

IN THE SUPREME COURT	)	
	)	
Action No. 08 SSC 003	)	
	)	
Ashley Klein	)	
PLAINTIFF	)	
	)	
versus	)	[ ANSWER ]
	)	
Ryan Morgan, Board of Elections	)	
DEFENDANT	)	

# 1 Answer

## 1.1 Jurisdiction

*Admit the allegation.* Restatement of The Code.

## 1.2 Standing

*Admit the allegation.* Restatement of The Code.

## 1.3 Necessary Defendants

*Admit the allegation.* Restatement of The Code.

Plaintiff's claims are not numbered. Pasting of the claims and subsequent denial/admission shall be used.

## 1.4

Issued by the Board of Elections on October 8 2008, Punitive Decision 08-BE-011 pledges to "fine Ms. Klein's campaign \$40.00 should she become a certified candidate." PD 08-BE-011 states:

On August 27, 2008 the Daily Tar Heel reported an interest meeting held at the Campus Y by the potential candidate Ashley Klein. In addition, Ms. Klein gave an interview to the Daily Tar Heel published in the same article.

During a meeting between Ms. Klein and BOE Chairman Ryan Morgan, Klein admitted to holding an interest meeting and giving an interview to the Daily Tar Heel.

PD 08-BE-011 claims that the activities described above "activities are in violation of Section 402(A)[1]" of the Student Code.

The plaintiff interprets the activities that the Board of Elections allegedly finds in violation with the Student Code to be:

1. Hosting a meeting of members of Ms. Klein's campaign staff in the Campus Y Faculty Lounge on August 27th, 2008.
2. Answering questions posed by Kevin Kiley of the Daily Tar Heel concerning the legality of the meetings of members of Ms. Klein's campaign staff.

The plaintiff admits that Ms. Klein completed these two activities.

*Admit the allegation.* Restatement of 08-BE-011.

## 1.5

Below, the plaintiff will assert that both of these actions are permissible under Section 402(A) of the Student Code.

*Deny the allegation.* As stipulated by the Plaintiff in (1.4), she held "a meeting of members of Ms. Klein's campaign staff in the Campus Y Faculty Lounge." Such meeting is in violation of Section 402(A)[1], which restricts pre-certification campaign activities to verbal declaration of one's candidacy and verbal conveyance of contact information. Staff meetings do not fall into that category. The meeting took place on University property, hence facilitated by the University and Government resources. Section 102(N), Title VI defines such meeting as public.

## 1.6

The plaintiff will also argue that what have been called Administrative Decision[s] 08-BE-001 and 08-BE-010 ought to be disregarded in determining the legality of Ms. Klein's actions as AD 08-BE-001 and 08-BE-010 constitute illegal acts of the Board of Elections.

*Deny the allegation.* While the BOE maintains that Administrative Decisions 08-BE-001 and 08-BE-010 are within its authority, Punitive Decision 08-BE-011 does not refer to the aforementioned Administrative Decisions and does not assert any connections to them.

## 1.7

To address the second activity, the plaintiff refers the court directly to the (sole) quotation in question. Ashley Klein's quote, published in the Daily Tar Heel, on August 27, 2008, read as follows:

*"Candidates in the past have shown that we can have large meetings like this if we've contacted campaign workers on a one-to-one basis."* (Ashley Klein, August 27, 2008)

*Admit the allegation.* Restatement of the DTH article.

## 1.8

According to Title VI, Article IV, Sect 402(A)[1] "No candidate, nor any campaign worker, shall publicly campaign for said candidate, nor publicly seek to further the interests of said candidacy prior to one's candidacy being certified by the Board of Elections." The BOE found Ms. Klein "in violation of Section 402(A)[1]" and thus issued a fine of \$40.00 (08-BE-011, Sect 3).

*Admit the allegation.* Restatement of The Code and actions of the BOE.

## 1.9

The plaintiff argues that while answering questions with Kevin Kiley of the Daily Tar Heel, Ms. Klein was exercising her right provided in Title VI, Article IV, Sect 402 (A)[2] to "at any time orally declare candidacy for a given office in a public setting and [to] orally provide contact information at public forums for those who may wish to join their campaign."

*Deny the allegation.* Plaintiff admits in (1.4) to "Answering questions posed by Kevin Kiley of the Daily Tar Heel concerning the legality of the meetings of members of Ms. Kleins campaign staff." Answering such questions is clearly outside of "...oral declaration of candidacy for a given office in a public setting..."

