

STUDENT GOVERNMENT ASSOCIATION SUPERIOR COURT

SHURBAJI v. SGA ELECTION BOARD

NOVEMBER, 2017

Bourland, CHIEF JUSTICE, delivered the unanimous opinion of the Court. Kimani and Brooking, JUSTICES, took no part in these proceedings

Petitioner Yaseen Shurbaji appeals the Election Board rulings on three grievances filed against Petitioner’s campaign for SGA President. Each appeal concerns the same underlying legal question: to what extent is a candidate liable for the actions of other students on campus during the campaign and election? The SGA Election Board unanimously upheld all three of the grievances filed against the Petitioner’s campaign. We have jurisdiction over this matter.¹ Because the Code Annotated imposes strict liability on candidates for the actions their campaigners/volunteers and because of the incredibly broad definition of “candidate” in the Code, we AFFIRM the Election Board’s rulings on all three grievances.

I

The appeals to all three grievances tell the same story: someone who is not a member of the Petitioner’s official campaign GroupMe page violated a campaign rule while encouraging others to vote for Petitioner’s campaign. The first and second grievances involve students sending unsolicited electronic messages: the first was sent in the 2020 National Merit GroupMe; the second was sent in the Muslim Student Association GroupMe. The third grievance involves the presence of a University of Oklahoma logo in an Instagram photo. The Election Board upheld the first two grievances as unsolicited messages in violation of the Code Annotated.²

¹ SGACA tit. VII, ch. 4, § 31.

² SGACA tit. VII, ch. 3, § 21(d)(iv).

Petitioner appeals the three grievances, arguing that none of the three “posters” are part of his campaign team. None of the posters, Petitioner argues, are members of his campaign GroupMe, and he should not, therefore, be liable for their campaign rules infractions. Petitioner believes it is unreasonable to hold him responsible for the thousands of students attending OU. Petitioner also believes the brevity of the candidate meeting before the election strengthens his “reasonableness” argument.

II

Petitioner is not wrong: it is surely difficult to police the actions of other students on campus. It is especially difficult to police people encouraging others to vote for you when they are not overtly involved with your campaign. As difficult as this may be (and we are sympathetic to the difficulty imposed), the Code requires it.

The Code broadly defines “candidate” as “[a] person qualified to be placed on the ballot for an election. For the purposes of this Title, ‘candidate’ includes helpers, volunteers, workers *or any other person expressly or impliedly acting on behalf of a candidate.*”³ The Code broadly defines “candidate” because it informs when a campaign can be held liable for the actions rule violations of other people. The Code holds candidates and campaigns strictly liable for the rule infractions of “their campaigners and volunteers *even if the candidate did not direct the offending action.*”⁴ The Code goes on to require candidates and campaigns to police their campaigns and volunteers: “Candidates *must ensure* that every individual campaigning on behalf of the candidate or volunteering for the candidate is aware of campaign rules and guidelines.”⁵ These three sections,

³ SGACA tit. VII, ch. 1, § 1 (emphasis added).

⁴ *Id.* (emphasis added). The term imposing strict liability the section is “Candidates shall be liable.”

⁵ *Id.* (emphasis added).

taken together, hold candidates and campaigns strictly liable for any rule violations committed by anyone campaigning on behalf of a candidate.

The breadth of the “candidate” definition is largely controlling in this case. To include “any other person expressly or impliedly acting on behalf of a candidate” means that anyone—*anyone*—campaigning for a candidate can break an election rule for which the candidate/campaign will be held liable. Campaigning includes advocating for a candidate or encouraging others to vote for a certain candidate. If, while campaigning, a person violates an election rule, then the candidate/campaign can be held responsible for that violation, even if the candidate did not direct the conduct.

While it may seem an onerous task to police students campaigning on your behalf, the Code *requires* it. Petitioner points to the brevity of the candidate meeting as evidence for why he should not be held accountable for the actions of others. While we understand that he may have liked a more thorough explanation of the rules and potential third-party liability, our understanding stops short of sympathy. Petitioner is not only willingly participating in an election, he is seeking to become the President of SGA. Understanding the Code Annotated and how the rules apply to one’s actions are not unrealistic requests of one seeking such a high office.

Furthermore, the Code does not limit a candidate’s liability to those in his or her official campaign GroupMe. While such a rule may be more desirable, that is simply not the rule currently in place in the Code. It is for this reason that we disagree with the opinion of the General Counsel regarding the first two grievances.

We must, therefore, affirm the decision of the Election Board. The three “posters” involved in these grievance appeals were clearly advocating for Petitioner and encouraging others to vote for Petitioner in the election. This is campaigning. They campaigned on behalf of a candidate and

violated election rules in the process. The Code allows the Board to hold the candidate strictly liable for these actions. To hold otherwise would require inappropriate judicial advocacy in which we are (and have been) disinclined to participate. Our hands are essentially tied in this matter.

III

We feel obligated to include in our opinion that we feel the rule holding candidates strictly liable for *anyone* who campaigns may not be the wisest of policies. In that sense (and that sense alone), we are reluctant to affirm the ruling of the Election Board. We understand that the Code requires us to rule in this way (hence, our holding in this case), but we write further to voice concern for this policy. We do not, unfortunately, have a better idea. We also understand why the definition of candidate and the strict liability is so broad. The Legislature wanted to sweep in as many people as possible so candidates could not game the system by escaping liability just because the person violating a rule was not on the campaign GroupMe. We strongly encourage the Legislature to find a creative solution to this problem—one which prevents candidates from gaming the system while also limiting (not necessarily removing) the liability of campaigns resulting from the acts of “strangers.”

IV

In conclusion, we must (reluctantly) affirm the three rulings of the Election Board because of the broad definition of “candidate” in the Code. Because Petitioner has 10 upheld grievances, we direct the Election Board to hold a disqualification vote to determine the eligibility of the Petitioner’s campaign.⁶

⁶ SGACA tit. VII, ch. 4, § 26.