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### III. Facts of controversy

Mr. Ian Lee currently serves as Student Body Secretary and is concurrently campaigning to become Student Body President. The Secretary is charged with providing updated, publication-quality versions of the Student Code every month as per Title IV Section 107(F) to the Congress so that the Congress can make the Code public information as per Title II Section 236.

On October 26<sup>th</sup>, 2010, the Student Congress approved heavy revisions of Title VI. Until her February 8<sup>th</sup>, 2011 resignation, Ms. Deanna Santoro presided as Speaker of Student Congress. After Ms. Santoro's Congress passed the Code, it became the responsibility of Mr. Lee to publish the Code. Mr. Lee once published an electronic version of the Code whose files were corrupted. Mr. Lee was informed of the problem upon receipt of the Code, but he did not produce an accessible Code until January 27<sup>th</sup>, 2011 – three months after the Title VI revisions passed and well after campus electioneering began.

In December 2010, Mr. Rick Ingram filed a complaint against Mr. Lee alleging that Mr. Lee had been illegally campaigning in his capacity as Student Body Secretary. The Board of Elections, hereafter known as the BOE, issued Administrative Decision 10-BE-07 on December 13<sup>th</sup>, 2010, which ruled that Student Government officials listed in Title VI Section 408(A)(1) “shall not use their [sic] position as a Student Government official to further or promote their campaign for any office, or the campaign of another.” The BOE reached this conclusion by ruling that Title VI Section 408(A)(3) clarified Section 408(A)(1). The ruling was not initially public record as required by Title VI Section 307(A), and Ms. Santoro only learned of the decision on January 23<sup>rd</sup>, 2011. 10-BE-07 did not appear online or in the Student Government suite, as required by Title VI Section 306(B), until a significant time after it was decided. The Plaintiff visited her office the Student Government Suite daily and the BOE never posted the Section 408 ruling on the bulletin, as Title VI Section 306(B) requires. The failure of the BOE to post the ruling on this case left the Plaintiff unaware of the ruling until after elections had commenced.

Immediately upon learning about the ruling, Ms. Santoro contacted Mr. Andrew Phillips, who is serving as the BOE Chairperson for 2010-2011. Feeling that it was unconstitutional in light of Title VI Section 408(A)(1) for the Speaker to issue a formal complaint about the application of 10-BE-07 to Mr. Lee's campaign, Ms. Santoro did not issue a formal complaint. Ms. Santoro expressed concern that 10-BE-07 did not rule on or cite Title VI Section 310(A). Mr. Phillips promised to investigate the matter with the BOE. From January 23<sup>rd</sup> to February 4<sup>th</sup>, Ms. Santoro attempted to contact Mr. Phillips asking for his determination but received no response.

Meanwhile, Ms. Santoro was confused. In her role as Speaker, she was obligated to

“ensure that all duties of the Congress and its officers are properly executed.” Title II Section 122(J). She required clarification of Title VI Section 408(A) as it applied to Committee Chairs of Congress running for re-election. Moreover, as Congress had confirmed Mr. Phillips to his post, it was her duty under the Student Code to ensure that he execute his duties faithfully. In the interim of her interactions with Mr. Phillips, Ms. Santoro sent the Ethics chair of Student Congress an email on February 1<sup>st</sup> asking for a list of Congress officers and their participation in elections in light of Section 408(A).

On February 4<sup>th</sup>, Ms. Santoro emailed Mr. Phillips expressing frustration over his actions and again asking for a ruling on Title VI Section 310(A). After calling him with no success on February 4<sup>th</sup> and 6<sup>th</sup>, Ms. Santoro received a phone call from Mr. Phillips on the evening of February 6<sup>th</sup>. Mr. Phillips stated that he had decided not to address her complaint on Title VI Section 310(A) because of his earlier ruling on Title VI Section 408(A). He also stated that since Section 310(A) was only mentioned once in the Code, it had no authority over 408(A). Ms. Santoro then asked Mr. Phillips to consider her February 4<sup>th</sup> email an official complaint. Mr. Phillips consented and told Ms. Santoro that the BOE would address the issue in its next meeting.

