

SPRING TERM, 2013

MAJORITY OPINION OF THE COURT

NOTICE: The following document represents an opinion of the Supreme Court of the Student Government Association of Texas Tech University, and constitutes a binding decision on all parties concerned within the decision of the Court.

STUDENT SUPREME COURT OF TEXAS TECH UNIVERSITY

COTTON V. STOVALL

Decided March 8, 2013
Opinions Issued March 20, 2013

By 4-2 Decision

ON APPEAL OF SANCTIONS IMPOSED BY THE ELECTION COMMISSION OF THE
STUDENT GOVERNMENT ASSOCIATION OF TEXAS TECH UNIVERSITY
ENFORCED MARCH 3, 2013

ROLLO, C.J., delivered the opinion of the Court, in which, URYASZ, SCIOLI, and MEYER, JJ., joined; JUSTICES ROBERTSON and MONTEMAYOR, dissenting.

The question presented by the parties on appeal is whether the Election Commission erred, as a matter of law, in its judgment of March 4, 2013. We decline to answer that question. The more pressing question recognized by this Court is whether Raiders United violated § 6.08 of the Student Government Association Election Code and if so, whether the sanctions imposed by the Election Commission are appropriate. We hold there was no violation of § 6.08, and reverse.

I. FACTS

On February 27, 2013, the students of Texas Tech University began voting in the 2013-2014 Student Government Association elections. Polls closed the following day, February 28th, and the election results were announced the following day, February 29th. Appellants Luke Cotton and Jill Berger, hereafter referred to as “Raiders United,” were elected President and Vice President for Internal Affairs respectively. On Sunday, March 3, 2013, the Student Government Association Election Commission, hereafter referred to as “Commission,” convened to address grievances filed by Forrest Stovall, Taylor Weeks, Peyton Craig, and Daniel Yates, hereafter referred to as “Bridge the Gap.” The Commission heard oral arguments and released an opinion

the following day finding Raiders United guilty of violating § 6.08 of the Student Government Association Election Code, hereafter referred to as "Election Code."¹ The Commission found Raiders United not guilty of violating §§ 6.12, 6.21, and 7.18 of the Election Code. The Commission mandated that new elections take place the week of March 18, 2013. Immediately following the opinion, Raiders United filed an appeal with this court alleging that the Commission exceeded its authority in finding a § 6.08 violation and disqualification of the election results was an excessive and inequitable punishment. This court granted a temporary restraining order enjoining the commission from proceeding with new elections and scheduled oral arguments, in an expedited manner, for March 7, 2013.

II. DISCUSSION

The main question this Court will address is whether Raiders United violated § 6.08 of the Election Code and if so, whether the sanctions imposed by the Election Commission are appropriate. In answering this question, the finding of procedural violations, which are apparent, will be secondary and irrelevant. While Raiders United alleges majority procedural violations from the Commission, the Election Code allows this court to have appellate jurisdiction over issues of law and *fact* in all cases and controversies arising under this code in which the commission has issued a final decision. STUDENT GOVERNMENT ASSOCIATION ELECTION CODE § 4.01. Additionally, upon review, the Supreme Court may revoke or modify the sanctions imposed by the commission. *Id.*

The issue on appeal stems from an email written from Vice President for Internal Affairs candidate Jill Berger to the leasing manager of University Fountains Apartment Complex, Ms. Kari Wazny. This email, which was subsequently sent out to every resident at the University Fountains Apartment Complex by Ms. Wazny, was admitted as evidence by Bridge the Gap. Raiders United argues in its brief that the email in question was hearsay and therefore should not be admitted as evidence. The Court unanimously agrees that Raiders United correctly defined and characterized hearsay; however, the subject of the email is not in question. It is the very existence and sending of the email that is the subject of the violation. While § 6.08 prohibits spamming as defined by the Student Code of Conduct, it allows for three exceptions. First, if a "business relationship" exists between the sender of the email and the recipient, then spamming is not implicated. Secondly, if a "professional relationship" exists between the sender of the email and the receipt, then spamming is not implicated. Third, if a "personal relationship" exists between the sender of the email and the recipient, then spamming is not implicated. We are only concerned with the first exception.

¹ Sec. 6.08: "In conjunction with the *Student Code of Conduct*, spamming is not allowed under any circumstances." The *Student Code of Conduct* Rule 17(I): "Intentional spamming of students, faculty, or staff (defined as the sending of unsolicited and unwanted emails to parties with whom you have *no existing business*, professional, or personal acquaintance.)"

