

IN THE SUPREME COURT)
)
Action No. 09 SSC 007)
)
Taylor Holgate,)
Marc Seelinger)
)
Plaintiffs)
)
versus)
)
Peter Gillooly,)
Chair, Board of Elections)
)
Defendant)

ORDER GRANTING
DEFENDANT'S MOTION
TO DISMISS

I. BACKGROUND

On February 11, 2010, Plaintiffs, Taylor Holgate and Marc Seelinger, separately notified this Court of their intent to bring separate actions against Board of Elections Chair, Peter Gillooly. After providing notice, both Plaintiffs submitted motions requesting that the Defendant be temporarily enjoined from certifying the results of the District 1 and District 5 Student Congress elections¹ and filed complaints. Acting pursuant to III S.G.C. § 302, Senior Associate Justice Oppenheimer granted each Plaintiff's motion for a temporary injunction. Justice Oppenheimer also ordered Defendant to respond to each Plaintiff's complaint no later than 5 pm, Sunday, February 14, 2010. By an order dated February 13, 2010, the Chief Justice combined Plaintiff's individual actions into a single case which was captioned 09 SSC 007.

In their Complaint, Plaintiffs sought to have the Court invalidate the results of the District 1 and District 5 Student Congress elections and order that a new election be held for each district. The plaintiffs argued that the following entitled them to this relief:

- (1) Defendant failed to “administer all laws governing elections” as required by VI S.G.C. § 302(A) and to “monitor[] the online election, verify[] the results, and ensur[e] that the process was not corrupted” as required by VI S.G.C. § 501(A).
- (2) Defendant violated VI S.G.C. § 302(H), which requires Defendant to request “a letter confirming that computer systems [were] acceptably secure” from Information Technology Services (ITS), and
- (3) Defendant violated VI S.G.C. § 403 by failing “to hold a meeting or contact candidates following the revelation of voting issues to determine whether the integrity of the election had been violated.”

¹ Ms. Holgate moved that the Board of Elections be enjoined from certifying the District 5 election. Mr. Seelinger moved that the Board of Elections be enjoined from certifying the District 1 election.

E.g. Complaint of Taylor Holgate ¶¶ 4(b), 4(c), *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010).

To support their legal arguments, the Plaintiff's alleged that

- (1) Students voting in District 1, in Mr. Seelinger's complaint, and in District 5, in Ms. Holgate's complaint, Student Congress elections were unable to vote "during the student body election held on February 9, 2010;"
- (2) Mr. Gillooly failed to request "a letter confirming that computer systems [were] acceptably secure" from Information Technology Services (ITS) as required by VI SGC § 302(H); and

Holgate & Seelinger v. Gillooly, 09 SSC 007 (2010) (order joining 09 SSC 005 and 09 SSC 006). The Plaintiffs further alleged the following:

- A. At about noon of February 9, 2010, students in North Campus and other congressional districts began experiencing difficulties using the online voting system through Student Central.
- B. Students were prohibited from voting in their appropriate districts because they were either misclassified as graduate students or because they were mistakenly listed as living in a different congressional district.
- C. From about noon to 11:30pm (sic), a persistent rain covered the UNC campus.
- D. At about 7pm (sic), the Chairman of the Board of Elections told the *Daily Tar Heel* (sic) that paper ballots would be available at the BOE Office.
- E. These paper ballots did not specify which districts covered which areas of campus, unlike the online ballot.
- F. On February 11, 2010, the Chairman of the BOE stated in an email that he had not yet obtained a letter from ITS verifying the integrity of the computer system for the election.
- G. On February 11, 2010, the *DTH* reported that the computer malfunction prevented "as many as 296 students from successfully casting votes in the election."

Brief of Plaintiffs at 2, *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010).² Plaintiff Holgate also alleged that "students who were supposed to vote in District 6 voted in the District 5 Student

² On February 15, 2010, Plaintiff Seelinger submitted a brief to the Chief Clerk. Defendant consented to the use of the brief for the purpose of raising additional factual allegations.

Congress election.” *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010) (order joining 09 SSC 005 and 09 SSC 006).

On February 14, 2010, Defendant filed an answer and a motion to dismiss 09 SSC 007 with the Court. In his motion to dismiss, Defendant argued that Plaintiffs “fail[ed] to state proper grounds for relief” in their Complaints.³ Motion to Dismiss, *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010). Specifically, the Defendant argued that VI S.G.C. § 403(H) only applies to campaign violations and the Plaintiffs have only alleged technical errors, Honor Code violations, and violations of the Student Code by the Board of Elections. Because the Plaintiffs did not allege any campaign violations, the Defendant reasoned that they failed to sufficiently plead grounds upon which relief can be granted.⁴

In response to the Defendant’s arguments, Plaintiffs cited multiple issues that they believed compromised the integrity of the election. After being asked what they believed the word “violation” in VI S.G.C. § 403(H) meant, Plaintiffs responded that the term meant more than campaign violations and included (1) “technical failures are the violations;” and (2) violations of the Student Code by the Board of Elections. To support the argument that “violation” should be construed broadly, Plaintiff Holgate asserted that she “participated on the Rules and Judiciary Committee on Student Congress and tried to make the laws more clear. The fact is that they are not clear.”

