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APPEAL OF TRIAL COURT DECISION

ASSOCIATE CHIEF JUSTICE ANTHONY HOFFMAN delivered this opinion of the court
Following the Appellate Trial Court proceedings, *THE ELECTIONS COMMISSION V. LEVEL UP*, the Supreme Court has authored this opinion.

Following the February 12, 2020 Trial Court case *THE ELECTIONS COMMISSION V. LEVEL UP*, the accused party, “LEVEL UP” submitted a request for appeal to the Chief Justice via email. The February 12th Trial Court hearing was held in regard to allegations that the executive officer ticket “LEVEL UP” violated Section 5-1.3 and Section 5-2.1 2 of the Election Codes in two Instagram posts.

In their request for appeal, authored by Randall Fitzgerald, LEVEL UP’s Presidential candidate, the accused party stated: “While we respect the opinion of our peers who comprise the court, we feel that this assessment of fourteen points is too severe for the alleged violation in question.” The party’s request for appeal was subsequently accepted by the Chief Justice on the grounds that the penalty potentially outweighed the violation. Subsequently, a Supreme Court Appellate trial was scheduled for February 17, 2020 at 10:00PM. The Supreme Court trial was chaired by Chief Justice McGrath.

Due to the ever evolving nature of social media campaigning, the Court offers two definitions for the purpose of the opinion. These definitions offer an important distinction between two forms of Instagram reposting. Reposts of Instagram stories created by non-campaign members on campaign affiliated accounts shall be referred to by the Court as “second-

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degree reposts” (henceforth referred to as SDRs). A repost of approved material, even with additional text, shall be referred to as a “first-degree repost” (henceforth referred to as FDRs)

In accordance with the party’s plea during Trial Court proceedings, LEVEL UP plead *LIABLE* to the charges. During oral arguments, accused party member LEVEL UP Presidential candidate Randall Fitzgerald argued that the penalty of fourteen (14) points did not hold with precedence set by *ELECTIONS COMMISSION V. ALL IN*, in which a violation on twenty seven (27) counts of the same codes (Elections Code Sections 5-1.3 and 5-2.1 2) was penalized fifteen (15) points. As the charges against LEVEL UP were only on two counts, the accused party argued the penalty should be proportional to fifteen (15) points for twenty seven (27) counts. As the recommended penalty for a single violation of EC Sections 5-1.3 or 5-2.1 2 is a penalty of 30 points, the court disagrees with LEVEL UP’s original line of reasoning. Thus, the oral arguments of the accused party failed to meet the standards of Supreme Court appeals.

Despite this, during witness testimony provided by Elections Commissioner Natalie Aguilar, the commissioner stated that the penalty should be less severe as the reposted material was previously directly approved by the Elections Commission. Furthermore, per testimony by Elections Commissioner McKinley Dyer, had the reposted material not contained any addition, there would have been no violation of Section 5-1.3 or 5-2.1, clause 2. Commissioner Aguilar also mentioned that the hashtag ‘#LEVELUP’ had been previously approved by the Elections Commission in the form of an Instagram caption, making the posts FDRs. Therefore, the Court views the violation in *ELECTIONS COMMISSION V. LEVEL UP* to be far less severe than the

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precedent that was set in the February 12 Trial Court case, *ELECTIONS COMMISSION V. ALL IN*.

In precedent set by the aforementioned case, the reposts by both personal and campaign Instagram accounts @allin_miami and ALL IN's presidential candidate, @abigailadeleke, were of Instagram story posts by individuals not directly affiliated with the ALL IN campaign. The posts in this case are classified by the Court as SDRs. The twenty seven posts in question during this case were created by non-campaign members had not been approved as graphic campaign material. Thus, the reposting by @allin_miami and @abigailadeleke of these new graphics constitutes graphic campaign material which had not been approved by the Elections Commission, a clear violation of Election Code 5-1.3. Contrary to precedent, in the case of *ELECTIONS COMMISSION V. LEVEL UP*, the reposts by the Instagram account @randyfitz were of a previously approved graphic posted to @levelupum, with an additional "#LEVELUP" added by account @randyfitz. Adding the additional #LEVELUP created a new, unapproved post which, when posted to the campaign members account (@randyfitz) violated Section 5-1.3 of the Elections Codes. The Court classifies these posts as FDRs. However, this repost is much different than the reposts in *ELECTIONS COMMISSION V. ALL IN*. Those SDRs were not reposts of approved material, which would not constitute a violation, but were reposts of new posts (the additional comments created new posts).

An important distinction is that a FDR is not by definition a violation of Section 5-1.3. In her testimony, Elections Commissioner McKinley Dyer stated that a repost of approved material without additional text is not a violation. However, a FDR with an addition, be it a sticker, text,

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hashtag, or any other or future possible addition, constitutes a new post, which, if not approved by the Elections Commission, would be a violation of EC Section 5-1.3. However, a SDR will always constitute a violation if the first-degree repost is from a non-campaign member, as the EC can not approve their posting or reposting (unless, of course, the SDR is approved by the Elections Commission).

Due to the differing degree of reposts, the Court does not see it fit to recognize the precedence set in *ELECTIONS COMMISSION V. ALL IN* in the case of *ELECTIONS COMMISSION V. LEVEL UP*. Therefore, the Supreme Court holds that the penalty in *ELECTIONS COMMISSION V. LEVEL UP* should be less severe than the lower Trial Court assessed. The Court decided, by a vote of 2-1 in favor, on 5 points as the violation was only of a small degree.

HELD: The Appellate Court has assessed 5 points from the “LEVEL UP” campaign. The “LEVEL UP” campaign now has 15 points remaining.