

SPRING TERM, 2015

JUDICIAL COURT OF THE TEXAS A&M STUDENT GOVERNMENT ASSOCIATION

Case Number 67-03

MICHAEL MURTHA *v.* ELECTION COMMISSIONER EMMA DOUGLAS AND
STUDENT BODY PRESIDENT-ELECT JOSEPH BENIGNO

SYLLABUS

Appellants filed alleging that Election Commissioner Emma Douglas erred in not appropriately penalizing SBP Candidate Joseph Benigno for campaigning off-campus and for violating several traffic laws. The Court addressed four issues relating to the appeal and held as follows:

- I. On the issue of whether off-campus campaigning occurred, five justices sided with Murtha (C.J. Cooper, JJ. James, Halbert, J. Smith, and Hadjis); four sided with Benigno and Douglas (JJ. S. Smith, Bonsu, Maredia, and Mueller).
- II. On the issue of whether the Election Commissioner violated the equal protection clause of the SGA Constitution, eight justices sided with Benigno and Douglas (C.J. Cooper, JJ. James, Halbert, S. Smith, J. Smith, Bonsu, Maredia, and Mueller); one justice sided with Murtha (J. Hadjis).
- III. On the issue of whether Joseph Benigno violated the Election Regulations' prohibition against offenses against local, state, and federal law, six justices sided with Benigno and Douglas (JJ. S. Smith, Bonsu, Maredia, Miller, James, and Hadjis); three justices sided with Murtha (C. J. Cooper, JJ. J. Smith and Halbert).
- IV. On the issue of whether the Court should grant relief to the appellants and whether to affirm or reverse the Election Commissioner's decisions, five justices sided with Benigno and Douglas (JJ. S. Smith, Mueller, Maredia, Bonsu, and James), ruling for the Court that no judicial action will be taken against Douglas; four justices sided with Murtha, contending that some kind of relief needed to be granted (C.J. Cooper, JJ. Hadjis, J. Smith, and Halbert).

JUSTICE S. SMITH delivered the plurality opinion of the Court, in which JJ. Mueller, Maredia, and Bonsu join.

I

This case poses several issues for the Court's consideration. First, we must address whether or not Student Body President Elect Joseph Benigno violated the Election Regulations in terms of off-campus campaigning. The Appellant contends that Mr. Benigno participated in off-campus campaigning while filming a campaign video. Several pieces of evidence were presented to the Court attempting to demonstrate this. The evidence presented was from a video entitled, "Go Pro with Joe". We hold that the video in question can be defined as a "campaign material". Therefore, we believe that the actions carried out during the video were for the sole purpose of creating campaign material, rather than the act of campaigning itself. The Election Regulations defines "campaign materials" in Article II, Section C, Subsection (i):

"Campaign materials are defined as anything distributed or displayed for the purpose of soliciting votes for a candidate."

We contend that the act of waving the flag in the context of the video was not itself an act of campaigning, as the act itself was not done to solicit votes. While the flag bore the campaign slogan of the Appellee, the Appellee was not seeking to directly solicit votes at the time of the action (i.e. the riding of the moped and waiving of the flag). The Election Regulations do not specify that campaign materials cannot be created off-campus. We hold that all actions contained within the video were being engaged in as part of creating a campaign material, and thus we believe that no off-campus campaigning occurred.

The Appellee also contends that the Election Commissioner erred in not fining the Student Body President Elect for his actions contained within the video. The Election Commissioner maintains that she reviewed the video and fined Mr. Benigno appropriately for violations contained within. The Election Commissioner is responsible for determining what constitutes campaigning, which is demonstrated by the Election Regulations, Article III, Section B, Subsection (i):

"The Election Commissioner is the judge of what constitutes campaigning"

We hold that the Election Commissioner should be the judge of what constitutes campaigning and what does not. A plain interpretation of this line of the text leaves no other alternative. If the Election Commissioner reviewed the footage accordingly, and determined that no off-campus campaigning occurred, then in our eyes, no off-campus campaigning occurred. The fact that Mr. Benigno was fined for other elements of the video shows that the Election Commissioner reviewed the footage accordingly.

Counsel for the Appellant was unable to prove that the Election Commissioner was biased towards Mr. Benigno or had any reason to levy fines towards him in an unequal fashion. We concede that the Judicial Court has the authority to review the decisions of the Election Commissioner when hearing Judicial Court Appeals, however we still hold that the Election Commissioner acted within her authority, regardless of whether we thought off-campus campaigning occurred or not. The Election Regulations give the Election Commissioner the power to determine appropriate sanctions and fines in Article IV, Section C, Subsection (i):

“...final sanction amounts and degrees are at the discretion of the Election Commissioner”

If the Election Commissioner has discretion in determining both what does and does not constitute campaigning and the appropriate sanctions for such behavior, we have no reason to believe that the Election Commissioner violated the Election Regulations.

