



**University of South Florida
Student Government
Supreme Court
2022 – 2023
3rd Term**



STUDENT GOVERNMENT SUPREME COURT

**ELECTION RULES COMMISSION V. SEBASTIAN SOLANO
AND JESSICA MALANGA**

MAJORITY OPINION OF THE SUPREME COURT

DECIDED: 21ST APRIL 2023 DECISION

ISSUED: 28TH APRIL 2023 AUTHORED BY:

CHIEF JUSTICE K. METHENY, SENIOR

JUSTICE G. FUCHSLOCHER, RANKING

JUSTICE B. JONES, ASSOCIATE JUSTICE K.

JACKSON, ASSOCIATE JUSTICE A.

MEDEIROS, ASSOCIATE JUSTICE C. ICAZA,

ASSOCIATE JUSTICE L. CAVALLIERI

Jurisdiction:

Under Titles V and VII of the USF Student Government Constitution, The USF Supreme Court has *original jurisdiction* over this case as it is enumerated in the following statutes:

§501.1. The Supreme Court shall have original jurisdiction over:

§501.1.4. Hearings about Major Violations of the election code.

§703.8.2. The Supreme Court shall have original jurisdiction over:

§703.8.2.3. All federal cases and local controversies regarding major election violations.

The complaint against the Solano/Malanga ticket by the Election Rules Commission (hereafter referred to as the ERC) alleged that the defendants had violated Student Government Statutes by operating an unauthorized polling station. This is in reference to the following statutes:

§706.5. Major Violations for Campaign Processes and Restrictions:

§706.5.8.8. Any of the other violations:

§706.5.8.8.5. Setting up or operating an unauthorized polling station.

The complaint thus satisfied one prong of the jurisdictional requirements for the Supreme Court, that

§506.5. In determining jurisdictional viability of the case, the Supreme Court must consider the following:

§506.5.1. The complainant must factually allege a violation of the SB Constitution and/or Student Government Statutes.

The second prong that must be satisfied for the Supreme Court to have Jurisdiction over this case is that:

§506.5.2. Both the complainant and defendant must be parties that fall under the jurisdiction of the Supreme Court as established in Article IV of the SB Constitution and SG Statutes Chapter 501.

Both parties in this case – the ERC and the Solano/Malanga ticket – are entities that fall under the Supreme Court’s jurisdiction, which per the Student Government Student Body Constitution, includes:

ARTICLE IV: THE JUDICIAL

SECTION I: The university wide judicial powers of the Student Body shall be vested in The Student Government Supreme Court, hereinafter referred to as The Supreme Court. The Supreme Court shall have jurisdiction over all cases and controversies, excluding those delegated

to other entities by the University Board of Trustees, involving the Student Body and Student Government, including the power to declare any act of Student Government unconstitutional.

The parties within this case have not been delegated to other entities, and thus both fall under the jurisdiction of the Student Government Supreme Court. Thus, both prongs for jurisdiction have been fulfilled.

Relevant Facts:

On March 1st, 2023 at 4:38 p.m., the University of South Florida Supreme Court received a campaign grievance form from the Election Rules Commission (ERC). Additionally, the Supreme Court received a second grievance form from the ERC at 4:53 p.m. that same day. The court, upon reviewing the two grievances, decided to combine the occurrences into one potential trial. The statute the ERC claimed was violated is:

§706.5.8.8.5. Setting up or operating an unauthorized polling station

On February 28th, 2023 at 1:30 p.m., Ms. Malanga set up a table outside of The HUB at The Village and allegedly started to hand out flyers and drinks to students passing by. Suryakanth Prasad Gottipati saw and interacted with this display, and called Cesar Esmeraldi, an opposing presidential candidate. Mr. Esmeraldi then notified Student Government Advisor Ms. Vanessa Smith who then showed up to the table with the Tampa Associate Supervisor of Elections, Ms. Myriam Marc, and talked to Ms. Malanga. Around 4:30 p.m. that same day, the Solano/Malanga ticket had another table set up outside The Recreation and Wellness Center, allegedly doing the same thing, handing out flyers and asking people to vote for them. The flyers distributed had a QR code with the candidate's faces on them, and the QR code led directly to the voting site (hosted on the EBallot platform, henceforth referred to as the EBallot QR code). These occurrences took place on the second day of the official voting period for Student Government elections. During this time three official polling stations were set up: one in front of the Marshall Student Center, another in front of the library, and a final one in front of Cooper Hall. These official polling stations had tables with EBallot QR codes, pizza for students who voted, and ERC/non-campaigning Student Government staff managing the booths.

