIntosh campaign. The materials in question are a number of glow sticks seen in the campaign video (“video”) titled “Let’s Rally with Robert.” The Appellant claims immunity from the Election Regulations (“Regulations”), as the Commissioner’s power to regulate electronic media and audit the expense obligations of a candidate contain reasonable limitations. The Court thus examined whether the decision to disqualify Robert McIntosh was justified given the expensing requirements outlined in the Regulations. Furthermore, the Court evaluated the nature and context surrounding the glow sticks to determine if their use constituted a campaign material and, if so, whether the Commissioner was permitted to investigate and regulate the contents of the video, “Let’s Rally with Robert.”

The Court Issues a Per Curiam Opinion:

The Regulations offer more than one definition of two relevant terms contended in this case: items to be expensed and campaign materials. While the Appellant argued multiple descriptions of the same or substantially similar classifications lead to contradictory and therefore unfairly arbitrary terms whose application would unavoidably result in inconsistent interpretations and rulings, the Court finds no such error embedded in the Regulations. Contrarily, the substantive reiterations enhance the Commissioner's understanding of precisely the materials and items subject to expense regulations. A complement of terms rather than a contradiction arises. The first mention of campaign materials dictates a material becomes attached to a campaign when, by purposeful intention, the material seeks to solicit votes. Article IV, Section 3, Subsection (a), states,

- (a) Campaign materials are defined as anything distributed or displayed for the purpose of soliciting votes for a candidate.
 - (i) Car chalk shall be exempt from regulation under these regulations, except that the car chalk itself must be expensed any other item / campaign material and cannot be used until the Pre-Campaigning Period.

Without question, the glow sticks were distributed and displayed during the video. The Appellant can be shown emptying the contents of his backpack containing car chalk and the glow sticks, prompting a number of video participants to retrieve the car chalk and glow sticks. Testimony and evidence indicated the incorporation of the glow sticks and the car chalk in the video were not coincidental or even incidental. A plan to utilize the glow sticks in conjunction with car chalk, an item that must be expensed, soon became clear. The further context surrounding the presence of the glow sticks resides at the purpose of the video. Again, without question, the video sought to garner support among those voters who viewed the internet material. The components contributing to the solicitation of votes are subject to the Commissioner's scrutiny as materials dedicated to enhancing the efficacy of said solicitation. In other words, the McIntosh campaign would not have included the glow sticks in the video but for an express or even implicit purpose to solicit votes in a manner more suitable than if the glow sticks would have otherwise been excluded.

The question thus became one of incidence or design. By incidence, a material may manifest itself in the course of a campaign and yet remain unregulated. However, a proven design to incorporate a material in the promotion of a candidate is sufficient to substantially entangle the material with the related campaign. Hence, Ms. Keathley reasonably and reliably interpreted the Regulations with regard to the glowsticks, pronouncing their use and existence within the campaign as campaign materials.

The second mention of campaign materials in the Regulations even further clarifies the classification to be placed upon the glow sticks. Article VII, Section I, Subsection (a), Sub-Subsection (6) states,

(6) The term “campaign materials” shall be defined as any items, services or materials used or intended to be used in the course of campaigning or preparing for a campaign.

The Court finds the Regulations again incorporates the glow sticks into the classification of campaign materials as evidence and testimony reasonably indicated an idea, plan, and decision to include the glow sticks in the course of filming a campaign video.

In the event the Court found the Regulation’s description of campaign materials a sufficient basis for incorporating the glow sticks in said definition, the Appellant alternatively directed the Court’s review to Article VIII, Section I, Subsection (b) and (c) , which states,

(b) Items that have been used in campaigning in any way, or have been purchased with the intent to use in any way unless it is an unused campaign item purchased before the mandatory candidate’s meeting, shall be considered necessary for expensing and such items shall be included in audit procedures.

(c) Items to be expensed shall include, but not be limited to, items that fit both of the following criteria

- (1) The item would not be purchased but for the candidate’s running for election.
- (2) The item cannot be accessed for free by the regular student

The Appellant properly satisfied the first condition listed in subsection (c) , as the glow sticks originated from a wholly unrelated event and were purchased for a purpose completely disjointed from the Student Body President election. Yet, the second criterion failed to apply. Unlike a common resource available for free to any and all students, the glow sticks were secluded to a single event in which participation and payment were required in order to receive a glow stick. Even so, the plain language broadens the scope of items subject to regulation. Subsection (c) includes an unambiguous qualification to foregoing test, namely “but not be limited to”. Unsurprisingly, the Regulations allow an item to simultaneously satisfy exemption under subsection (c) but not under subsection (b). The qualification presented in subsection (c) avoids any contradiction or unreasonable restriction on the regulation of items related to campaigns.

Regardless of the definition applied, whether “campaign material” or “item”, the glowsticks satisfy either description and therefore must comport with the expense regulations regarding all other campaign materials.

The Appellant, preempting a decision by the Court to incorporate the glow sticks in the classification of campaign materials, plead for equal protection under the law. According to the SGA Constitution Article X, Section IV, Subsection (a),

The liberty, rights, and privileges of any student shall not be deprived except by fair process of law. Each student shall have equal protection of the statutes, but such equal protection groupings of students shall only be deemed unconstitutional if arbitrary and capricious.