II

In their next line of argumentation, Counsel for the Appellant argued for equal protection under the Election Regulations. In his argument, he cited Student Body President Candidate Isaiah Tsau, who was fined for campaigning in off-limits areas. Mr. Tsau's violation was for campaigning in the Memorial Student Center. The Election Regulations, Article III, Section B, Subsection (vii) specifies off-limits areas as follows:

“Areas inside the Memorial Student Center, Rudder Complex, classrooms, the Rec Center including Time Out Deli, and the John J. Koldus building are off limits to campaigning during the campaigning period... Any candidate found actively campaigning in the aforementioned areas shall be assessed a major violation.”

The Memorial Student Center is specifically listed as an off-limits area for campaigning. The Election Commissioner levies fines based on severity and intent. The Election Commissioner judged that by campaigning in the MSC with a banner that encouraged students to vote, the intent was to directly solicit votes. Campaigning in the MSC is also explicitly stated in the Election Regulations as a major violation.

The Appellant argues that Mr. Benigno should be fined in a manner consistent with the punishment carried out against Mr. Tsau. We believe that the situations are fundamentally different. The offenses that Mr. Benigno is being accused of were committed in a different area (i.e. off-campus). The Election Regulations states only this about off campus campaigning in Article III, Section B, Subsection (iii):

“Off-campus campaigning shall be prohibited. No campaign materials shall be distributed, posted, or held off campus.”

The Elections Regulations do not include a mandated sanction for off-campus campaigning. The Election Commissioner is allowed to judge the severity and intent of violations. Even if the Court were to rule that a violation occurred, the Election Commissioner’s actions are still covered by her discretion. We hold that the Election Commissioner has discretion in deciding whether to fine or not fine candidates as she sees fit. The Election Regulations grant her this discretion over the rules. Because of this, we affirm the decision of the Election Commissioner and we believe that she acted within the discretion provided by her position.

III

The Appellant also argues that in the “Go Pro with Joe” video, Mr. Benigno committed several violations against state and local law regarding traffic safety and parking. We hold that it is not the role of the Court to assess violations against state and local laws that were not first assessed by the proper authorities. The Election Regulations define major violations as follows in Article IV, Section C, Subsection (i), Sub-Subsection (i.a):

“Major Offenses: Major violations include, but are not limited to: offenses against local, state, or federal law to any degree...”

We believe that the word offense in this statement is referring to a crime. We assert that it is not the role of the Court to decide whether or not a crime occurred. If a crime did occur and Mr. Benigno was given due process by the proper authorities, then it would be appropriate for the Court to reprimand Ms. Douglas for not issuing him a fine.

Mr. Benigno was not indicted or convicted of an offense against any law. The Judicial Court is not the police department, nor do we have the authority to interpret State law. Our job is to determine whether a violation was committed against the rules contained in the Student Government Association Constitution, Code, or Election Regulations. While the Election Regulations do state that any offense committed against federal, state, or local law is a major violation, Mr. Benigno has not been proven guilty of any offense in a court of law, and in our eyes, he is innocent until proven guilty. The Judicial Court cannot offer true due process of law, and thus we simply cannot determine whether Mr. Benigno has committed an offense against the law.

IV

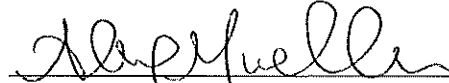
The heart of the issue in this case is not the actions of Mr. Benigno, but rather the inactions of Ms. Douglas. While we contend that off-campus campaigning did not occur, even if we believed it did, the Election Commissioner and her commission have discretion over which candidates are fined and how much they are fined. Because his actions were part of creating a campaign material, and the intent of such actions was not to directly solicit votes, we do not believe that Mr. Benigno engaged in off-campus campaigning. We also maintain that it is not the role of the Court to enforce federal, state, and local laws without proper due process. Therefore, we AFFIRM the arguments of Student Body President Elect Joseph Benigno.

The Election Commissioner worked well within the confines of her position and assessed proper penalties in accordance with her interpretation of the Election Regulations. Because the Election Regulations allot her discretion in her execution of the rules, we AFFIRM the decision of the Election Commissioner.

PLURALITY OPINION OF THE COURT
CASE NUMBER 67-03



Shannon Smith, Associate Justice



Alex Mueller, Associate Justice



Zain Maredia, Associate Justice



Bethany Bonsu, Associate Justice