

IN THE SUPREME COURT

)
)
)

Action No. 08 SSC 004

ORDER GRANTING A TEMPORARY INJUNCTION TO DELAY THE RELEASE OF RESULTS OF THE CHILDCARE SERVICES FEE REFERENDUM

On February 16, 2009 at 11:48 p.m., the petitioner, the Speaker of Student Congress, Tim Nichols, asked this Court to temporarily enjoin the Board of Elections from placing the Childcare Services Fee referendum on the ballot for the February 17 Special Election on the grounds that the Executive Branch of Student Government had violated VI S.G.C. §§ 402(L)(2) and 405 (2008). Because the email was sent approximately seven hours before the polls opened at 7:00 am this morning, there was insufficient time to convene the Court to grant a temporary injunction.

As Chief Justice of the Student Body, I am charged with

issu[ing] temporary injunctions against the Elections Board stopping an election . . . to preserve the status quo until a judicial determination can be reached . . . in extreme circumstances and when necessary . . . [when] there is insufficient time to convene the court in order to issue a temporary injunction.

III S.G.C. § 410 (2008).

Our case law and the Code provide little guidance on the proper procedure for granting a temporary injunction, what “stopping an election” entails, and what are extreme circumstances that warrant stopping an election. Therefore, I must make several preliminary determinations on behalf of the Court about III S.G.C. § 410 (2008) before deciding whether to grant the motion for a temporary injunction.

Procedure for Granting a Temporary Injunction

First, it is unclear whether the Student Code requires a party seeking a temporary injunction to stop an election to file a complaint in addition to making a motion for a temporary injunction. This provision of the Code appears to have been put in place so that the Court can act quickly to preserve an action without waiting for the parties to file pleadings in the matter. Because I believe that the Code gives the Court the authority to grant a temporary injunction when a motion has been filed that alleges extreme circumstances and necessity sufficient to warrant a temporary injunction, the Court will grant a temporary injunction provided the motion on its face alleges “extreme circumstances” and it is necessary for the Court to grant a temporary injunction.

Stopping an Election

Before deciding whether the motion alleges extreme circumstances, I must also decide what stopping an election entails. While the motion for the injunction contemplates that stopping an election entails stopping voting, the Court finds that the phrase “stopping an election” implies

more than merely stopping voting. An election is not a singular event, but a series of actions occurring along a general timetable. Such actions include preparing the ballot, accepting ballots, counting the ballots, and announcing results. Therefore, it appears that the Court may enjoin any of these actions and not just voting.

Extreme Circumstances and Necessity

Turning to the motion, the III S.G.C. § 410 (2008) requires “extreme circumstances” and necessity before this Court may issue an injunction stopping an election. The extreme circumstances contemplated are those relating the underlying harm, not the procedural circumstances. As such, before an election is halted, the balance of harms must be such that more harm occurs from the conduct of the election than from the injunction itself. The clearest case where this would enjoin voting is when the ballot itself contained an error that would lead to permanent harm to a party at interest.

As set forth above, an election is not a singular event, but a series of actions occurring along a general timetable. Depending on the phase the election, the harm from the injunction will vary. Accordingly, less extreme circumstances are regarded to halt an election after ballots have been cast than immediately prior to casting ballots.

Here, the motion alleges that the Executive Branch has engaged in “violations of the rules[, in this case VI S.G.C. § 402(L)(2) and 405 (2008),] which are designed to prevent Student Government from unduly affecting the outcome of any ballot measure.” Though the circumstances alleged are substantial and warrant full legal and factual consideration by the entire Court, the petitioner does not allege the ballot itself is defective, nor does he forecast a permanent injunction against ever presenting the referendum. Therefore, the circumstances raised do not rise to a level that this Court should order that voting be stopped.

Nevertheless, if the election were to proceed to conclusion, and results were provided to the student body, it is possible that students would not think to look for a redone election on the Childcare Services Fee referendum. In the case of a referendum, there can be substantial harm from the completion of an election and release of the results, if those results are later invalidated.

Though I am reluctant to impose the will of five people on a matter that has been placed on today’s ballot by over 3,400 student petition signatures, if the facts alleged in the motion are taken as true, it appears that the Executive Branch of Student Government may have engaged in a serious violation of Title VI that could compromise the integrity of this race. Allowing the results of the election to be released and later invalidating them may result in later problems for the vote on the referendum. On balance, the best way for this Court to preserve the status quo in the election related to this referendum is to grant the request to stop the election on the referendum by ordering the Board of Elections not to release the final results of the vote on this matter.

ORDER

Accordingly, the Court grants a temporary injunction preventing the release of the results of the referendum until the Court can decide whether there was indeed a violation of Title VI. In granting this temporary injunction, the Court is mindful that students will want to have the results of the Childcare Services Fee referendum released in a timely manner.

Therefore, the Court further orders that the complaint in this matter be filed with the Court and served on the opposing party by 10 pm on February 17, 2009. The answer in this matter must be filed with the Court and served on the opposing party, Tim Nichols, by 10 pm on Wednesday, February 18, 2009. In the interest of judicial economy and efficiency, the Court further orders each party to file briefs explaining their legal arguments against or in defense of the actions alleged in the complaint and answer by Thursday, February 19, 2009 at 10 pm.

Failure to file and serve the complaint by the stated deadline and in accordance with the requirements of Title III of the Student Code will result in the Court rescinding this order and permitting the Board of Elections to release the results of the Childcare Services Fee referendum.

By ordering the Board not to release the results of the election, this Court's in no way implies that voting is to be stopped or that the results of voting are to be automatically invalidated. Instead, this order merely leaves open the question of whether the election should be invalidated for the alleged violations by the Executive Branch for a later hearing in this case. Furthermore, this order shall not be construed to enjoin the Board of Elections from releasing the results of the Student Body President run-off election or any other elections on today's ballot.

Done this day February 17, 2009 at 12:30 p.m.

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

