

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL  
SUPREME COURT

No. 99-SC-02

Jermain Reeves,  
PLAINTIFF

v.

Murray Coleman,  
Write-In RHA President and  
Heather Faulk, Elections Board Chair, on behalf of herself and  
The Elections Board  
DEFENDANTS

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Argued and Decided 17 March 1999

Opinion Delivered 22 March 1999

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After the Elections Board of The University of North Carolina at Chapel Hill disregarded 107 graduate student votes of the 9 February 1999 General Election and certified Defendant Murray Coleman as the winner of the Residence Hall Association Presidency, the plaintiffs filed a complaint with the Chief Justice within the statutory period pursuant to Title III, Article II, Section 203 [n1]. Plaintiff served his written complaint upon the Chief Justice 21 February 1999. Upon receiving the complaint, the defendants filed a joint answer on 25 February 1999, at which time a pre-trial hearing was held. Motions to Dismiss were submitted by defendants. The first motion to dismiss was denied. Trial was set for 27 February 1999. Upon convening, the Court denied the second motion to dismiss. Plaintiffs filed a motion for continuance, motion for exclusion of affidavits, and motion to subpoena witnesses. The Court granted the motion to subpoena with respect to a portion of the witness list. The Court denied the motion to exclude affidavits and granted the motion for continuance. The Supreme Court reconvened for trial in the case *sub judice* on 17 March 1999 in the courtroom in Van Hecke-Wettach Hall.

*Held:* Plaintiffs granted relief.

The Elections Board's certification of the RHA election after discarding 107 graduate student votes of unknown validity is void. A re-election shall be held 30 March 1999 for Residence Hall Association President which shall include votes of all qualified graduate students.

MR. JUSTICE ED PAGE delivered the opinion of the Court, in which MR. CHIEF JUSTICE CALVIN CUNNINGHAM and MR. JUSTICE JOHN BARNES AND MR. JUSTICE JEREMY BERKELEY-TUCHMAYER joined.

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Ms. Laura Killinger,  
Mr. George Battle,  
for Plaintiff

Mr. Shawn Fraley,  
Ms. Melinda Manning,  
for Defendants

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## I.

Plaintiff Jermain Reeves ran for RHA President, appearing as the sole name on the ballot. After a close race against write-in candidate Defendant Murray Coleman, Plaintiff Reeves was notified by Elections Board Chair Defendant Heather Faulk that he was the winner. Subsequently, confusion arose regarding the validity of 107 graduate student votes. After consulting with several people, including Speaker of the Student Congress Morayo Orija and Graduate and Professional Student Federation President Bryan Kennedy, Defendant Faulk discarded the 107 graduate student votes, re-tallied the totals and declared Defendant Coleman the winner. She also later certified that result. Plaintiff Reeves brought suit with this Court seeking to have a re-election wherein qualified graduate student votes would be counted. Plaintiff Reeves also sought to have Defendant Coleman disqualified on the basis of certain alleged campaign violations.

We find for the plaintiff.

## II.

All members of the Residence Hall Association (RHA) are entitled to vote for the RHA President. [n2] Furthermore, Graduate students living on campus in any of the undergraduate residence halls who pay the RHA fee (currently set at \$9.25) are members of the RHA if not prohibited from membership by employment or other disqualification.

The Constitution states, "There shall be a Residence Hall Association (RHA) whose duty it shall be to handle all matters concerning student life in University-owned and approved undergraduate residence halls...." [n3] Furthermore, the Code states, "Only those students living in residence halls that are members of the Residence Hall Association may vote in the elections for the Residence Hall Association President or on policies and issues affecting the Residence Hall Association." [n4] Our analysis turns on our interpretation of these two sections.

Defendants argue that the fact that the phrase "undergraduate residence halls" [n5] is used in defining the RHA in the Constitution means that only undergraduates in residence halls can be members of RHA. We find this argument unpersuasive. The reasonable conclusion, and the one which we draw, is that the phrase merely distinguishes the residence halls in which undergraduates live from Odum Village. Even Craige Residence Hall, the residence hall with the largest population of graduate students, has a population in which undergraduates are in the majority. [n6] It is quite possible, given that the Constitution has remained largely unchanged for several generations of students, that at one point all residence halls other than Odum Village were reserved for undergraduates. The phrase would then merely reflect the state of affairs at the adoption of the Constitution. Whether this was in fact the case is, however, irrelevant to our analysis. Either Craige Residence Hall is an "undergraduate residence hall" [n7] within the meaning of the Constitution and all of its residents who pay the RHA fee are members of RHA, or it is not an "undergraduate residence hall" [n8] and no one living in Craige can be a member of RHA. Finding the latter an untenable decision, the Court finds that Craige Residence Hall is an undergraduate residence hall within the meaning of the Constitution, and that all students living therein are eligible members of RHA.

Defendant also argues that the phrase from Title VI of the code stating that "[o]nly those students living in residence halls that are members of the Residence Hall Association may vote in the elections for the Residence Hall Association President..." [n9] means that there are some students living in the residence halls who are not members of the RHA. We agree. However, Defendant also asserts that the students mentioned that live in the residence halls and are not members of RHA are graduate students. It is here that our opinions diverge. The Department of University Housing (DUH) employs graduate students as Assistant Area Directors for every Area on campus. It is our understanding from statements made at trial, and from our own conversations with DUH officials and with the Payroll Department, that Assistant Area Directors are not members of RHA, due to the fact that part of their remuneration is free housing and that they pay neither rent nor the RHA fee. [n10] We imagine that this may also have to do with problems of undue influence and conflicts of interest. RHA was set up to voice student concerns to the DUH and having DUH employees as members of RHA may defeat or compromise that purpose. Whatever the reasons, we interpret this phrase to refer to these employees, and not, as the Defendants allege, to the possibility that graduate students are not or can not be members of RHA. As we have already stated, graduate students are eligible to be, and are, members of RHA. [n11]

Given these statements by the Constitution and Title VI, and our interpretation of them, it is absolutely indefensible that the graduate students from whom a \$9.25 fee is collected for the RHA should be denied the right to vote for the head of the organization for whom that money is not only taken, but earmarked.