On Monday, February 7<sup>th</sup>, the eve of the elections, the BOE convened in full, but it failed to take action on Ms. Santoro’s complaint. Ms. Santoro met Mr. Phillips before the meeting, and he acknowledged that “we will leave it to the Supreme Court to decide,” indicating that he had no intention of addressing Ms. Santoro’s complaint with the BOE. Ms. Santoro’s last resort, therefore, was complaint to this Court, and in order to avoid possible conflicts of interest under a now-vague Title VI Section 408(A), she resigned as Speaker of Student Congress on the morning of Tuesday, February 8<sup>th</sup>, 2011, to file suit. She remains a representative of the 4<sup>th</sup> District of Congress.

#### **IV. Questions of Law**

- i. Does Ms. Santoro have standing to sue the BOE under Title III Sections 408 and 409, and has she exceeded the statute of limitations?*
- ii. Did the BOE err in its interpretation of Title VI Section 408(A), and does this Section supersede Title VI Section 310(A)?*

#### **V. Arguments**

- i. Standing to Sue and Statute of Limitations*

The Defendant has made a motion to dismiss Action No. SSC 03 on the grounds that Plaintiff does not have standing to sue and that she has exceeded the time limits allowed by the statute of limitations. In fact, Plaintiff does have standing

under Title III Sections 408 and 409, and she is filing suit within the statute of limitations. Under Section 409, specifically:

- 1) In her role as Speaker of Student Congress, Plaintiff was unsure of how to enforce Title VI Section 408(A) within the body.
- 2) After reporting concerns about 10-BE-07 and filing an official election complaint, the BOE refused to address Plaintiff's concerns. In order to seek relief from this Court and fulfill her Code-mandated duties, she had to resign her post Speaker.
- 3) As Plaintiff is a fee-paying student, she is a constituent of the Student Body President. All students are directly and adversely affected by the election of the illegitimate candidate.

And with regard to Section 408:

- 1) This is not a complaint against a campaign but rather against an "executive decision." 10-BE-07 is "executive in nature" and had repercussions beyond the sphere of elections, namely in the legislative branch.

Where Section 409 is concerned, Plaintiff was "directly and adversely affected" by 10-BE-07, a decision of the BOE. The Speaker's duty to see that external appointees faithfully execute the Student Code extends beyond "personal or moral duty" as the Defense alleges. 10 SSC 003-10. As detailed below, Plaintiff, in her former role as Speaker of Student Congress, was obligated to "ensure that all duties of the Congress and its officers are properly executed." Title II Section 122(J). As several officers were running for re-election, Plaintiff required clarification about Title VI Section 408(A)'s application to Committee Chairs. Although Title VI Section 310(A) does not mention the legislative branch, it supports a wholly different interpretation of 408(A) than 10-BE-07 provided. Plaintiff sought clarification from the BOE, but to no avail. The refusal to respond to Plaintiff "directly and adversely" impaired her ability to enforce the Code.

Title VII explains the manner in which Congress approves the Student Body President's appointees, among whom is the BOE Chairperson. Subject to the approval of Congress, the BOE "shall be responsible for maintaining the duties of said position and overseeing the Elections Board as outlined in Title I and Title VI of The Code." Title VII Section 308. Additionally, "It shall be the duty of the appointer to ensure the appointee is aware of his or her potential responsibilities as enumerated in Title VIII<sup>1</sup>." Title VII Section 105(A). Plaintiff, who introduced Mr. Phillips' resolution for appointment under her name, endeavored to make Defendant aware of his responsibility to execute Title VI Section 310(A), but Defendant ignored her requests. Because Plaintiff could not speak publicly against a campaign as per Title VI Section 408(A), Defendant's actions *directly* required her

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<sup>1</sup> Should read Title VII; there is no Title VIII.

resignation as Speaker to take appropriate action, and she was adversely affected by having to shorten her term as Speaker.

