THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

SUPREME COURT

No. 00-SC-01

Sandra Chapman, David Seymour, Christine Williams, and Corye Barbour,

PLAINTIFFS

v.

Mark Kleinschmidt, Speaker of Student Congress, and Catherine Yates, Elections Board Chair, on behalf of herself

and the Elections Board,

DEFENDANTS

Argued and Decided 02 February 2000

Opinion Delivered 06 February 2000

On 07 December 1999 the Student Congress of the University of North Carolina at Chapel Hill enacted SCR-81-130 by a vote of 12-10, which later became 81 SR 057. On 20 January 2000 Student Body Treasurer Ryan Schlitt and other members of the Executive Branch noticed said Resolution was in contradiction of II SGC IV, §166. After notifying Speaker Kleinschmidt of the possible violation, Kleinschmidt requested some time to review his options. On 21 January 2000 Speaker Kleinschmidt directed the Chair of the Elections Board to remove the referendum from the ballot. Plaintiffs subsequently filed a complaint against Defendant Kleinschmidt with the Chief Justice within the statutory period pursuant to III SGC IV, §513. Upon receiving the complaint, Defendant filed an answer on 22 January 2000 at which time Plaintiffs moved for a Temporary Restraining Order seeking to estop Defendant's action. On 23 January 2000 this Court denied Plaintiffs' motion for a TRO and a trial date was set. On 28 January 2000 Plaintiffs, Defendants, and Amici filed briefs with this Court. The Supreme Court convened for trial in the case *sub judice* on 02 February 2000 in the courtroom in Van Hecke-Wettach Hall.

Held: Plaintiffs denied relief.

II SGC IV, §166 is hereby constitutional and is not in contradiction with I SGC VI, §1. 81 SR 057 failed to receive the requisite number of votes as prescribed by law. As such, Defendant's action causing the removal of 81 SR 057 from the general election ballot was proper and consistent with his duties as Speaker of Student Congress.

MR. CHIEF JUSTICE ED PAGE delivered the unanimous, jointly written opinion of the Court, in which MR. JUSTICE JEREMY BERKELEY-TUCHMAYER, MS. JUSTICE RACHEL FUERST, MR. JUSTICE DAN ROBERTS, and MR. JUSTICE DUSTIN GARIS joined.

Mr. David Neal,
for Plaintiffs

Mr. Drew Haywood,
Mr. Mark Kleinschmidt,
for Defendants

I.

On Tuesday, 07 December 1999, Student Congress passed 81 SR 057, *a Resolution to Include a Referendum Regarding the United States Student Association on the Elections Ballot*. This Resolution passed by a roll call vote of 12-10. The Speaker of Student Congress, Defendant Mark Kleinschmidt, signed the Resolution, which was then to be placed on the February 2000 election ballot by the Elections Board.

On 20 January 2000 Executive Branch officers made Defendant Kleinschmidt aware of an apparent Code violation regarding the passage of 81 SR 057 (heretofore referred to as the USSA referendum). The controversy regarded the possible incongruity between the language in I SGC VI, §1,

"**Amendments.** Amendments to this Constitution shall become valid when passed by a *simple majority*, provided that at least 2.5% of the Student Body votes on the amendment, of those voting in campus elections conducted by the Elections Board *at the direction of the Student Congress*, or, they shall become valid when, upon petition in writing signed by ten percent (10%) of the duly enrolled students in the University of North Carolina, the President of the Student Body shall direct the Elections Board to conduct an election in which a favorable vote of two-thirds of those voting shall be necessary to ratify the amendment…" (Emphasis added).

and the language contained in II SGC IV, §166,

"**Election Supermajorities**. …No resolution calling a referendum to amend the Constitution of the Student Body shall be passed at any time without a *two-thirds vote of the Congress*." (Emphasis added).

After consulting other congressional representatives, Speaker Kleinschmidt directed the Elections Board Chairperson, Catherine Yates, to remove the USSA referendum from the February 2000 general election ballot.

