

IN THE SUPREME COURT            )  
   )  
 Action No. 08 SSC 003            )  
   )  
 Ashley Klein                            )  
 PLAINTIFF                                )  
   )  
 versus                                    ) [COMPLAINT]  
   )  
 Ryan Morgan (BOE Chairperson)    )  
 DEFENDANT                                )

I.        Jurisdiction

The plaintiff argues that the Supreme Court has jurisdiction over this matter. According to Title III Section 401(a) of the *Student Constitution of the University of North Carolina at Chapel Hill* (hereafter "*The Code*"), the Supreme Court...

...shall have legal power, as to both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority[,] of actions of the executive branch, legislative branch, elections board or other organizations and committees organized under the authority of this Code of Permanent Laws. This jurisdiction is extended to questions of law arising under this Constitution, the laws enacted under its authority and the governing documents of the other organizations and committees recognized under its authority. These organizations include but are not limited to the Residence Hall Association, Graduate and Professional Student Federation, Carolina Athletic Association and other organizations receiving funds from the Student Congress

In this complaint, the plaintiff asks the Supreme Court to evaluate the validity of *Punitive Decision 08-BE-011* issued by the Board of Elections on October 8<sup>th</sup> 2008, which pledges to “fine Ms. Klein’s campaign \$40.00 should she become a certified candidate.” As we present the grounds for our relief, you will notice that we also ask the Supreme Court to evaluate the validity of what have been titled *Administrative Decision 08-BE-001* and *Administrative Decision 08-BE-010*. All three of these documents have been made available on the Board of Elections’ website.

As these three documents constitute “actions of...[the] elections board,” the plaintiff asserts that the Supreme Court does have jurisdiction over this matter.

II.       Standing

According to Title III, Sect 409(A) of *The Code*, standing to bring a complaint to the Student Supreme Court extends to any plaintiff claiming to have his or her “powers, rights, privileges, benefits or immunities adversely affected, restricted, impaired or diminished.”

In this case, the plaintiff asserts that Ms. Klein’s “rights, privileges, benefits” under Title III, Sect 402(B)[1a], would be “restricted, impaired, or diminished” by *Punitive Decision 08-BE-011*. According to Title VI, Article IV, Sect 402(B)[1a] a candidate for Student Body president is afforded \$400.00 as “the maximum [amount] that may be spent by the candidates, their campaign workers or other people on behalf of the candidates.” *PD 08-BE-011* would diminish Ms. Klein’s campaign finances by “\$40.00 should she become a certified candidate” (08-BE-011, Sect 4).

Furthermore, according to Section 409(A) of *The Code*, “the plaintiff must be a student directly and adversely affected by a regulation, ruling, or determination of the Elections Board.” According to the *PD 08-BE-011*, “the [campaign] activities are in violation of Section 402(A)[1]” (08-BE-011, Sect 3). As a result of the alleged violation, “the Board of Elections has decided by a 4-0 vote to fine Ms. Klein’s campaign \$40.00 should she become a certified candidate,” indicating that Ms. Klein was in fact “directly and adversely affected by a regulation, ruling, or determination of the Elections Board.”

Therefore, the plaintiff asserts that Ms. Klein has standing under the Student Code to bring action against the Board of Elections.

### III. Necessary Defendants

Title III, Section 510(B)[3] of the Student Code mandates that for suits based on election action, the Election Board Chairperson shall be a formal party defendant in every action. This clause provides the justification for the inclusion of the Board of Elections as a necessary defendant, because this appeal suit is based on election action.

### IV. Relief

Issued by the Board of Elections on October 8<sup>th</sup> 2008, *Punitive Decision 08-BE-011* pledges to “fine Ms. Klein’s campaign \$40.00 should she become a certified candidate.” *PD 08-BE-011* states:

On August 27, 2008 the Daily Tar Heel reported an interest meeting held at the Campus Y by the potential candidate Ashley Klein. In addition, Ms. Klein gave an interview to the Daily Tar Heel published in the same article.

