

UNIVERSITY OF KENTUCKY
STUDENT GOVERNMENT ASSOCIATION SUPREME
COURT

Case No. 1-Spring-2018

A. RILEY GRANT, CLAIMANT

v.

ROSS BOGGESS and SYDNEY OTTEN, RESPONDENTS

[February 26, 2018]

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

CHIEF JUSTICE TREVOR NICHOLS writing for the unanimous court.

The issue presented before this Court is one of first impression. While the Elections Procedures and Rules Act of 2010 (the “Elections Act”) and the UK Student Government Constitution (the “Constitution”) provide helpful guidance, this Court, in recognition of its duty, and mindful of its scope of authority on novel claims, relies heavily on legislative intent, commonsense, and the interest of justice in making its ruling. An effort to relieve legislation of unnecessary ambiguity is a necessary function of this Court. While it is universally understood that the judicial branch does not have the authority to create law, this Court nevertheless has the obligation to interpret existing legislation with an eye towards effective precedent and policy.

On Wednesday, February 21, 2017 undergraduate, graduate, and professional students at the University of Kentucky received an email from “Ross Boggess <noreply@qualtrics-survery.com>”. The emails stated the following:

Hi Wildcat,

My name is Ross Boggess! I am running to serve you as Student Government President with Sydney Otten. We believe that you, as a graduate student, have the opportunity, now more than ever, to choose the next Student Body President and Vice President.

As your Student Body President we will hold graduate and professional [sic] students as a high priority. Your UK experience is just as valuable as any others. You and your graduate and professional [sic] student colleagues [sic] hold the power in this election. Make it count; put someone in that will fight for you like you were any other.

Vote at this [link](#)!

We appreciate your help, thank you for all that you add to the university!
Ross & Syd

Hey Wildcat!

As I am sure you're aware based off the overwhelming solicitation you were likely subject to, SGA elections are happening today and tomorrow. We would appreciate it if you all would take the literal 35 sections it takes to vote. We are running on student wellness & student success. Follow the link and click Ross Boggess and Sydney Otten for Student Body President and Vice President, the genuine leaders on campus that deserve this honor.

The link can be found [here](#)!

Sincerely,
Ross & Syd

The above referenced emails were sent by Respondents on a day in which the polls were open and students could cast their votes in the Presidential/Vice Presidential Student Government Association election. The time of delivery of said emails is disputed, and has been alleged to have ranged from 9:10 p.m. on Wednesday, February 21 to 9:30 a.m. on Thursday, February 22.

Within the emails, Respondents provided a link that directed recipients to the "University of Kentucky Elections" cite, where voters could then input their respective "LinkBlue" credentials and vote for their desired candidate. While the email directed at graduate and professional students did not expressly endorse Mr. Boggess and Ms. Otten on its face, there is no question that the email to undergraduate students directed recipients to vote for the Boggess Otten ticket. Specifically, the email states: "Follow the

link and *click Ross Boggess and Sydney Otten for Student Body President and Vice President*, the genuine leaders on campus that deserve this honor.” (emphasis supplied).

Mr. Boggess obtained approximately 29,000 email addresses of UK students through an Open Records Request with the intent to input the addresses into a “Qualtrics” program designed for mass-email messages. Specifically, Mr. Boggess stated the following in his Open Records Request to the University of Kentucky Official Records Custodian:

I hope that you are doing well. May I request a copy of the student university emails as an Excel or CSV file for all undergraduate and another file of all graduate students if you are allowed to differentiate. This will be used to encourage students to engage with Student Government elections on February 21st.

Mr. Boggess’ request was granted and he received a spreadsheet from the University’s Analytics Team. Of those approximately 29,000 student emails received, approximately 9,000 were graduate and/or professional students.

Students could not “opt in” or “opt out” of receiving Respondents emails unless they previously designated their directory information confidential under the Family Education Rights Act of 1974 (“FERPA”). In other words, the emails were unsolicited and unexpected by those in receipt. Testimony alleging protest and displeasure from students regarding the fact that a Student Government presidential candidate could obtain their individual emails and solicit their vote was presented at the hearing on this matter.

Section IV of the Elections Act states the following:

D. No campaigning may take place at any polling location during polling hours on the election days, nor may any campaign material be present at a polling location during polling hours.