Verdict:

The USF Supreme Court ruled against the defense in favor of prosecution with a vote of 6-0-1, finding that the Solano/Malanga ticket had indeed set up and operated an unauthorized polling station.

Court Opinion:

The grievance presented in this case was one that discussed the following statute:

§706.5.8.8.5. Setting up or operating an unauthorized polling station

For further clarification, an unauthorized polling station is statutorily defined below:

§700.57. Unauthorized Polling Station - Any polling station that is not setup and operated by ERC staff and/or Student Government Employees. This shall also include any polling station that is being operated by a campaign ticket.

The Supreme Court recognizes the importance of conducting a fair election that does not privilege or disadvantage any candidate so that the student body of the University of South Florida may best elect the candidate they deem fit. Simultaneously, the Court understands that for candidates to follow the election statutes and regulations that outline a fair election, they must be clear enough to abide by. With these considerations in mind to determine if the grievance presented has merit, the court considered the following three questions:

- A. Were the regulations prohibiting the set up or operation of an unauthorized polling station clearly conveyed by the University of South Florida Student Government Statutes?
- B. Were the regulations prohibiting the set up or operation of an unauthorized polling station, and what a polling station was, clearly outlined by the external resources provided?
- C. Was the information given to Mr. Solano and Ms. Malanga, in its totality, sufficient to reasonably deter the alleged activity from commencing?

(A) Were the regulations prohibiting the set up or operation of an unauthorized polling station clearly conveyed by the University of South Florida Student Government Statutes?

One of the defense's primary arguments rested on the ambiguity of what a 'polling station' was in statutes. Within statutes, there are two definitions given relating to what a 'polling station' is. They are below:

§700.40. Official Polling Station - A device or outlet of voting that is directly designated in writing and staffed by the employees of Student Government who are not running for a position in the current election.

§700.57. Unauthorized Polling Station - Any polling station that is not setup and operated by ERC staff and/or Student Government Employees. This shall also include any polling station that is being operated by a campaign ticket.

The defense argued that these definitions did not give a sufficient idea of what constituted a polling station itself beyond the requirements that it was authorized by SG and staffed by SG members. Specifically, they pointed to the lack of characteristics explicitly outlined in these statutes; whether a QR code, a table, snacks, flyers, etc. were needed to constitute a polling station is unclear.

A large part of the confusion, the defense claims, comes from the unclear difference between campaigning and polling. From their perspective, the alleged occurrence was nothing more than the most basic form of campaigning: soliciting votes. Per statutes, campaigning is defined as:

§700.16. Campaigning - An expression by any medium attracting public attention whether media, television, newspaper, magazine, periodical, direct mail, direct e-mail, display, leaflet, speech, or any other means which shall transmit any idea furthering the candidacy of any person.

§700.2. Active Campaigning - Public and intentional expression of support for a candidate or ticket including vocal campaigning, distributing flyers, and campaigning via social media or email.

The prosecution, argues that the definitions relating to what a polling station is are both sufficient and clear for candidates. For them, an "Official Polling Station" is synonymous with

the definition for what a polling station itself is, thus leaving no confusion. They also assert that the act of soliciting votes is a component of polling, not campaigning. To the prosecution, as described in the testimony of Ms. Shaw, campaigning is nothing more than describing a platform.