### 1.10

The plaintiff asserts that Ms. Klein was commenting on the legality of current campaign staff meeting to Kevin Kiley, not "publicly campaign[ing]" nor "publicly seek[ing] to further the interests of said candidacy." Ms. Klein was not attempting to solicit votes from Kevin Kiley or DTH readers; instead she was offering her opinions on the manner in which she was attempting to keep her campaign within regulations of the student code and the precedent of candidates in previous years.

*Deny the allegation.* The Plaintiff admits to publicly commenting on topics outside of "...oral declaration of candidacy for a given office in a public setting...", as prohibited by Section 402(A)[2], Title VI.

### 1.11

Furthermore, the plaintiff also argues that Ms. Klein's attempts to rescind her quotes from the Daily Tar Heel indicate her lack of malice in answering Kevin Kiley's questions. According to The Code, while discussing the actions necessary of a candidate should their campaign team unknowingly violate election laws, weight is given to those candidates who attempt to "nullify or correct the act that is causing the violation" (Title VI, Article IV, Sect 402(D)). The plaintiff maintains that Ms. Klein's actions were not intentionally in violation of The Code and her subsequent actions indicate her desire to "have a clean fight" (BOE Memorandum to all candidates, "Clean Fight").

*Deny the allegation.* No evidence is presented to this effect.

### 1.12

The plaintiff contends that Ms. Klein's statement to the DTH was not an attempt to violate elections laws, instead it consisted of her beliefs about how to avoid breaking such laws. If Ms. Klein had wanted to "further the interests of said candidacy," the plaintiff argues that she would have made statements that would have "furthered" her campaign. The article contained no information about Ms. Klein's campaign platform or her plans for the upcoming election.

*Deny the allegation.* Lack of intention to violate the election law does not exempt the offending party from sanctions. Furthermore, hypothetical scenarios are not considered by the Court.

### 1.13

Finally the plaintiff disputes the legality of the Administrative Decisions put forth by the BOE on October 5, 2008 in the Administrative Decision 08-BE-10. According to Title VI, Article I, Sect 102 (C), an Administrative Decision is defined as "a decision made by the Chair of the Board of Elections or the Board of Elections pertaining to these election laws."

*Deny the allegation.* The BOE maintains that Administrative Decision 08-BE-10 is an interpretation of the election law, and as such is within the BOE's authority.

### 1.14

In his Advisory Opinion, Solicitor General Kris Gould writes that "the Board of Elections cannot make election law as that power is held by Student Congress alone. The Board of Elections can only, as noted by Title VI, Section 302.A of the Student Code, make recommendations for legislation to Student Congress" (Advisory Opinion, Sect 4). The plaintiff asserts that the Administrative Decision passed on October 5, 2008 is outside the jurisdiction of the BOE. According to Title I, Article I, Sect 4 (M) of The Code, "Congress shall have the power to...establish laws governing election." The function of Administrative Decisions is to "to explain how the Board of Elections interprets provisions of the Student Code" (Advisory Opinion, Sect 4).

*Deny the allegation.* In crafting of Administrative Decisions, the BOE does not usurp the Congress' authority in creating the election law. Rather, Administrative Decisions of the BOE are direct interpretations of the election law. A test of whether something is an interpretation of the source or addition is as follows:

***x is an interpretation of X if and only if x does not contradict X.***

Administrative Decision 08-BE-10 does not contradict Title VI of the Student Code, hence it is an interpretation thereof, and thus is within the authority of the BOE.

### **1.15**

When reading the Administrative Decision published by the BOE on October 5, 2008 the plaintiff maintains that the BOE is overstepping its jurisdictional bounds by redefining the practice of orally declare[ing] candidacy and other relevant campaign terms throughout Section 3. Although the plaintiff agrees that it is the role of the BOE to interpret Title VI, it is not up to the BOE to rewrite election laws; that power is vested in Student Congress alone. Originally, Title VI Sect 402 (A) read as follows:

*Candidates and their campaign workers may at any time orally declare candidacy for a given office in a public setting and may orally provide contact information at public forums for those who may wish to join their campaign.*

This could be interpreted to mean that anyone who had the intention to run could announce such at any time (and in any public location) to allow those who are interested in joining a campaign the opportunity to do such. Originally Title VI, Sect 402 did not prohibit the sharing of platform ideas so long as this was done outside the public view. The new amendment reads as follows:

*Section 3(A) Oral declaration of candidacy for an office shall consist of no more than specifying ones desire to run a particular office, soliciting, without elaborating on any details whatsoever, campaign workers, and orally conveying contact information. (AD, 08-BE-10)*

The Administrative Decision now limits candidates to only being able to announce their name and office and to solicit campaign workers by giving out their contact information.