During a meeting between Ms. Klein and BOE Chairman Ryan Morgan, Klein admitted to holding an interest meeting and giving an interview to the Daily Tar Heel.

*PD 08-BE-011* claims that the activities described above “activities are in violation of Section 402(A)[1]” of the Student Code.

The plaintiff interprets the activities that the Board of Elections allegedly finds in violation with the Student Code to be:

1. Hosting a meeting of members of Ms. Klein’s campaign staff in the Campus Y Faculty Lounge on August 27<sup>th</sup>, 2008.
2. Answering questions posed by Kevin Kiley of the *Daily Tar Heel* concerning the legality of the meetings of members of Ms. Klein’s campaign staff.

The plaintiff admits that Ms. Klein completed these two activities. Below, the plaintiff will assert that both of these actions are permissible under Section 402(A) of the Student Code. The plaintiff will also argue that what have been called *Administrative Decision[s] 08-BE-001* and *08-BE-010* ought to be disregarded in determining the legality of Ms. Klein’s actions as *AD 08-BE-001* and *08-BE-010* constitute illegal acts of the Board of Elections.

To address the first issue, the plaintiff follows the *Advisory Opinion* published on October 7<sup>th</sup>, 2008 by the Solicitor General, Mr. Kris Gould. Mr. Gould writes,

Title VI, Section 402.A(1) of the Student Code prohibits public campaigning and publicly seeking to further the interest of a campaign prior to the compulsory candidates meeting and prior to a candidate’s submission of a written declaration of candidacy to the Board of Elections.

Title VI, Section 402.A(2) of the Student Code provides an exception to that clause, permitting candidates, at any time, to orally declare their candidacy and orally provide contact information “at public forums for those who may wish to join their campaign.” Thus, if candidates limit their public comments to a declaration of candidacy and provision of contact information, then public interest meetings for campaigns may be held at any point prior to an election. As these statements can be made at public forums, the Student Code does not provide a basis for prohibiting candidates from holding such interest meetings in campus buildings.

The plaintiff agrees with Mr. Gould and asserts that this argument is sufficient to clear Ms. Klein from a violation of Title VI, Section 402(A)[1]. Yet in case any doubts remain, the plaintiff argues further that Ms. Klein’s campaign staff meeting was not a “public” event. Title VI, Section 102(N) states,

Private shall be defined as that which is not in the general view, not widely known, and not facilitated by University or government resources. Public shall be defined as that which is not private. For the purposes of

this Act all University forums or forums sponsored by University organizations shall be considered public.

Ms. Klein's campaign staff meeting was not "in the general view" and not "widely known" as the event was held inside closed doors and because she invited attendees on a one-to-one basis. Furthermore, the campaign staff meeting was not "facilitated by University or government resources." In a recent policy announcement sent October 16<sup>th</sup>, 2008 (titled, "FORMAL NOTICE: University Resources Cannot Be Used To Support Political Campaign Activities"), Chancellor Holden Thorp defined "university resources" to the campus community. He writes,

With Election Day approaching, this is a reminder that students, faculty and staff may not use University resources - e-mail accounts, computers, vehicles, equipment, supplies, funds, postage, photocopying, faxes, and the like - for political campaign activities.

Clearly in this policy announcement, Chancellor Thorp was referring to *national* political campaign activities. Nonetheless, he defined "university resources" exclusive of the Campus Y Faculty Lounge and other university buildings. The Court should accept Chancellor Thorp's interpretation of "The Code" in defining "university resources" to be exclusive of university buildings for the purposes of student meetings.

For this reason, and for Mr. Gould's argument, it does not make sense that Ms. Klein's campaign staff meeting, held behind closed doors, in the Campus Y is a violation of Title VI, Section 402(A).