The court here agrees with the defense. The definitions for what an official versus unauthorized polling station do not provide any actual characteristics of what a polling station may look like, apart from the fact that it is designated in writing and staffed by unbiased SG employees. The lack of description here creates an ambiguity as to what a polling station is, and thus, means that candidates may have a hard time, going purely off of statutes, understanding when they have created a polling station. If there were physical descriptors, for example, the definition of a polling station explicitly including the presence of the EBallot QR code and some sort of reward/food prize for voting, then candidates would know exactly what to avoid in order to not accidentally create an unauthorized polling station. Since those descriptors are absent, candidates lack that necessary statutory clarity, and thus are more susceptible to falling into error if they were to rely purely on statutes while trying to differentiate campaigning and polling.

The court has determined that the answer to question (A) is NO, the regulations prohibiting the set up or operation of an unauthorized polling station are not clearly conveyed by the University of South Florida Student Government Statutes. The court now turns its attention to question (B).

(B) Were the regulations prohibiting the set up or operation of an unauthorized polling station, and what a polling station was, clearly outlined by the external resources provided?

Here, when the court refers to external resources, it means any other resources and information provided to candidates about election rules outside of statutes. These may include informational sessions, canvas courses, or any communications between persons holding authority in the Election Rules Commission and the candidates. The ERC brought forth evidence of all of the aforementioned external resources given to the defendants during the trial.

Beginning with the canvas course, in SG Supervisor of Elections Laura Shaw's testimony, she testified about a training Canvas course that all candidates had to take. Within this Canvas course, she explained that much of the Title VII election code was broken down in detail. The course also warns candidates against having campaign staff work polling stations.

Ms. Shaw also stated that all executive candidates have to attend two mandatory training sessions to discuss the guidelines of the election. During the prosecution's rebuttal, the prosecution clarified that in the mandatory training sessions the ERC explained what a polling station is, how it is operated, and what it looked like. No dispute was ever raised about the contents of the Canvas course or the two mandatory information sessions. Thus, it seems clear to the court that there was some clarity about what a polling station was, and that this was conveyed to the defendants.

Finally, both the defense and the prosecution extensively discussed an email exchange admitted into evidence between defendant Sebastian Solano and SG Supervisor of Elections Laura Shaw. Before the occurrence of the alleged grievance, the defendant Mr. Solano sent an email to Ms. Shaw and asked, "With voting starting tomorrow, are we allowed to hand out flyers with a Celsius or some other snack/drink, or would that be considered bribery?" Ms. Shaw responded by stating, "We decided that that would not count that sort of this as long as it is not a full meal, but please refer to the statute below [706.5.8.7.1.2.]. Also, please do not use it to ask people to vote for you, just hand them out with your flyers." While the defense warranted this email as an approval for the event, the prosecution disagreed and emphasized Ms. Shaw's precaution.

It is the Court's belief that such precautionary steps as emailing Ms. Shaw demonstrated the defense's knowledge of and the capacity to use the external resources available to them - in this case, communication with an authority figure of the ERC. Further, the court believes that the actual act of sending the email that the defense underwent demonstrates that there was some degree of hesitation or uncertainty about the event. For the specific question asked, the defense seemed to receive a positive response from the ERC. However, the court believes that the email was too vague and lacking critical information for the ERC to properly assess and approve/deny the event. The Court thus finds the alleged approval to be irrelevant.

The first consideration leading to the conclusion above was that the only question that the defendants posed was about bribery. The potential for bribery is a factor beyond the scope of this trial, since the only grievance being discussed solely pertains to the set up and operation of an unauthorized polling station. Thus, even if they received approval that handing out snacks with flyers was not considered bribery, which the court would like to reemphasize as an irrelevant issue to this trial, this would not provide the proof the defense seeks that their event as a whole was sanctioned.

The second consideration regards the language and contents of the email. In the email, Mr. Solano mentions flyers that his campaign plans to hand out. There is no attachment of a flyer in the email. Their failure to give the full information on what materials would be distributed at their event precludes the ERC from giving an approval with any weight. Due to both of these considerations, the court believes the email presented between Mr. Solano and Ms. Shaw does not constitute an approval of the tabling event that occurred. However, the point remains that these tools for clarification were present and used by the defendants.