1. This shall exclude candidate platforms received and approved by the Elections Board of Supervision.

2. Campaign material within the campaign free zone prior to the zone being designated by the Election Board of Supervision shall be removed by an election official prior to opening the poll.

...

F. Neither verbal campaigning nor campaign materials shall be allowed within twenty-five (25) feet of the polls while polls are open if applicable.

...

N. No student may set up a computer or other electronic device to be used as a polling location for the purpose of soliciting votes.

1. This does not include polling locations designated by the Elections Board of Supervision.

Subsections (D), (F), and (N) do not specifically apply to the matter presented, however these provisions provide guidance in interpreting the legislature's intent. With the use of smartphones becoming seemingly universal, and given the immediate access to email on such devices, it is difficult to determine where such a line must be drawn in regard to the definition of campaigning, or what constitutes a polling location. For example, if an email endorsing a particular candidate was *sent* outside of voting hours, but was *delivered* inside of voting hours, does this constitute a violation? If every student at a particular polling location is in receipt of a mass-email endorsement, does said email then constitute a campaign material present at a polling location during polling hours? If most voters vote electronically rather than at a physical polling location, is the prohibition against campaigning at polling locations during polling hours viable? Is a mass-email endorsement sent for the purpose of soliciting votes effectively its own virtual polling location? We are not called today to answer these questions, however the legislation as written provides for this opportunity in the future. Because Section IV(S) specifically addresses the matter currently before the Court, we need not further investigate the implication of the above referenced subsections.

Section IV(S) of the Elections Act states:

S. All campaign emails sent to multiple voters must have all email addresses in the blind carbon copy (Bcc) line.

1. Any voter that requests to be removed from campaign emails must be removed from all campaign mailing lists within 36 hours.

As such, Respondents, having no email address in the Bcc line in their mass-email correspondence, are in violation of the Elections Act.

Section V of the Elections Act states the following:

C. If a candidate is found to have violated specific policies outlined in Section IV, the Student Government Supreme Court shall sanction the offending candidate as follows:

1. If subsection G, H, or K under Section IV is violated the offending candidate's total votes shall be decreased by no less than 10% per subsection violated. This percentage may be increased at the discretion of the Supreme Court.
2. If subsection M, N, or T under Section IV is violated the offending total votes shall be decreased by no less than 25% per subsection violated. This percentage may be increased at the discretion of the Supreme Court.

3. For all other subsections under Section IV the Supreme Court may choose to nullify all votes cast, or a percentage of the votes of a candidate, or level any other sanctions permitted under Section V.

This Court believes that the type of mass-emailing used by Respondents was never intended by the legislature and is expressly prohibited. Further, this Court finds that Mr. Boggess acted outside the spirit of the legislation and misrepresented his intention and purpose for obtaining the approximately 29,000 emails derived from the Open Records Request.

Evidence in support of this finding is not, and cannot be, disputed. For example, there is no dispute that the emails sent did not contain all addresses in the Bcc line. There is no dispute that Respondents did not physically enter the email addresses of each individual recipient. There is no dispute that Respondents specifically requested and solicited the votes of approximately 20,000 undergraduate students via email on a day in which the polls were open, and did not merely “encourage students to engage with Student Government elections.”

Respondent Boggess argued at the hearing on this matter that the intent of Section IV(S) was for sake of privacy, and meant to protect recipients from gaining other recipients’ private information, i.e. their individual email address. We respectfully disagree. Just as Mr. Boggess was able to obtain approximately 29,000 email address through an Open Records Request, it would seem that any individual requesting such information would be able to access it. As such, an argument based solely on a suspected intention of privacy collapses; approximately 29,000 “private” emails were solicited and subsequently used by Respondents.

This court interprets Section IV(S) to mean that no student-candidate for a Student Government office may abuse the open records system by using mass-email programs to solicit votes for their personal benefit. This is not to say that candidates are precluded from exercising their right to request such records, rather this Court holds that a violation occurs when such records are obtained under false pretenses, i.e. used to solicit votes directly rather than to encourage participation in the election.

Because we have found a violation of Section IV(S) of the Elections Act, this Court holds that ten (10%) percent of Respondents votes are hereby nullified, pursuant to Section V(C)(3) of the Elections Act.

It is so ordered.