The plaintiff argues that the clarifications listed above are within the scope of the BOEs jurisdiction. Yet, the prohibition without elaborating on any details whatsoever is outside the bounds of the BOE. In specifying that candidates must solicit campaign workers yet prohibiting the elaboration of details the BOE has effectively altered The Code and the way candidates must follow it. Now candidates cannot discuss any details of their platform when trying to convince fellow students to join their team.

Furthermore, the Administrative Decision Section 3(B) also redefines the meaning of "campaigning" in accordance with Section 3(A). Campaigning is now defined as "(B) any candidacy/campaign-related activity other than those described in (A)" (AD, 08-BE-10). If the court accepts the fact that part (A) is unconstitutional, part (B) must also be found outside the authority of the BOE.

*Deny the allegation.* Plaintiff alleges that "without elaborating on any details whatsoever" is not an interpretation of Section 402(A)[2]. However, "without elaborating on any details whatsoever" passes the interpretation test outlined in (1.14). The statement in question is therefore a reasonable interpretation and explanation of Section 402(A)[2], Title VI, not an addition to it.

### **1.16**

In part (C) of the Administrative Decision, the BOE redefines the concept of private in direct violation of The Code. The Code defines the word private in Title VI, Sect 102(N):

*Private shall be defined as that which is not in the general view, not widely known, and not facilitated by University or government resources. Public shall be defined as that which is not private."*

In Section 3(C) the BOE redefines private to mean:

*"Any gathering, at any time, for any purpose, encompassing any activities, that takes place either in students dormitory room or on private property."*

This alteration to the code changes private from widely know to mean a specific location on campus. The original code does not speak to locations on campus, nor does it prohibit meetings that are not in dormitories or on private property. Once again, the plaintiff notes the BOEs ability to interpret The Code, but finds the above changes to be outside the jurisdiction of the BOE.

*Deny the allegation.* The BOE's interpretation of Section 102(N), Title VI does not contradict it but, is a direct reading thereof; and as such is within the BOE's authority.

### 1.17

The same could be said for Section 3(D) of the Administrative Decision, which changes the definition of public, as written in the code as Public shall be defined as that which is not private. Section 3(D) redefines the definition of public to mean as (B), which takes place outside of the students residence and on UNC property or directly visible from UNC property.

*Deny the allegation.* Once again, the BOE's interpretation of Section 102(N), Title VI does not contradict it. Section 102(N), Title VI reads "*Private shall be defined as that which is not in the general view, not widely known, and not facilitated by University or government resources.*" Note that the list is separated by commas & **and**, meaning that all three conditions must be satisfied in order for the meeting to be considered private. Section 102(N), Title VI further defines public as "*that which is not private.*" Therefore, Section 102(N), Title VI defines public as "*Public shall be defined as that which is in the general view, or widely known, or facilitated by University or government resources.*" The BOE's "*directly visible from UNC property*" and "*outside of student's residence*" corresponds to "*in the general view*"; "*on UNC property*" corresponds to "*facilitated by University or government resources*". BOE's statements are explanations of the code, not alterations thereof.

### 1.18

Finally, the Administrative Decision goes one step father and assigns deadlines for when these new definitions come into effect. The Administrative Decision reads that (A) and (C) may occur at any time. Potential candidates are hereby expressly forbidden from engaging in (B) and (D) earlier than 28 days prior to a Regular Election or 21 days prior to a Special Election. The plaintiff contends that the ability to change election law and/or expressly [forbid] candidates from engaging in activities that are not written within the organically code is unconstitutional and directly coincides with Congresss expressed power to establish laws governing election.

*Deny the allegation.* Administrative Decision in question does not change the election law. The deadlines are the results of direct reading of Sections 302(C), 302(F)[2], 303(C)[1], 402(A)[1] of Title VI.

## **2 Demand for Judgement**

### **2.1**

The Plaintiff failed to demonstrate any contradiction between the facts stipulated by the Plaintiff and the Punitive Decision 08-BE-011. The Defendant hereby asks the Court not to overturn the aforementioned decision.

### **2.2**

The Plaintiff failed to demonstrate any contradiction between Administrative Decisions 08-BE-001, 08-BE-010 and the Student Code. The Defendant hereby asks the Court not to overturn the aforementioned decisions.

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