If a business relationship exists between the sender of the email and the recipient, then § 6.08 is not violated. Ms. Berger is a resident of University Fountains Apartment Complex and a condition of her being a resident is that she enters into a business agreement (lease) with the Complex and its officials, in which she is to pay a monthly rent. If she does not pay her rent in a timely manner, then she may be evicted. The leasing manager of the complex is in charge of enforcing this agreement. Based on her being a tenant of University Fountains and having entered into this agreement with her, it is reasonably assumed Ms. Berger has a business relationship with the complex and the officials in charge of enforcing the agreement and *vice versa*. This reasoning will apply to all 656 residents at University Fountains in that they have a business relationship with the complex and its officials.

With a business relationship established between Ms. Berger, Ms. Wazny, and the tenants of University Fountains, the Court arrives at the next finding: Ms. Berger did not email the residents of University Fountains directly, she emailed Ms. Wazny with the hopes that she will then email the residents. This was done. In the strict meaning of the statute, this email that was sent by Ms. Wazny on behalf of Ms. Berger and Raiders United cannot be construed to be spamming because of the business relationship that exists between all three. This business relationship between the parties provides an exception to § 6.08.

Assuming, *arguendo*, that a § 6.08 violation was found to have occurred, the punishment proscribed by the Commission is grossly unfair and unjust and the harm was in fact harmless. According to § 4.30 of the Election Code, an infraction falls into one of four categories.² Each category carries its own degree of sanctions, but disqualification of a candidate (Class A) is the most strenuous punishment possible. While responsibility for defining these four categories based on both the severity of an infraction and the assumed intent of the violator is delegated to the Commission, no such definitions were made available to candidates by either the code itself or the Commission. Instead, the Commission defined spamming as being among the most punishable of campaign violations in its decision to disqualify Raiders United. On the contrary, the Court would argue a spamming violation – such as the one in question in this case – should fall under a lesser category of violation. Surely a person would not receive a life imprisonment sentence for speeding.

Additionally, the Court finds the harm in this case to be negligible. Referring to a question presented by Justice Uryasz in oral arguments, assuming that everyone that lives in University Fountains (656) were to have voted and voted for Bridge the Gap, it still would not overturn the results from the Presidential or Vice Presidential races. In fact, both would most likely have gone into a runoff as proscribed by the code. Unfortunately, this outcome is based on

² Violations of the Code shall be divided into four classifications:

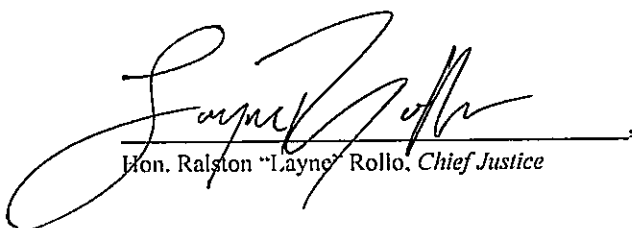
- I. Class A violations shall result in a disqualification from the election
- II. Class B violations shall result in a combination of a moratorium of campaigning and a fine
- III. Class C violations shall result in a moratorium of campaigning
- IV. Class D violations shall result in a fine

a very unreasonable assumption and cannot take place without that assumption. The Court will not be fooled into thinking that every person living in University Fountains voted. As voter turnout statistics will show, it is more reasonable to assume no one voted than to assume everyone voted. Raiders United is correct in that the harm, if any, was negligible; this Court finds the punishment to be grossly excessive and unjust.

The fact remains, however, that Raiders United did not violate § 6.08 of the Election Code. A business relationship is clearly established by Ms. Berger's status as a resident of University Fountains. Furthermore, seeing as Ms. Berger did not send the email directly to the tenants, but to the leasing manager who in turn has a business relationship with each individual tenant in the complex, a § 6.08 violation is simply not sustainable. Additionally, assuming this Court were to find a violation of § 6.08, the harm perpetrated was negligible and the punishment was grossly unfair and unjust.

As such, we find no violation of § 6.08 of the election code. Furthermore, even if a violation had occurred, the court finds that disqualification is an inequitable punishment. For the foregoing reasons, the decision of the Election Commission is hereby REVERSED. The Election Commission is hereby commanded to reinstate the results of the election in regards to the Office of President and the Office of the Vice President for Internal Affairs. Furthermore, since the violation of § 7.31 of the Election Code was not appealed and in such barred by University regulations, the Court hereby commands the Election Commission to proceed with a new election for the Office of the Vice President for External Affairs, in accordance with the proscribed guidelines.

REVERSED



Hon. Ralston "Layne" Rollo, *Chief Justice*

/s/

Hon. Keith Scioli, *Associate Justice*

/s/

Hon. Michael Uryasz, *Senior Associate Justice*

/s/

Hon. Michelle Meyer, *Associate Justice*