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STATEMENT OF FACTS

On February 17, 2009, Tim Nichols (Plaintiff), Speaker of Student Congress, filed a Complaint with the Student Supreme Court. The Complaint alleged that Student Body President J.J. Raynor (Raynor) and the Executive Branch of Student Government (Executive Branch) violated election laws, under Title VI of the Student Code (Title VI). The complaint alleged the following violations: 1) that Raynor, on behalf of the Executive Branch, sent an email through the University's Formal notice email system that improperly supported passage of a fee referendum; 2) that members of the Executive Branch improperly posted information on Facebook supporting passage of the referendum; and 3) that campaign materials advocating passage of the referendum were improperly stored or displayed in Student Government office space. Ryan Morgan (Morgan), Chair of the Board of Elections, was also listed as a defendant in the Complaint. Plaintiff alleges that the Board of Elections failed to take action after he notified Morgan of the potential violations. Defendants filed a motion to dismiss the suit claiming that the Board of Elections did not fail to take action, but that the Complaint was filed before the Board of Elections had time to act. The Student Supreme Court denied the motion.

On February 16, 2009, Raynor sent an email through the Formal Notice email system informing students that they could vote in a fee referendum to be held on Feb. 17, 2009. The email contained the wording of the fee referendum, information on where and when students could vote, and a link to the Student Government homepage. The Student Government homepage contained a link to a "pdf" version of a presentation that Raynor gave to Congress at an earlier meeting of the body. The presentation contained basic information about the proposed fee increase, including: numbers and statistics associated with the fee's use and three testimonial quotes from students receiving assistance through the fee program. The document did not contain any statements from the Executive Branch endorsing a vote one way or the other on the referendum. The document did contain statements from current fee recipients. None of the statements profiled in the document contained language advocating a specific vote on the referendum.

Furthermore, Student Body President J.J. Raynor used the Formal Notice system to inform the campus of the referendum and the opportunity to learn more about the fee history as part of a good faith effort to respond to the requests of Student Congress. At the February 4th, 2009 meeting of Student Congress, the body expressed its concern that students would not have enough information about the fee to make an educated decision in

the referendum. Members of Student Congress asked that appropriate efforts be taken to publicize the referendum and the fee background. In response, Student Body President J.J. Raynor offered to send a Formal Notice email to all students informing them of the referendum and linking them to information on the fee. Hence, President Raynor sent a Formal Notice to all students and directed them to the same background information on the fee that had been presented to Student Congress.

Raynor joined two Facebook groups prior to the election that voiced support for the fee: "Embrace Inclusivity: Support the Childcare Services Fee Increase" and "Vote YES on the Child Care Services Fee Referendum." She did not create any Facebook groups related to the referendum. After joining, Raynor invited "friends" to join both groups but did not include any message with the invitations.

On February 17, 2009, referendum campaign materials were found on a counter top in the Student Activities and Organizations Office. Raynor discovered these materials after the Executive Branch was alerted to the issue upon receipt of the Complaint. There is no indication of who left these materials in the Student Activities and Organizations Office. It is not known if these materials were left by a member of the Executive Branch, a member of the Legislative Branch, or a member of another student organization.

QUESTIONS PRESENTED

DID THE EXECUTIVE BRANCH VIOLATE TITLE VI SECTION 402(L) OF THE STUDENT CODE WHEN STUDENT BODY PRESIDENT RAYNOR WROTE THE STUDENT BODY, VIA UNIVERSITY MASS EMAIL, REMINDING STUDENTS TO VOTE IN THE REFERENDUM ELECTION?

DID THE EXECUTIVE BRANCH VIOLATE TITLE VI SECTION 402(L) OF THE STUDENT CODE BY USING A FACEBOOK GROUP TO SUPPORT PASSAGE OF THE REFERENDUM?

DID THE EXECUTIVE BRANCH VIOLATE TITLE VI SECTION 405(A) OF THE STUDENT CODE BY STORING CAMPAIGN MATERIALS SUPPORTING THE REFERENDUM IN STUDENT GOVERNMENT OFFICE SPACE?

ARGUMENT

A. THE EXECUTIVE BRANCH DID NOT VIOLATE TITLE VI SECTION 402(L) OF THE STUDENT CODE WHEN STUDENT BODY PRESIDENT RAYNOR WROTE THE STUDENT BODY, VIA UNIVERSITY MASS EMAIL, REMINDING STUDENTS TO VOTE IN THE REFERENDUM ELECTION.

