Case No.03-XX

Mr. John Willms

Complainant/Appellant

Vs.

Mr. Kristopher Infante

Respondent

RESPONDENTS/COMPLAINTANTS BRIEF

The attached brief is an outline for the Supreme Court’s records in the case of Willms v. DeSalvo concerning a sanction applied by the Election Board on March 26, 2014. An appeal was issued to the Dean of Students concerning the sanction, which was remanded to the Supreme Court per the Memorandum of Understanding between the Election Board and Supreme Court dated October 14, 2013.

The respondent has provided the Supreme Court with all relevant evidence, testimony, and case documents referenced in the appeal before the court. The court has decided to here only the question related to the Election Board’s authority to reclassify violations of the Election Code.

I am willing and able to answer questions before the Supreme Court should they wish to embrace the topic of the specific sanction. During testimony I will demonstrate to the court that:

1. The Election Board did not find Mr. John Willms had committed an act of vandalism; rather that he violated the Student Code of Conduct section 2.02(Q).
2. The Election Board acted within the confines of its powers as outlined in the Associated Student Government Constitution and Election Code.

ELECTION BOARD HEARING DESALVO V. WILLMS
Mr. Cody DeSalvo, the complainant in the original case, has waived his privilege of confidentiality

related to his original violation filing against the appellant.

The Election Board received a Violation Complaint Form via its only documentation system on March 24, 2013 from Mr. DeSalvo, he claimed to have seen what he described as “an act of vandalism” and that he believed it was “not only a violation of the Code of Laws Article IV, Section 1 but also the Student Code of Conduct.” Photographic evidence of the violation was received shortly after the violation report form was submitted.

There are a few issues resulting from this filing. The first is that the Code of Laws has never been proven to be under the purview of the Election Board, and an “act of vandalism” is not defined in the Student Code of Conduct. However the context of the complaint and the pictures received by the Election Board substantiated that a violation could have occurred, therefore a hearing date was set.

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As a result Mr. DeSalvo presented to the Election Board a brief, outlining the specific areas of the Election Code and Student Code of Conduct that he thought Mr. Willms had violated. In addition, Mr. DeSalvo requested the Election Board reclassify the violation at Alkek to a class A offense. He proposed that the accused actions at Alkek exceeded a simple posting violation.

Upon reviewing this brief the Election Board embraced the three charges presented at the hearing, that the accused violated Article IV, Section 1 of the Election Code three times, once by not getting permission before posting, the second for not posting in an authorized area, and the third by taping a large flyer on the pillars of Alkek Library.

The central issue of confusion relating to the Election Board’s Orders is a result of Mr. DeSalvo’s accidental mischaracterization of the violation as vandalism. Mr. DeSalvo provided clarification via the briefing and testimony to the Election Board.

The Election Board Order issued on March 26, 2014 made no mention of Mr. DeSalvo’s usage of vandalism in his report form and the Election Board strictly decided on the issues presented during the hearing including the Code of Conduct violation. The Election Board found the accused guilty of that violation and granted Mr. DeSalvo’s request to upgrade the level of violation to a Class given the accused violation of the Code of Conduct.

ELECTION BOARD AUTHORITY

I have provided the Supreme Court with all relevant evidence, testimony, and case documents referenced in the appeal before the court.

Therefore, we will focus on the Election Boards authority to reclassify offenses upon request and demonstrate where the Election Board is granted the authority to issue sanctions based on violations of University policy, including the Code of Conduct.

The Election Code, Article II, Section 2 provides the Election Board broad powers whenever situations arise that are not embraced by the text of the document. In addition, the Memorandum of Understanding outlines that the Election Board has authority over:

Violations of the Student Code of Conduct, in this case, directly related to a candidate for office. It is through this power that the Commission was able to enforce the Student Code of Conduct on the accused. The Commission exercised its rights under the Memorandum of Understanding and Article II, Section 2 of the Election Code.

The Election Code grants the Commission other broad powers in reference to its ability to discipline candidates who violate the Election Code, found under Article II, Section 2:

“The Election Board shall have the power to enforce any and all provisions in this document by any disciplinary action it deems appropriate and reasonable”

These provisions provides a framework which allows the Election Board to deal with disciplinary issues and grant sanctions outside the scope of the Election Code.

The Election Board was presented with a request; elevate the sanction beyond that of the established guidelines because of its potentially more egregious nature. Executing the power it has to make decisions whenever a situation is not embraced by the Election Code, the Commission granted the request.

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The Commission then exercised its right under Article II, Section 2 to elevate what may have normally been a class C offense to a Class A offense, having found that the accused had violated section 2.02(Q) of the Student Code of Conduct, an offense which would be cause for impeachment by any sitting officer of the Associated Student Government.

Through this framework I have demonstrated a procedural system which allows the Election Board to take the course of action it chose to pursue.

CONCLUSION

It is important that the court understand that the Election Board did not find Mr. Willms had committed vandalism. The Election Board used the powers it has per the Election Code, Constitution and Memorandum of Understanding to apply a sanction for violating the Student Code of Conduct section 2.02(Q) for defacing, damaging or misusing University property. We encourage the court to reinstate the Commission’s order within 24 hours, as the elections will conclude on April 3, 2014.

Attachments:

Violation Reporting form
Election Board Hearing Notice
Brief for DeSalvo v. Willms from DeSalvo to Election Board Photographic documentation of defacement and misuse Election Board Order

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