

IN THE SUPREME COURT

| | | |
|-----------------------|---|---------------|
| Action No. 10 SSC 002 |) | |
| |) | |
| Deanna Santoro |) | |
| PLAINTIFFS |) | |
| |) | |
| Versus |) | DEFENSE BRIEF |
| |) | |
| Andrew Phillips, |) | |
| DEFENDANT |) | |

TABLE OF CONTENTS

| | |
|--------------------------------|----------|
| TABLE OF AUTHORITY | 2 |
| STATEMENT OF FACTS | 3 |
| QUESTIONS PRESENTED | 4 |
| ARGUMENTS | 4 |
| CONCLUSION | 6 |

TABLE OF AUTHORITY

STUDENT CONSTITUTION:

N/A

STATUTES:

***Title VI, Article III, § 310.A(5)*.....p.133**

Automatic Disqualification. Under the auspices of Title VI, a campaign may be automatically disqualified if the Board of Elections finds certain violations of a campaign or a failure to submit various documents. These constitute the following:
(5) Disqualification for Failure to Submit a Resignation for an Executive or Judicial Branch position.¹

***Title VI, Article IV, § 408.B(1)*.....p. 143**

The following Student Government officers shall not participate in a campaign for any elected position or make public endorsement for any candidate nor shall they make any statement against a campaign or candidate:

- a. Student Attorney General
- b. Graduate and Professional Attorney General
- c. Chair of the Undergraduate and Graduate Honor Courts
- d. Members of the Student Supreme Court
- e. Student Body President
- f. Student Body Undergraduate Vice-President
- g. Student Body Secretary
- h. Student Body Treasurer
- i. Graduate and Professional Student Federation President
- j. Student Congress Speaker, Speaker Pro Tempore, and Committee Chairs

***Title VI, Article IV, § 408.B(3)*.....p. 144**

When participating in student body elections or endorsing a particular candidate, it must be made clear that the official is speaking only on behalf of themselves and not for Student Government or any subsidiary thereof.

¹ Sub-sections 1-4 and 6 were excluded from the Table of Authority, as they are not relevant to the issue being considered.

STATEMENT OF FACTS

- 1 On November 28, 2010, Rick Ingram filed a complaint with the Board of Elections that Student Body Secretary Ian Lee had told several students that he intended to run for Student Body President. As Mr. Lee was Student Body Secretary at the time, Mr. Ingram alleged that Mr. Lee's actions were a violation of Title VI § 408.B.1.g.
- 2 The Board voted to initiate an investigation of Mr. Lee's actions in response to Mr. Ingram's complaint on December 1, 2010. The Board requested that both Mr. Ingram and Mr. Lee respond to questions provided by the Board and to submit evidence and provide written outlines of their arguments. The Board conducted a hearing to investigate the allegations stated by Mr. Ingram on December 7. During the hearing, Mr. Lee had a chance to respond to the allegations brought against him and to make arguments in his defense.
- 3 On December 13, the Board issued two administrative decisions in regard to Mr. Ingram's complaint against Mr. Lee. The first, 10-BE-06, dismissed Mr. Ingram's complaint on the grounds that the Board could not meet the requirement established in Title VI, § 306 of "clear and convincing evidence" that a violation of election law had occurred. In both evidence submitted to the Board and in his testimony during the hearing, Mr. Ingram failed to provide the Board with evidence that would satisfy the burden of proof requirement in the Student Code. In the second administrative decision, 10-BE-07, the Board issued its official interpretation of § 408 of Title VI.
 - i. § 408 B.1 lists Student Government officials who "shall not participate in a campaign for any elected position," while § 408 B-3 says that when participating in student body elections, Student Government officials must speak on behalf of themselves and not on behalf of Student Government. Given these provisions in the Student Code, the Board ruled that any Student Government officer listed in § 408 B.1 shall not use their position as a Student Government official to further or promote their campaign for any office, or the campaign of another. This was decided by the Board by a unanimous vote.
 - ii. The Board notified parties of its decisions on December 13, 2010. It also posted the decisions, along with all relevant documents in the case, to the Board of Election's website. As a courtesy to other senior members of Student Government, Chair Andrew Phillips notified the Student Body President, the Speaker of Congress, and committee chairs in Student Congress of the Board's decision. The Board also released the decisions to the Daily Tar Heel.

- 4 The Plaintiff expressed her disagreement with the Board's decision in 10-BE-07 with Chairman Phillips verbally and in emails beginning on January 23, 2011. Chairman Phillips heard the Plaintiff's concerns but declined to re-open the investigation into the candidacy of Mr. Lee allowed by the Board's decision in 10-BE-07.
- 5 On February 6, 2011, the Plaintiff and Chair Phillips had a phone conversation. During this conversation, the Plaintiff indicated to Chair Phillips that she wished to file an official complaint with the Board regarding Mr. Lee's candidacy and Title VI § 310 A-5 of the Student Code.
- 6 The Defendant filed a motion to dismiss the case on procedural grounds on February 10, 2011. Specifically the motion argues that (a) Plaintiff Santoro does not have standing to bring suit against an election action and (b) that the statute of limitations has expired.²

STATEMENT OF THE QUESTIONS OF LAW PRESENTED

- A. How should the seemingly contradictory statements of Sections 408.B.1 and 408.B.3 be reconciled?
- B. If the contradictory statements of Sections 408.B.1 and 408.B.3 are resolved, in what way does this understanding affect the eligibility of Ian Lee?