After relying on the placement of the USSA referendum on the February 2000 ballot, the Plaintiffs, University of North Carolina students Sandra Chapman, David Seymour, Christine Williams and Corye Barbour, brought this suit against the Defendants, Speaker Kleinschmidt and, later in their amended Complaint, Elections Board Chairperson Yates. The Plaintiffs brought two contentions before this Court: (1) a two-thirds congressional majority requirement before constitutional amendments can be added to the ballot is unconstitutional, and (2) since the Plaintiffs relied on the results of the simple majority vote and the public understanding of it to their detriment, the Defendants should be estopped from removing the USSA referendum from the ballot. We disagree with both arguments and find for the Defendants.

II.

Before the start of the trial, the defense moved to have Defendant Yates dismissed as an unnecessary party to the action, and the Plaintiffs agreed to this motion. Although III SGC V, §510(B)(3), as a general rule, requires the joinder of the Elections Board Chairperson in any suit based on an election action, the present controversy falls outside of the scope of this rule because this Court finds that the aforementioned act did not constitute a formal election action by the Elections Board Chairperson.

The powers of the Elections Board are clearly defined in Title VI of the Student Code. Under Title VI, the Elections Board Chair is given the power to determine the composition of the elections ballot and other administrative duties, but no power is given to the Elections Board Chair to decide the composition of the ballot with regard to referenda. In fact, I SGC VI, §1 specifically gives the power to amend the Constitution to the students, while Congress and the President are directed to give the possible amendments, as referenda, to the Elections Board for inclusion. There is no room for discretion by the Elections Board. Once the Elections Board has included or excluded a referendum from the ballot, an actionable Title III violation may have occurred. However, until the Elections Board has formally acted in placing or not placing a referendum on the ballot, no formal election action has occurred within the meaning of Title III. Thus, this Court found that the Elections Board Chair need not be a party for this suit to proceed, and Chairperson Yates was duly dismissed without objection from either the Plaintiffs or the Defendants.

III.

I SGC VI, §1 provides the only two ways in which the Constitution may be amended. This Court believes that the students are the driving factor behind Student Government. Furthermore, this Court believes that the students are issued the primary power to amend the Constitution. The majority of I SGC VI, §1 provides the process by which the Constitution may be amended by a student initiated petition drive. When ten percent of the student body signs a petition for a constitutional amendment, the Constitution spells out, in no uncertain terms, that the Student Body President shall direct the Elections Chair to place the referendum on the ballot. Once the requisite number of signatures has been acquired, the Student Body President has no ability to withhold the referendum from being placed on the general election ballot. This process is solely student controlled.

The second and final way in which a constitutional referendum may be placed on the general election ballot, however, is through legislative means. This power is separate from the powers given to the student body to petition for a Constitutional referendum. This Court interprets the phrase "*at the direction of Student Congress*" to suggest an allotment of power to Congress to facilitate the amendment process, *not* a definition of that process. This phrase allows Congress to set a procedure by which the Constitution may be amended. It must be understood, however, that "at the direction of Student Congress" implies that *at minimum*, more than one-half of a quorum of Student Congress must vote in affirmation of the Resolution. Furthermore, *all* business of Congress must pass with at least a majority affirmation as spelled out in I SGC I, §4(K) and by the general theory of democracy. Beyond this requirement, the Constitution does not clarify the number of votes needed in order to pass a referendum in the congressional process for amendments. Therefore the supermajority expressed in II SGC IV, §166 does not conflict with the amendment process outlined in the Constitution, specifically I SGC VI, §1.