Given all the resources that were available, the court's answer to question (B) is YES, the regulations prohibiting the set up or operation of an unauthorized polling station, and defining what a polling station was, were clearly outlined by the external resources provided. Using the considerations outlined in both (A) and (B)'s answers, the court will now consider question (C):

(C) Was the information given to Mr. Solano and Ms. Malanga, in its totality, sufficient enough to reasonably deter the alleged activity from commencing?

Based on all of the information available to the defendants besides statutes, it is the court's belief that the defendants had enough information to reasonably deter the unauthorized polling station from commencing. While statutes have fallen short, the court believes there were a sufficient amount of outside resources, such as informational sessions, canvas courses, and communications between persons holding authority in the Election Rules Commission and the candidates, available to the defendants to determine what a polling station was and that what they were doing was indeed setting up and operating an unauthorized polling station.

It is granted that not everything is covered in statutes. However, that is why these external resources are present - to fill in the gaps. The ERC made several attempts to give candidates further education on the election code and standards, and when those resources did not suffice, made themselves available for other questions candidates may have. Defendants demonstrated their ability to use the latter resource while emailing the SG Supervisor of Elections Laura Shaw.

Importantly, however, the ERC cannot be a perfect resource if they are not given full information. Seeking approval of an event while omitting the full description of what it is - a table, with snacks, with EBallot QR codes - is bound to not give an approval with much weight. While it may be argued that the ERC has the burden of asking for these details when they are

absent, one has to ask in response - how can the ERC know what it does not know? The court believes that the burden is on the candidates to be candid and clear in their requests so that the ERC can be accurate in its advice.

But beyond the ability to email, the court is of the opinion that the defendants still should have known not to set up their table. The ERC's witnesses testified that during the canvas course and the mandatory information sessions, candidates were described to what a polling station was, and were repeatedly urged not to set up anything that would remotely resemble one.

The court believes that the candidates running for SG President and Vice President have a reasonable duty to be aware of what a polling station looks like. Candidates have a vested interest in being informed on how the voting process works, and even if what a polling station looked like or was unclear from statutes, candidates were free to educate themselves by exercising their right as a USF student and voting themselves at a physical Official Polling Station. At the time that the alleged tabling took place, the voting period had commenced and this was an option for them.

A bid for the SG Presidential election is a highly tumultuous task, and one violation of the election code can cost a ticket their chance at the office. This is why an abundance of caution must be had by these tickets. The court believes that the actions of the defendants lacked the caution necessary to avoid this error. Had the candidates referred back to or sought additional clarification by doing any of the following:

- Re-visiting the canvas course
- Re-reviewing the mandatory information sessions
- Seeking advice from Ms. Shaw, or any other member of the ERC, with the explicit details of their planned event
- Physically visiting an Official Polling Station to assess what it looked like, what characteristics it had, and comparing it to their plans

The defendants would have seen that what they were planning to do was indeed setting up and operating an unauthorized polling station. The defense only relied on statutes to determine if what they were doing was wrong. The court believes that if they had looked further into the additional resources available to them, they would have known not to set up their table in the manner they did.

Thus, the court believes the answer to question (C) is YES, the information given to Mr. Solano and Ms. Malanga, in its totality, was sufficient to reasonably deter the alleged activity

from commencing.

Because it is the court's belief that there was sufficient evidence that the defendants were aware of what a polling station was; that the defendants were aware and exposed to the resources that did have information on this topic if there was ambiguity; and that this information, if properly heeded, would have been enough to dissuade the tabling that occurred; the court rules in favor of the prosecution.


Holding:

THEREFORE, it is the holding of The USF SG Supreme Court that it can be inferred beyond a reasonable doubt that the Solano/Malanga ticket did in fact set up and operate an unauthorized polling station.

THEREFORE, the Court has ruled in favor of the prosecution, the Election Rules Commission.


THEREFORE, the Senate is so ordered to further define what comprises a polling station.


IT IS SO ORDERED ON APRIL 28TH 2023


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Katherine Metheny, Chief Justice

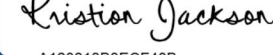
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