

UNIVERSITY OF KENTUCKY
STUDENT GOVERNMENT ASSOCIATION SUPREME
COURT

Case No. 4-Spring-2018

ROSS BOGGESS, CLAIMANT

v.

MICHAEL HAMILTON and NOOR ALI, RESPONDENTS

[February 26, 2018]

CHIEF JUSTICE TREVOR NICHOLS delivered the opinion of the Court in which JUSTICE MARK BUTLER, JUSTICE ARAYO SOKAN, and JUSTICE BRADLEY STRAIT joined. JUSTICE JAKE BARTLETT and JUSTICE GENTRY COLLINS filed a separate dissenting opinion.

CHIEF JUSTICE TREVOR NICHOLS writing for the majority.

This matter appears before this Court upon the Election Investigator's prior finding of no cause. Specifically, Mr. Boggess alleges:

Noor Ali used her official position in LDP to campaign and intimidate voters as she was in a position of power. These groups are meant for official purposes. This would be comparable to if I had the university [sic] of Kentucky mascot campaigning for me.

Attached to Mr. Boggess' complaint, is a "GroupMe" message, self-designated as "LDP 2016-2017." The contents of the message state as follows:

Hi! Today is the first day of Student Government Elections! I'm here to remind you to inform yourselves about the candidates and to remind you to VOTE! The Hamilton & Ali ticket is devoted to serving ALL students, creating a sense of belonging, and creating a student government that is representative of every student - regardless of background or belief. This is also the only presidential/vice presidential ticket with experience on both the executive and legislative branch. Their experience has led them to see the many

initiatives and issues that can be tackled next year if elected such as: 1) creating a meal swipe bank for food insecure students, 2) improving advising for students for the entirety of their time here, 3) implementing a syllabus bank and teacher course evaluation bank and many more! Never forget how much your voice matters to Hamilton & Ali and that you belong here. You can read platform statements and vote for ... [.]

The Court was unable to review the entirety of the message, however the message itself designates that more language follows the above quotation. Nevertheless, the contents of the message are not necessarily the focus of the dispute, rather the majority believes the issue presented is whether Ms. Ali is in violation of Section IV(R) of the Election Procedures and Rules Act of 2010 (the “Elections Act”). Specifically, Mr. Boggess alleged at the hearing for this matter that Ms. Ali’s use of the LDP 2016-2017 was a use of a Student Government resource in violation of the Elections Act.

Section IV(R) of the Elections Act states, “[n]o Student Government Resource shall be used to support any candidate unless those resources are available to all candidates.”

LDP stands for Leadership Development Program and is organized and facilitated by the University of Kentucky Student Government Association. It is a “freshman program ... dedicated to building future leaders on campus.”¹ Members of the program are selected through an application process and applications are released to “all freshman during the first few weeks of classes in the fall semester.”² The top forty (40) student-applicants are selected to be in the program.

“Student Government Resource” is not defined by the governing documents of the Student Government Association. As such, this Court is not bound to any particular definition, but is permitted to exercise its judgment according to the spirit and intent of the legislation. The majority does not believe the legislation as written intended to reach into the private messages of individual students, nor do we believe a GroupMe is the type of resource contemplated by subsection (R).

Assuming *arguendo*, if LDP itself is to be considered a Student Government resource, and the group messaging system at the center of this complaint is a resource of LDP, the analysis may turn. However, as stated above, all freshmen at the University of Kentucky are able to apply to be selected for the program, and thus this resource is available to all candidates and in compliance with Section IV(R) of the Elections Act. Further still, even if the LDP program is not considered available to all candidates, (e.g. a candidate applied to the program and was not chosen for selection), this Court believes the type of resource provided has a finite duration. This program only admits freshmen students and is completed after a student finishes his or her freshman year. If the GroupMe were truly a Student Government resource and participation in the GroupMe is a requirement of LDP, it would seem that the

¹ See <http://uksga.org/programs-and-services/leadership-development-program/>

² *Id.*

GroupMe would cease to exist after completion of the program. Obviously, this is not the case.

There has been no evidence presented that participation of individuals in the LDP GroupMe was mandatory or required by those accepted into the program. Further, there has been no evidence presented by Mr. Boggess that he could not have obtained the names of the individuals within LDP, and provide a similar message to that sent by Ms. Ali. In fact, no evidence at all has been presented that shows Ms. Boggess was prevented from sending a group message, email, or any other form of communication to the exact same individuals with whom Ms. Ali communicated.

It is undisputed that at the time Ms. Ali's message was sent, no individuals within the GroupMe were still participating in LDP as freshmen. It is also undisputed that at the time the message was sent, Ms. Ali had no official capacity and/or position within LDP. Would the alternative have been presented, the majority's analysis may have developed differently. However, given that the alternative is not presently before this Court, the majority finds the fact that Ms. Ali held a prior position within the program a red herring.