Even if Plaintiff did not have standing to sue in her role as Speaker (which we believe that she does), as a full-time student she is still a member of the Student Body President's constituency and is thus affected by his or her election. If a candidate runs illegally for office and wins or topples a legal candidate, every member of the student body is "directly and adversely" harmed by the outcome. The election of an illegitimate candidate, moreover, is a blow to the legitimacy of Student Government.

Where Title III Section 408 is concerned, Plaintiff has standing because 10-BE-07 had effects beyond the context of elections; namely, it affected the everyday business of Congress.

Congress originally implemented Title VI Section 408(A) in order to prevent conflicts of interest that may inadvertently affect the outcome of elections. One instance came to light in this election. Per Title II Section 236, all laws and regulations passed by Congress must be public record, and the Student Body Secretary prepares the Code for publication pursuant to Title IV Section 107(F). Mr. Lee, who is required by Title IV Section 107(F)(2) to produce an electronic version of the Code monthly, did not make the updated Code available to Congress until well into election season. This may have presented a conflict of interest; he had access to election laws that his fellow candidates did not, and they were bound by its content. One is left to speculate why Mr. Lee did not avail the revised Title VI to Congress for three months, but it is reasonable to assume that his campaign for Student Body President in some way interfered with its preparation. Because 10-BE-07 authorized him to run while serving as Secretary, and because the Code requires Congress to make its laws public record (via the Secretary), the BOE's ruling directly and adversely affected Plaintiff by barring the fulfillment of this duty to make the Code public.

Plaintiff has not overstepped the statute of limitations. Plaintiff made multiple requests of the BOE Chairperson over nearly two weeks to examine the applicability of Title VI Section 310 to Title VI Section 408 and 10-BE-07. On the night of February 6<sup>th</sup>, Defendant accepted Plaintiff's February 4<sup>th</sup> email as an official complaint and agreed to address it at the next meeting of the BOE. When the BOE convened the very next evening on the eve of the election, Defendant did not take the promised measure and even encouraged Plaintiff to seek relief from this Court. Plaintiff argues that his failure to act in the agreed-upon timeline constituted an official action, and thus she filed suit within the statute of limitations.

Title VI Section 306(B) requires that the BOE "maintain accessible materials

regarding all provisions of elections...on the Student Government Office Bulletins.” The Plaintiff visited her office the Student Government Suite daily and the BOE never posted the Section 408 ruling on the bulletin as Title VI Section 306(B) requires. The Code also requires “an appointee [to] arrange to have a copy of agendas, minutes, written reports and other materials submitted to or generated by the committee to the appointer on a routine basis.” Title VII Section 104(B). The failure of the BOE to post the ruling on this case left the Plaintiff unaware of the ruling until after elections had commenced. Upon learning of the ruling, she immediately contacted the BOE regarding her concern about their ruling on Section 408(A), its relation to Section 310 and her request for the BOE to make a ruling on Section 310.

It should be noted that in *Holgate v. Gillooly*,<sup>2</sup> despite uncertainty about the Defendant’s grounds to sue, the Court allowed the case to proceed upon the merits of the issues at contest.

*ii. Interpretation of Title VI Sections 408(A) and 310(A)*

The Defendant’s Amended Motion to Dismiss, 10 SSC 003-10, reasons that Plaintiff does not have standing under Title III Section 408 because Section 409 *restricts* the grounds of Section 408. This very same reasoning tool applied to 10-BE-07 handily defeats the logic of the Administrative Decision at issue.