II. ANALYSIS

Here, Plaintiffs rely on VI S.G.C. § 403(H) to argue that the Board of Elections must invalidate the results of the District 1 and District 5 Student Congress elections and call for a re-election. VI S.G.C. § 403(H) states that

³ I did not order the Plaintiffs to submit a new complaint after joinder. Instead, Defendant was instructed to provide a single response to the Plaintiff’s identical arguments and to treat Plaintiff Holgate’s additional claims separately.

⁴ In Paragraph 1 of the motion to dismiss, the Defendant argued that “Plaintiffs’ Complaints fail to cite a clause in the Student Code that would require the Board of Elections to call for a re-election. Title VI, Article IV, Section 403(H), as quoted in the complaints, simply gives the Board of Elections discretion to call for a re-election in the event that a campaign violation would have affected the outcome of the election or compromised the integrity of the election.” Motion to Dismiss, *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010). Though VI S.G.C. § 403 gives Defendant discretion to make a decision about whether or not a re-election is necessary, Plaintiffs might still be able to challenge Defendant’s discretionary decision.

In Paragraph 2 of the motion to dismiss, Defendant further argued, “the Complaints merely cite voter disenfranchisement, and do not provide any specific allegations regarding how voters were disenfranchised. Thus the facts alleged in the complaint are too vague and are insufficient to show that a violation affected the results of the elections or compromised the integrity of the elections.” Motion to Dismiss, *Holgate & Seelinger v. Gillooly*, 09 SSC 007 (2010). Defendant did not present this argument at the pretrial hearing after reading Plaintiffs’ briefs, which did allege specific examples of how students were disenfranchised. Because Defendant appears to have abandoned this argument and because I do not need to decide whether the facts Plaintiffs alleged were “too vague [or] insufficient” to conclude that Plaintiffs failed to state a cause of action upon which I can grant relief, I will not address this issue in this order.

The Board of Elections may call for a re-election if a violation occurred and it could have affected the outcome or compromised the integrity of the election. If the Board of Elections feels that a re-election is necessary, they must allow all affected parties the opportunity to present information concerning the decision to hold a re-election.⁵

I read this section of the Code to permit the Board of Elections to call for a re-election where (1) a campaign violation has occurred and (2) the campaign violation “could have affected the outcome or compromised the integrity of the election.” *See id.* Although I agree with Plaintiffs that the Student Code is ambiguous in many sections, I do not believe that VI S.G.C. § 403(H) is unclear. While the testimony of a legislator that there are generally ambiguities in the Student Code may be evidence of Congressional intent to construe the term “violation” broadly, the Student Code on its face provides a more authoritative guide to Congressional intent in this instance. Specifically, VI S.G.C. § 403(H) is part of Article IV of Title VI, which governs “Campaigning.” Also, Congress has enacted a separate provision of the Student Code to cover technical difficulties, VI S.G.C. § 511. Since Section 403(H) appears in the Article of Title VI dealing with campaign violations and since Congress has provided separate grounds for calling for a re-election when technical difficulties occur, Congress appears to have intended for Section 403(H) to apply only to campaign violations.

Although Plaintiffs have cited many technical issues that could have easily compromised the District 1 and District 5 Student Congress elections, they have not alleged a campaign violation that would have done so. Plaintiffs have failed to allege grounds upon which I can grant relief under VI S.G.C. § 403(H). Accordingly, I am bound to grant the Defendant’s motion to dismiss.

Granting the Defendant’s motion to dismiss may seem harsh in light of the Plaintiffs’ slim margins of loss and the rampant technical problems that may have disenfranchised the Plaintiffs’ supporters as well as other students. My role, however, is to serve as an impartial decision-maker between legal adversaries. If I were to order the Plaintiffs to amend their complaints to allege grounds upon which my court might be able to grant relief, I would cease to be an impartial decision-maker and would become an advocate. Further, ordering the Plaintiffs to amend their complaint to allege grounds upon which relief might be granted could potentially harm my court. Specifically, I fear that future litigants may not adequately study the Student Code if they believe that the Court will guide them to the correct provisions.

Though granting Defendant’s motion to dismiss will cause Plaintiffs’ claims against Defendant to lapse because of the statute of limitations, my order should not be construed to preclude Plaintiffs or any other parties from bringing an action under VI S.G.C. § 511 should Defendant take further action that affects, impairs, or diminishes the Plaintiffs’ rights.

⁵ Emphasis added.

III. ORDER

ACCORDINGLY,

Defendant's motion to dismiss is GRANTED, and

The temporary injunctions issued by Senior Associate Justice Oppenheimer in 09 SSC 005 and 09 SSC 006 are hereby LIFTED.

Done this 17th day of February 2010, at 1:00 a.m.

/s/Emma J. Hodson
Emma J. Hodson, C.J.
for the Court