The majority does not believe and, in fact, advises against, creating an obligation for the Student Government Association to monitor the communications between LDP members in any official or unofficial capacity. The majority would also advise against labeling any GroupMe message as a Student Government resource, as we feel it unnecessary to inhibit voluntary communication of those with whom an LDP member has developed a friendly and/or professional relationship.

If the GroupMe messaging of LDP members is to be considered a Student Government resource, it will create an impossible burden on the judiciary to overcome and enforce. For example, if the above referenced message from Ms. Ali was void of an LDP title, would it still be considered a Student Government resource? If LDP members added one person to the GroupMe, who was not a part of the program her freshman year, would that single addition change the analysis? If a prior LDP member were to create a separate and distinct GroupMe, and add every single member of the GroupMe that was created during the program, would both group messages be considered resources, or only one? If a prior LDP member were to email all of her LDP colleagues, grouping all emails in one message, would that email be considered a Student Government resource?

Obviously, when applying this potential resource designation, the argument collapses. The majority believes Student Government election candidates should be encouraged to communicate with voters and use relationships developed and earned over the course of their tenure at the University. Designating a GroupMe as a Student Government resource would create impossible hurdles in enforcement, encourage frivolous claims to be presented before this Court, and create further ambiguity in the Elections Act.

Given the foregoing, the majority, finding no violation, hereby dismisses Mr. Boggess' claim with prejudice.

It is so ordered.

JUSTICES J. BARTLETT and JUSTICE G. COLLINS in their dissenting opinion state the following:

With the situation at hand this Court has been tasked with interpreting a vague and ambiguous provision that should be defined by the legislature of the Student Government Association (SGA). The majority, in finding no violation of Ms. Ali's conduct, is adopting a limited interpretation of "Student Government resources" as it pertains to Election Procedure and Rules Act (The Act) that ignores the purpose and spirit of The Act. Mr. Boggess' claim centers around an alleged violation of § IV (R) of the Act which states: "No *Student Government resources* shall be used to support any candidate unless those resources are available to all candidates." (emphasis added). Because the Act is devoid of any definition of what qualifies as a prohibited Student Government resource, we believe the purpose and spirit of The Act should be controlling and a broad reading used.

In reading the Act with the broadest perspective we see no reason "Student Government resource" should exclude a sanctioned GroupMe account created with the purpose of communicating with SGA's Leadership Development Program (LDP). LDP is a group of approximately 40 freshmen selected through an interview process by SGA leadership with the purpose of cultivating leadership skills. The GroupMe at issue includes members of the 2016-2017 LDP class. Ms. Ali served as the 2016-2017 Leadership Development Program Coordinator and used the platform as a means of communication with those freshmen. Access to the group was, and still is, limited. Only those freshmen carefully selected by Student Government leadership and SGA members tasked with influencing them were included.

We do not find the argument that those freshmen have completed the LDP convincing. The students may have graduated from the program, but the GroupMe is still active and Ms. Ali continued to use it to influence those that she has maintained authoritative position over. Given the original purpose and continued use, we are not convinced that some members of the GroupMe did not view the communication platform as a Student Government resource.

The Legislature passed the Act to ensure a fair and level playing field for all campaigns. *See generally* § IV (creating broad violations for campaigning at polling locations, limiting expenditures and requiring reports, barring intimidation or harassment or slander, and prohibiting ticketing). The Act attempts to protect the integrity of the elections and is drafted broadly to allow for interpretations that cannot always be predicted. The majority's opinion unnecessarily limits the broad reading of the Act. Meriam Webster's Dictionary defines resource as "a source of supply or support: an available means" and "a source of information or expertise." Resource is a broad term and does not limit itself to only tangible assets or things of obvious monetary value. Access to information and people, especially in today's technical age, falls under the definition of a resource. Because the Act specifies that violations are limited to use of resources not "available to all candidates," we believe the Legislature intended to prohibit the use of anything owned or attributed to Student

Government that was not available to all and could be used as an advantage by one. We believe finding this GroupMe a resource of Student Government is consistent with with The Act's intended purpose.

Section IV (R) of the Act was created to prevent an unfair advantage by candidates who have individual access to Student Government resources. Ms. Ali, as a former LDP coordinator, used a GroupMe that was created and run by Student Government to communicate with students. We believe this falls under Section IV (R) as a resource that provided an advantage of influence to one candidate at the disadvantage of others. If the Legislature intended a more limited definition of resource, we strongly encourage an amendment for future clarification.

For the above stated reasons, we respectfully dissent.