By failing to assess similar violations against a number of campaigns, the Appellant suggested the Commissioner failed in her capacity as the representative of the Election Commission and thus impeded upon the equal protection of the law. The Appellant further claimed the result of such a dereliction of duty was an arbitrary and capricious application of the Regulations among candidates. The Court rejects this outright. The Office of the Commissioner cannot be expected in any Student Government Association to capably monitor and investigate the actions of all candidates during all relevant campaign periods as well as intercept all internet communications and postings pertaining to the Texas A&M election cycle. The resources, labor, and time afforded the Election Commission are never and were never construed to permit such surveillance. Rather, the Commissioner evaluates and investigates only those activities reported to her through the appropriate channels (e.g. violation reports, fellow staff, witness testimonials, or coincidental discovery). The chief duty of the Commissioner is not seek out but to evaluate violations in the election cycle. The Commissioner upheld her duty in this case in every way reasonable and expected.

Given the Court's agreement with the Commissioner in correctly interpreting the Regulations to designate the glow sticks presented in the video as campaign materials, or more simply items requiring expense via a Fair Market Value form, the question now arises regarding the jurisdiction the Commissioner has in regulating Electronic Campaigning. Certain prohibitions prescribed avoiding the interference of an election candidate's actions in order to enhance the freedom of candidates and allow for flexibility in campaigning. One marked restriction noted in argumentation is the exclusion of all Internet or other electronic media from the purview of the Commissioner. Article V, Section 3, Subsection (a) states,

- (a) The Election Commission shall not regulate an activity that takes place over the Internet or other electronic media, such as telephone lines or electronic mail. The following exceptions apply to this rule:

The Regulations, therein, provide special circumstances under which the Commission may reimpose its previously precluded interests. The Commissioner cited Sub-Subsection (4) as a

reasonable and justifiable means of applying the Regulations to the actions of the Appellant. Article V, Section 3, Subsection (a), Sub-Subsection (4) states,

(4) Evidence found on the internet of physical campaign violations shall be accepted by the Election Commission.

The issue rested, then, on the internal limitations of the cited exception. The Appellant invoked 67-03, the case of Joseph Benigno, as a precedent demonstrating only the physical manifestation of the violation in the internet evidence may be considered by the Election Commission. In the case of Mr. Benigno, the Appellants argued, the violation was expressed and clearly present in the video presented to the Court and thus warranted consideration under the Regulations. To take Mr. McIntosh's potential violation in step, the failure to properly expense a campaign material can be divided simply in two stages: first, the manifestation of a material's use and existence and second, the neglect to expense a material once its use has manifested. The two are fundamental and inseparable aspects of a single violation, one element is physical while the other is a failure of action. The sub-subsection is not construed so as to overbearingly restrict the Commissioner's available sources for conducting violation investigations. The Court presents an alternative interpretation. Here, participants of the campaign video clearly and without objection physically displayed and handled the glow sticks. Such action alone initiates regulatory insight to determine the merits of a submitted violation. Even further, the Commissioner's use of the video as a means of proving the physical existence of an item used in the course of campaigning is further permissible with the aforementioned aspects of a failure to expense campaign materials. To be sure, the Regulations are not interpreted as precluding candidates from posting internet videos or other internet content. Instead, electronic campaigning has reasonable protections as well as reasonable restrictions and in the case of 69-02 Commissioner Keathley correctly interpreted and applied the exception cited.

The consequence of these interpretations are clearly stated and were correctly applied by the Commissioner. Article VII, Section I, Subsection (c) states,

(c) It is the responsibility of the candidate to assess a fair market value for any donated campaign materials or campaign materials used without any proof of payment. This shall be done by filling out the Fair Market Value Assessment Form provided by the Election Commissioner. Fair Market Values must be assessed using at least three (3) vendors and may use up to five (5). This form shall serve as the receipt for donated items and must be included in the submitted finance report.

Article VI, Section III, Subsection (b) states further,

(b) Any violation found in the Common Violation Table shall be fined the amount therein associated for the first offence, scaled up for subsequent offense thereafter.

Finally, Article VI, Section IV includes the following fine assessed for lack of receipts or Fair Market Value Form:

Lack of receipts or Fair Market Value Form	Disqualification
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The Election Commissioner prudently and correctly interpreted the proper course of action after assessing the campaign video “Let’s Rally with Robert.”

On final note, the Appellee acknowledged early in argumentation how innocuous the violation at hand truly appeared, namely the presentation of a few inexpensive glow sticks for eight or nine seconds during a Facebook video. While the casual observer might find the decision of the Commissioner and this Court unreasonably officious, our decision rests squarely upon the written text of the Regulations. The interpretation and application of the law is the Court’s sole charge in the Judicial Branch.

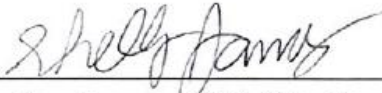
It is so ordered.

Spring Term 2017

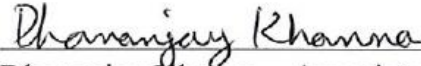
JUDICIAL COURT OF TEXAS A&M

No. | 69-02

Signatures



Shelby James – Chief Justice



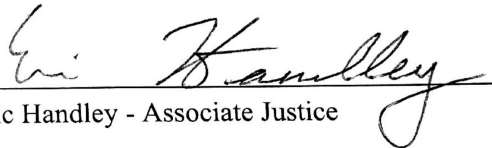
Dhananjay Khanna – Associate Justice



Michael Formella, Associate Justice



Corbin Neumann, Associate Justice



Eric Handley - Associate Justice



Ryan Woolsey, Associate Justice