This Court found that, in this case, the issue of disrupting the system of checks and balances by upholding II SGC IV, §166 unconvincing. Neither the Defendant nor the Plaintiffs were able to articulate the ways in which the system of checks and balances would be negatively affected by upholding II SGC IV, §166. First, it is important that, although the Executive Branch provided an amicus curiae brief, the Executive Branch in no way has power over any part of the amendment process. In the amicus brief, however, the lack of discussion concerning the possible disruption of the system of checks and balances clearly shows that the amici did not feel that their powers were being restricted by II SGC IV, §166. Secondly, the Judicial Branch has no initiative power over the amendment process, and therefore, does not feel restricted by II SGC IV, §166. The student body through petition, and the Student Congress through legislative

means, are the only aspects of our system of government that have initiative control over the amendment process, according to the Constitution. Since said provision does not affect the student body petition process, upholding the Title II Code provision does not provide a more strenuous check on the student body as an institution. Therefore, II SGC IV, §166 only provides a check on the Student Congress, but does not elevate the Executive or Judicial Branches' power since each had, and continues to have, no initiative power in the matter.

II SGC IV, §166 does place a restriction on Student Congress' power to place a referendum to amend the Constitution on the election ballot. This self-restriction on congressional power is properly placed in the procedural section of Title II because this section clearly defines the *procedure* required to adopt amendment referenda. Since this is a special circumstance that does involve changing the supreme law of the student body by Congress, it is acceptable to increase the number of votes required for legislative passage. This allows only widely supported congressional resolutions to be brought before the students, while still providing the popular means by which students petition for such amendments

Ignorance of the Code seems to be used as a justification for both Defendant Kleinschmidt's action, as well as Plaintiffs' reliance on Kleinschmidt to put the constitutional referendum on the general election ballot. It is the responsibility of every member of Congress to be aware of the relevant sections of the Student Code when conducting its legislative business. Knowledge of the Code is particularly crucial for the Speaker of Student Congress, whose responsibilities include ensuring "*that all duties of the Congress and its officers are properly executed*." Knowledge of the Code is tantamount for the sponsor of a Bill or Resolution, in this case Representative Josh White, since it is in every sponsor's interest to have the Bill or Resolution adequately pass the Congress.

In summary, this Court finds that II SGC IV, §166 is consistent with the Constitution. The Constitution merely provides the allocation of power to Congress for the amendment process, but it does not discuss internal procedures for this process. Furthermore, this Court finds that there is no disruption of the balance of power by finding II SGC IV, §166 constitutional. Therefore, this Court finds II SGC IV, §166 constitutional and denies Plaintiffs relief under this claim.

IV.

We now turn to the Plaintiffs' estoppel argument. Before ruling on whether the Defendant should be equitably estopped from acting because the Plaintiffs relied on the Defendant's action to their detriment, this Court finds itself in a quandary. One of the most important bases of this Court's authority has been challenged-the ability to address equitable issues. This must first be addressed.

Equitable Issues

The Defendant hastily took the unnecessary action of challenging this Court's ability to hear and settle equitable claims. Defendant Kleinschmidt argued that III SGC I, §103(B) only allowed the Student Supreme Court to hear questions of law and no other claims. He also argued that the supreme combination of courts of law and equity, which occurred in this nation over two hundred years ago, should not be applied to this case or this Court. We find that the Student Supreme Court has the power to hear equitable, as well as legal, claims so long as the equitable remedies do not violate the Constitution.

Under Title III, the Student Supreme Court has been given the power to hear,

"…controversies concerning actions of the executive branch, legislative branch, elections board or other organizations and committees organized under the authority of this Code of Permanent Laws… extended to *questions of law arising under this Constitution*…" (emphasis added).

A plain meaning of this section reveals that the Student Supreme Court has been given the authority to hear questions of law *and controversies concerning the other branches and organizations* at the University of North Carolina at Chapel Hill. Furthermore, under III SGC IV, §410(A), this Court has been given "legal power, as to both questions of law and fact,..." Yet nowhere does the Code specifically define what these other controversies must be, or whether these are solely legal claims. Thus, this Court was forced to delve into the background of both legal and equitable claims.