To address the second activity, the plaintiff refers the court directly to the (sole) quotation in question. Ashley Klein's quote, published in the *Daily Tar Heel*, on August 27, 2008, read as follows:

Candidates in the past have shown that we can have large meetings like this if we've contacted campaign workers on a one-to-one basis. (Ashley Klein, August 27, 2008)

According to Title VI, Article IV, Sect 402(A)[1] "No candidate, nor any campaign worker, shall publicly campaign for said candidate, nor publicly seek to further the interests of said candidacy prior to one's candidacy being certified by the Board of Elections." The BOE found Ms. Klein "in violation of Section 402(A)[1]" and thus issued a fine of \$40.00 (08-BE-011, Sect 3).

The plaintiff argues that while answering questions with Kevin Kiley of the *Daily Tar Heel*, Ms. Klein was exercising her right provided in Title VI, Article IV, Sect 402 (A)[2] to "at any time orally declare candidacy for a given office in a public setting and [to] orally provide contact information at public forums for those who may wish to join their campaign."

The plaintiff asserts that Ms. Klein was commenting on the legality of current campaign staff meeting to Kevin Kiley, not “publicly campaign[ing]” nor “publicly seek[ing] to further the interests of said candidacy.” Ms. Klein was not attempting to solicit votes from Kevin Kiley or DTH readers; instead she was offering her opinions on the manner in which she was attempting to keep her campaign within regulations of the student code and the precedent of candidates in previous years.

Furthermore, the plaintiff also argues that Ms. Klein’s attempts to rescind her quotes from the *Daily Tar Heel* indicate her lack of malice in answering Kevin Kiley’s questions. According to The Code, while discussing the actions necessary of a candidate should their campaign team unknowingly violate election laws, weight is given to those candidates who attempt to “nullify or correct the act that is causing the violation” (Title VI, Article IV, Sect 402(D)). The plaintiff maintains that Ms. Klein’s actions were not intentionally in violation of The Code and her subsequent actions indicate her desire to “have a clean fight” (BOE Memorandum to all candidates, “Clean Fight”).

The plaintiff contends that Ms. Klein’s statement to the DTH was not an attempt to violate elections laws, instead it consisted of her beliefs about how to avoid breaking such laws. If Ms. Klein had wanted to “further the interests of said candidacy,” the plaintiff argues that she would have made statements that would have “furthered” her campaign. The article contained no information about Ms. Klein’s campaign platform or her plans for the upcoming election.

Finally the plaintiff disputes the legality of the Administrative Decisions put forth by the BOE on October 5, 2008 in the Administrative Decision 08-BE-10. According to Title VI, Article I, Sect 102 (C), an Administrative Decision is defined as “a decision made by the Chair of the Board of Elections or the Board of Elections pertaining to these election laws.”

In his Advisory Opinion, Solicitor General Kris Gould writes that “the Board of Elections cannot make election law as that power is held by Student Congress alone. The Board of Elections can only, as noted by Title VI, Section 302.A of the Student Code, make recommendations for legislation to Student Congress” (Advisory Opinion, Sect 4). The plaintiff asserts that the Administrative Decision passed on October 5, 2008 is outside the jurisdiction of the BOE. According to Title I, Article I, Sect 4 (M) of The Code, “Congress shall have the power to...establish laws governing election.” The function of Administrative Decisions is to “to explain how the Board of Elections interprets provisions of the Student Code” (Advisory Opinion, Sect 4).

When reading the Administrative Decision published by the BOE on October 5, 2008 the plaintiff maintains that the BOE is overstepping its jurisdictional bounds by redefining the practice of “orally declare[ing] candidacy” and other relevant campaign terms throughout Section 3. Although the plaintiff agrees that it is the role of the BOE to interpret Title VI, it is not up to the BOE to rewrite election laws; that power is vested in Student Congress alone. Originally, Title VI Sect 402 (A) read as follows:

Candidates and their campaign workers may at any time orally declare candidacy for a given office in a public setting and may orally provide contact information at public forums for those who may wish to join their campaign.