Title III Section 408(A)(3) allows *all* Student Government officials to participate in student body elections or endorse candidates on the condition that it be “made clear that the official is speaking only on behalf of themselves and not for Student Government.” Read alone, Section 408(A)(3) totally invalidates Section 408(A)(1). One would be hard-pressed to see any purpose in Section 408(A)(1) as 10-BE-07 construes it: the Secretary [a named subject of Section 408(A)(1)] must take care “when participating in student body elections,” which he “shall not” do. The BOE’s flaw in reasoning is abundantly clear.

It therefore becomes apparent that Congress meant to restrict the meaning of Section 408(A)(3) using Section 408(A)(1). The legislation takes great care to distinguish Student Government “officers” in Section 408(A)(1) from Student Government “officials” in Section 408(A)(3). All members of the Student Government are as “officials” of the organization, but not all are “officers.” It is a narrower class. Indeed, the existence of Section 310(A)(5), which calls for the BOE to initiate automatic disqualification hearings against members of the Executive and Judicial branches who do not resign their posts, supports Plaintiff’s interpretation of Section 408(A)(1). If members of the Executive branch officers are not excluded from running for election, to whom could Section 310(A)(5) possibly refer?

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<sup>2</sup> 09 SSC 008

As aforementioned, Congress implemented Section 408(A) to prevent possible conflicts of interest between Student Government officers who may be able to influence the outcomes of their own elections. Indeed, Plaintiff's responsibility to make public the laws of Congress as per Title II Section 236 is intertwined with the Secretary's responsibility to publish the Code. Mr. Lee's tardy publishing of the Code and the suspicions it would reasonably arouse represents exactly the situation Congress endeavored to prevent with the implementation of Title VI Section 408(A)(1).

Plaintiff originally approached Defendant with concerns about 10-BE-07 because it obfuscated her responsibilities. As Speaker, the Code mandated that she "ensure that all duties of the Congress and its officers are properly executed." Title II Section 122(J). Plaintiff needed to know whether 10-BE-07 and Title VI Section 408(A) required Committee Chairs of Congress to resign their posts during election season. Section 310(A)(5) does not refer to the Legislative branch, but only to Executive and Judicial branches. Thus, the Plaintiff needed a ruling on Section 310(A)(5) in relation to the previous ruling on Section 408(A) so that she could enforce the provisions of these sections within Congress. She therefore brought her concerns to Defendant.

Title VI Section 301 establishes that "the purpose of the Board of Elections is to conduct fair and impartial student elections in accordance to the Student Government Election Laws." Additionally, Title VI Section 314 "*shall*<sup>3</sup> hold meetings to hear complaints concerning campaigns or the enforcement of elections laws" # and "use its powers specified in Title VI Section 306.A of Title VI to administer all laws pertaining to student elections." Defendant agreed to consider Plaintiff's complaint multiple times but never gave it due process. Specifically, he received an official complaint from her on February 4<sup>th</sup> but failed to address it in the BOE's next meeting. In refusing to hear Plaintiff's complaint, Defendant rejected his responsibility under Section 314.

Title VI Section 306(A) holds that "the Board shall not construe said power [of Title VI interpretation] as the ability to complement the law, including the establishment of any standard which lacks explicit basis in election law." In issuing 10-BE-07, the BOE flies in the face of the limitations imposed by Section 306(A).

## **VI. Conclusion with relief**

The Plaintiff respectfully requests that this Court vacate the findings of 10-BE-07 and remand the issue back to the Board of Elections for proceedings consistent with Title VI Sections 310(A) and 408(A).

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<sup>3</sup> Emphasis added

Respectfully submitted,

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PLAINTIFF

Deanna Santoro

Speaker Emeritus, 92<sup>nd</sup> Student Congress

1318 Granville Towers West

deanna.santoro@gmail.com

(803) 553-9202

Erik M. Davies

Counsel for the Plaintiff

303 Smith Level Rd., Apt. C-22

erik.m.davies@gmail.com

(704) 576-9398

Filed this the 12<sup>th</sup> day of February, 2011, at 10:30 a.m.