Title VI, Section 402(L) of the Student Code states "email lists reserved for the use of Student Government officials or any party acting on behalf of Student Government may not be used to advance the candidacy of any individual or support the passage or failure of a referendum."

The Formal Notice mass email list used by Raynor is such a list, because Raynor was granted access to the list because she holds the position of Student Body President. Other students do not have access to the list.

The email sent by Raynor did not advocate for or support the passage of the fee referendum. The text of the email did not indicate whether or not Raynor or the Executive Branch supported the referendum. The email provided a link to the Student Government website which contained a link to a "pdf" file with information previously used in a powerpoint presentation about the proposed fee. The information in this file did not state whether or not Raynor or the Executive Branch supported the referendum. The Board of Elections uses the Federal definition of endorsement, meaning that the statement

must say "vote for" or "vote against" in order to be construed as an endorsement.

As neither the email nor the website linked in the email contained statements from the Executive Branch supporting passage of the referendum, the Executive Branch's use of the Formal Notice mass email list could not have violated Title VI Section 402(L) of the Student Code because a violation of that section could only have occurred if the email in question was used to support the passage or failure of the referendum.

B. THE EXECUTIVE BRANCH DID NOT VIOLATE TITLE VI SECTION 402(L) OF THE STUDENT CODE BY USING A FACEBOOK GROUP TO SUPPORT PASSAGE OF THE REFERENDUM.

As noted above, Title VI Section 402(L) of the Student Code states "email lists reserved for the use of Student Government officials or any party acting on behalf of Student Government may not be used to advance the candidacy of any individual or support the passage or failure of a referendum." Facebook is not an email list nor is Facebook a tool reserved only for members of Student Government. All students can access Facebook and can create Facebook groups. There were a number of different groups created that advocated both for and against the fee referendum. Facebook is a tool for generating dialogue accessible to all students, not just members of Student Government. Because Facebook groups are not email lists and because Facebook groups are not reserved for the use of Student

Government officials, any alleged support by Student Government through Facebook does not constitute a violation of Title VI Section 402(L) of the Student Code.

C. CAMPAIGN MATERIALS FOUND IN THE STUDENT ACTIVITIES AND ORGANIZATIONS OFFICE WERE NOT LEFT THERE IN VIOLATIONS OF TITLE VI SECTION 405(A) OF THE STUDENT CODE.

Title VI Section 405(A) of the Student Code states "For the duration of the campaign of any elected position, no campaign materials may be displayed or stored in the offices of Student Government, including but not limited to the offices of the Executive and Legislative branches and the offices of the Honor Court and the Student Attorney General."

As this section mentions only campaigns for elected positions and does not mention referenda, this section's prohibition should only apply to campaign materials for candidates for elected positions and should not apply to campaign materials for referenda. The campaign materials in question related to the fee referendum. Because this section applies only to candidates, no violation of 405(A) could have occurred.

Further, the campaign materials in question were found in the Student Activities and Organizations Office, which is not a Student Government office. The Student Activities and Organizations Office is an office space and work center open to all members of student organizations. It is not a Student

Government office as described under Title VI Section 405(A) of the Student Code. The Student Activities and Organizations Office contains office space, office supplies, and filing cabinets intended for the use of student organizations. It is open to all students and is not controlled by Student Government. Office space for the Executive Branch, Student Congress, the Senior Class, and the Graduate and Professional Student Body Federation link off of the main Student Activities and Organizations space, but no campaign materials were found in these offices. As the materials were not found in Student Government offices, no violation of Title VI Section 405(A) of the Student Code could have occurred.

Finally, Title VI Section 405(A) requires that the materials be stored or displayed in the Student Government offices. The materials in question were found on a counter top in the Student Activities and Organizations Office. There is no indication that they were left on the counter top to be stored there, as storing would require that whoever left the materials on the counter intended for the materials to remain there for a significant period of time. There is also no indication that whoever left the materials intended to display the materials there. Merely leaving a pile of materials on a counter does not constitute displaying those materials. For these additional

reasons, there was no violation of Title VI Section 405(A) of the Student Code.

Filed this the 22nd day of February, 2009, at 4:00 p.m.

DEFENDANT

J. J. Raynor
Student Body President

DEFENDANT

Ryan Morgan
Chair, Board of Elections

COUNSEL FOR THE DEFENDANTS

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