This could be interpreted to mean that anyone who had the intention to run could announce such at any time (and in any public location) to allow those who are interested in joining a campaign the opportunity to do such. Originally Title VI, Sect 402 did not prohibit the sharing of platform ideas so long as this was done outside the public view. The new “amendment” reads as follows:

**Section 3(A)** Oral declaration of candidacy for an office shall consist of no more than specifying one’s desire to run a particular office, soliciting, without elaborating on any details whatsoever, campaign workers, and orally conveying contact information. (AD, 08-BE-10)

The Administrative Decision now limits candidates to only being able to announce their name and office and to solicit campaign workers by giving out their contact information.

The plaintiff argues that the clarifications listed above are within the scope of the BOE’s jurisdiction. Yet, the prohibition “without elaborating on any details whatsoever” is outside the bounds of the BOE. In specifying that candidates must “solicit campaign workers” yet prohibiting the “elaboration of details” the BOE has effectively altered The Code and the way candidates must follow it. Now candidates cannot discuss any details of their platform when trying to convince fellow students to join their team.

Furthermore, the Administrative Decision **Section 3(B)** also redefines the meaning of “campaigning” in accordance with **Section 3(A)**. Campaigning is now defined as “**(B)** any candidacy/campaign-related activity other than those described in **(A)**” (AD, 08-BE-10). If the court accepts the fact that part **(A)** is unconstitutional, part **(B)** must also be found outside the authority of the BOE.

In part **(C)** of the Administrative Decision, the BOE redefines the concept of “private” in direct violation of The Code. The Code defines the word private in Title VI, Sect 102(N):

Private shall be defined as that which is not in the general view, not widely known, and not facilitated by University or government resources.  
Public shall be defined as that which is not private.

In **Section 3(C)** the BOE redefines private to mean:

Any gathering, at any time, for any purpose, encompassing any activities, that takes place either in student’s dormitory room or on private property.

This alteration to the code changes private from “widely know” to mean a specific location on campus. The original code does not speak to locations on campus, nor does it

prohibit meetings that are not in dormitories or on private property. Once again, the plaintiff notes the BOE's ability to interpret The Code, but finds the above changes to be outside the jurisdiction of the BOE.

The same could be said for **Section 3(D)** of the Administrative Decision, which changes the definition of public, as written in the code as "Public shall be defined as that which is not private." **Section 3(D)** redefines the definition of public to mean as "(B), which takes place outside of the student's residence and on UNC property or directly visible from UNC property."

Finally, the Administrative Decision goes one step further and assigns deadlines for when these new definitions come into effect. The Administrative Decision reads that "(A) and (C) may occur at any time. Potential candidates are hereby expressly forbidden from engaging in (B) and (D) earlier than 28 days prior to a Regular Election or 21 days prior to a Special Election." The plaintiff contends that the ability to change election law and/or "expressly [forbid]" candidates from engaging in activities that are not written within the organically code is unconstitutional and directly coincides with Congress's expressed power to "establish laws governing election."

## V. Demand for Judgment

The plaintiff respectfully asks that The Court reverse the Board of Election's *Punitive Decision 08-BE-011* and order that the Board of Elections issues a public retraction of its statement that Ms. Klein committed a violation. If The Court finds both of Ms. Klein's actions to have been legal, the Plaintiff asks that Ms. Klein's campaign not be fined \$40.00 at the time she attains her official status of candidacy. If The Court finds only one of Ms. Klein's actions to be legal and the other illegal, the plaintiff requests that she be fined not \$40.00 but instead \$20.00.

Additionally, the plaintiff requests that The Court recognize the danger of giving a small group the power to edit and amend the law. As the plaintiff noted above, the Board of Elections is charged by the Student Code only with the administration of the law. It is up to the elected members of Student Congress to amend the law. The plaintiff requests that the court strike down what have been titled *Administrative Decision 08-BE-001* and *Administrative Decision 08-BE-010* as invalid acts of the Board of Elections. The plaintiff asks that The Court issue a statement to the effect that the Board of Elections not commit further modifications of existing election law that up until this point has only been crafted by the democratically elected members of Student Congress.

Filed this the day of October, 22 , at 9:00 a.m.

Signed:

Ashley Klein