ARGUMENTS

1. On its face, § 408.B(1) forbids Student Government officers from (i) participating in a campaign for any elected position, (ii) making public endorsements for any candidate and (iii) making any statement against a campaign or candidate.³
2. On its face, § 408.B.(3), establishes procedure as to how, or in what manner, those same Student Government officers can participate in student body elections or endorse a candidate. It specifically requires that Student Government officials are "speaking only on behalf of themselves and not for Student Government or any

² As the Defendant expressed procedural concerns in that Motion to Dismiss, the purpose of this brief is narrowly confined to discussing the merits of the case, rather than procedural considerations (i.e. standing, statute of limitations)

³ For the purposes of this brief, "Student Government officers" will refer specifically to the ten officers listed in Section 408.B.1.a through Section 408.B.1.j.

subsidiary thereof.” The purpose of this clause is, presumably, to divorce the politicized nature of election season with the current governing body.

3. The Plaintiff’s interpretation of 408.B.(3) is unreasonable. In the Complaint, she asserts that:

Plaintiff understands the word “official” in Title VI § 408(B)(3) to refer to any student participating in Student Government who is not named in Title VI § 408(B)(1).

Plaintiff is alleging that subsection (3) is making reference to a class of persons that are, by any fair assessment, unmentioned in all of § 408. Consequently, the Plaintiff’s understanding of the word “official” is implausible, as this reading of lacks any textual basis. A more natural reading of 408.B.(3) is that this section is referring to the very same officers listed in § 408.B.(1).

4. Furthermore, a strict interpretation of 408.B(1) results in an intuitively undesirable consequence. According to 408.B(1), “Student Congress Speaker, Speaker Pro Tempore, and Committee Chairs” are classified as Student Government officers. If that same section is to be read as meaning these persons “shall not participate in a campaign for **any** elected position,” these officers would be required to resign from their respective posts before running for re-election. Chair Phillips and the Elections Board identified this precise problem when authoring their administrative decision.
5. As members of Congress do **not** resign from their posts in order to run for re-election, Plaintiff’s strict interpretation could not have been the real legislative intent. Consequently, any appeals to what ‘Congress meant,’ are contrary Plaintiff’s interests.
6. The most reasonable way to resolve the textual conflict is to interpret § 408.B(1) as allowing Student Government officers to participate in their own candidacy, while prohibiting them from helping promote or relegate the interests of other persons running for office. There is no specific language in the 408.B(1) suggesting that (a) the statute applies to their own campaigns or that (b) the statute only applies to the campaigns of others. Small additions in the text illustrate how this might have been accomplished:
 - a. The following...shall not participate in a campaign for any elected position, ***including their own....***
 - b. The following...shall not participate in a campaign for any elected position, ***with the exception of their own....***

Notice that (a) closely corresponds with the reading offered by the Plaintiff, while (b) mirrors that of the Defendant.

7. It is a basic canon in statutory construction to make and interpret laws so that (i) there is no internal inconsistency with the laws themselves and (ii) no clauses or statutes are redundant.

The Defendant's interpretation of Sections 408.B(1) and 408.B(3) can be meshed together to provide a coherent regulation. According to § 408.B(1), Student Government officers **cannot** work on the campaigns of others, but **can** work on their own campaign. 408.B(3) states that if a Student Government officer chooses to work on their own campaign, as is allowed under 408.B(1), "it must be made clear that the official is speaking only on behalf of themselves and not for Student Government or any subsidiary thereof." Thus, these statutes can actually be understood as complementing one another.

8. Under the Defendant's reading of the interpretation, Title VI, Article III, § 310.A(5) does not lose any of its regulatory force. If a Student Government officer becomes a candidate and fails to obey § 408.B(3), the Elections Board may demand a resignation from his or her post. A failure to submit that resignation could, pursuant to § 310.A(5), result in disqualification. This case alone illustrates the ability to enforce § 310.A(5) **and** subscribe to the Defendant's interpretation of § 408.B.

CONCLUSION

Plaintiff's allegations that the Elections Board abused its powers in interpreting Section 408.B is unfounded. As the Defense has illustrated, the most plausible reading of Sections 408.B(1) and 408.B(3) prohibits Student Government officers from aiding in the campaigns of others. However, Student Government officers are not required to resign in order to promote their own candidacy. If one applies this understanding of the law to the particular question of Ian Lee's candidacy, it reveals that Mr. Lee did not act in any fashion prohibited by Title VI.

Therefore, the Defense requests that the Court rule against Plaintiff's case and lift the injunction against the Student Body President election results.

KEVIN WHITFIELD

Counsel for the Defense
146 EAST LONGVIEW STREET
CHAPEL HILL, NC 27516
kmwhitfield@gmail.com
(252) 367-1177

Filed this day of February 12, 2011, at 10:53a.m.