Both legal claims and equitable claims are inextricably tied to their respective remedies, which historically were kept separate until the courts were united. Legal claims led to legal remedies, and equitable claims lead to equitable remedies. Never in the courts of this University have the final arbiters of justice been authorized to hear legal claims and only some equitable claims while being denied the right to hear equity. III SGC IV, §§ 410, 522 specifically authorize the Court's use of temporary restraining orders and simple injunctive relief, obvious equitable remedies.

Speaker Kleinschmidt argued that the specificity with which these equitable remedies were enunciated speak to the exclusion of all others under the principle of *expressio unius est exclusio alterius*, yet this Court also finds this idea unpersuasive. The Code specifically gives the Student Supreme Court the authority to decide issues involving the Constitution of the Student Body of the University of North Carolina at Chapel Hill without reference to equitable or legal claims. Since elements of both legal and equitable claims are present in Title III, this Court has concluded that this body has the authority to hear issues of both law and equity.

Yet the Student Supreme Court has been given the supreme task of upholding the Constitution and the Code. Under this directive, this Court finds that although the Student Supreme Court may hear equitable claims, equitable claims may not be held above the Constitution. Since the Plaintiffs seem to seek the elevation of their equitable estoppel claim above the Constitution, we must further rule against the Plaintiffs under the theory of estoppel.

Equitable Estoppel

As a final matter, the Plaintiffs made an estoppel argument that in the event this Court did not rule in their favor on the Constitutional point, this Court should reserve the equitable remedy of placing the USSA referendum on the ballot. Although this Court heard valid witnesses and arguments in favor of an equitable remedy, placing the USSA referendum on the ballot would be unconstitutional, and therefore, is outside of the scope of equitable remedies that this Court may use to place the Plaintiffs in pre-injury standing.

The Plaintiffs apparently only pursued one course of action in this matter-the congressional referendum. Although multiple witnesses testified to the importance of educating the students in what they feel is a "student issue," and educating these fellow students early because of the complexity of USSA, the Plaintiffs seem to have taken little or no action in following through with this course. Resolution 81 SR 057 was passed on 07 December 1999, the last day of classes and the final congressional meeting of the year. Not only did the Plaintiffs wait until the final Student Congress session of the Fall semester to pass this referendum, they also apparently took no action during the semester to educate masses of students, encourage a petition drive, or involve the entire student body in a discussion on the merits of USSA. The Plaintiffs relied solely on the congressional referendum, the legislative manner by which referenda are placed on the ballot, instead of the popular method of educating students and securing a ten percent student body petition to place the referendum on the ballot; therefore, this was their downfall.

As it stood, the Plaintiffs planned to educate the campus about USSA in the brief span of less than a month before the planned 08 February 2000 elections. The Plaintiffs worked out these details with USSA and spent the Winter Break planning the education campaign, but not actually acting on it. Thus, although the time and money spent seem to be lost on the February 2000 elections, this Court does not see how all of the USSA education campaign work is lost forever.

Furthermore, while Plaintiffs' counsel argued the substandard nature of a special election, this argument is unpersuasive. In the face of an obvious constitutional violation, the fact of logistical difficulties does not justify support of the Plaintiffs' inequity. In fact, the Framers of our Constitution purposefully wrought the difficulties of which Plaintiffs' complain. When asked outright if the Plaintiffs could think of any other equitable remedy that would repair their situation, they were unable; consequently, this Court is also unable. Without any other equitable remedy this Court is left to the task of denying all of the Plaintiffs' claims with the hope that this opinion will encourage them to begin with the students on their next campaign, because the students are the basis upon which our Constitution was founded.

V.

Therefore, we find the action of removing the USSA referendum from the general election ballot, taken by Speaker Kleinschmidt on 21 January 2000, valid and constitutional. Furthermore, unless or until a congressional referendum Resolution passes with the requisite two-thirds supermajority of Congress, or a petition with at least ten percent of the student body is presented to the Student Body President, the USSA referendum may not be added to the February 2000 ballot.

It is so ordered.