### III.

We turn now to the plaintiff's allegations of Elections Law violations by the Plaintiff against the Defendants.

#### *Defendant Coleman.*

At the close of the Plaintiff's case we granted Defendant Coleman's Motion for Judgment as a Matter of Law. With all evidence presented at that time taken in the light most favorable to the Plaintiff, there was insufficient showing that Defendant Coleman had foreknowledge of either violation alleged [n12], which would have been necessary to require Coleman's disqualification. Since disqualification would not have been required, and there is no showing of abuse of discretion by the Elections Board Chair in merely issuing a warning, the outcome would not have been changed by these violations.

#### *Ambiguous Code Sections.*

However, some uncertainty arose during argument as to the meaning of "mass use of voice mail" as it is used in Title VI, Article VII, Section 171.C.1. Our discussion led us to the conclusion that "mass" was somewhere between the entire student body of the University and two or three friends. Randomness may be the determining factor, i.e. the entire Black Student Movement is not mass, but all of the B's in the phone book would be. At trial, Defendant Faulk, the proponent of the legislation and the Elections Board Chair testified that mass was meant to address automated or technologically duplicated voice mails by candidates. We strongly urge the 81st Student Congress to address this issue and clarify the meaning of "mass use of voice mail."

Furthermore, some confusion arose as to the intent of Title VI, Article VI, Section 151.C, the definition of Campaign Worker. As it currently reads, the section would seem to include the *Daily Tar Heels'* endorsement of candidates, or at least that if it does not, the only reason is because the DTH doesn't inform the candidate of its endorsement ahead of time. For example, if the DTH tells Coleman they are endorsing him tomorrow, they become a campaign worker, but if the BSM doesn't tell him, but prints an endorsement anyway, they are not a campaign worker. It seems a pointless distinction to draw when defining a Campaign Worker. We urge the Student Congress to clarify its intent, perhaps by providing an example in the Code or by at least addressing the DTH issue.

In addition, we suggest that the 81st Congress codify the status of graduate students. We hold that graduate students who reside in residence halls and pay the RHA fee are members of the RHA and may vote according to Title VI, Article III, Section 123.C. We suggest clarifying Part B of that Section to reflect that graduate students are not only residents of their "School, Department, Curriculum," etc., but may be a resident of a residence hall and a member of RHA.

*Defendant Faulk.* [n14]

Defendant Faulk incorrectly advised Murray Coleman that, as a write-in candidate, he did not have to follow the same rules as the other candidates, in direct contradiction of Title VI, Article IV, Section 134.A. As a result, Murray Coleman and/or his staff unknowingly violated campaign laws. When the error and subsequent violations were discovered, they were quickly remedied. Nevertheless, during the night and following day that the illegally placed campaign flyers were posted, Murray Coleman may have gained an unfair advantage over Jermain Reeves. By itself, however, this violation(s) is not enough to require us to overturn the discretionary decision of the Elections Board Chair and order a re-election.

Conversely, the exclusion of 107 graduate student votes had a profound effect on the outcome of the election. [n15] Given the available alternatives, their exclusion was an abuse of discretion by the Elections Board Chair. The exclusion of valid votes should always be the last resort of the Elections Board Chair. Defendant Faulk had at least two available alternatives before her when she discovered that some of the graduate student votes might be invalid: throw them out and declare a winner; or, recognizing that she did not know how many, if any or all, of the graduate student votes were valid, hold a re-election. There was, in fact, a run-off election held the following week for the Student Body President. The addition of an RHA re-election to the already campus wide ballot would have saved a lot of trouble. [n16] In addition, a week should have been sufficient time for the Elections Board to compose a system which would more reliably collect valid graduate student votes. [n17] By choosing to invalidate an unknown number of valid graduate student votes, Defendant Faulk violated the rights of both Plaintiff Reeves and those graduate student members of RHA who voted. Defendant's decision fell outside the bounds of acceptable mistake or discretion.

#### IV.

Therefore, we find the certified results of the 9 February 1999 election of the Residence Hall Association President void. We hereby order a re-election to take place on 30 March 1999. Pursuant to Title VI, Article III, Section 121.E.2 [n18]; Title VI, Article IV, Section 133.G [n19]; and Title VI, Article IV, Section 134.A [n20], the Plaintiff's name shall appear on the ballot, and Defendant Coleman must run again as a write-in candidate. This is consistent both with the Code and with the inherent nature of a re-election and returns the parties to their positions in the original election. This election shall be conducted by the Elections Board Chair [n21], or in the event she is unable to perform her duties, by the Vice-Chair of the Elections Board, pursuant to Title VI, Article II, Section 117.B&C [n22]; and Title VI, Article II, Section 113.A [n23].

*It is so ordered.*

#### Endnotes

1. The Code of Permanent Laws of the Student Government of the University of North Carolina at Chapel Hill (1998).
2. Code, Title VI, Art. III, Sec. 123.B.3.
3. Code, Title I, Art. I, Sec. 7.
4. Code, Title VI, Art. III, Sec. 123.B.3.
5. Code, Title I, Art. I, Sec. 7.
6. It is the court's understanding that the makeup of Craige's population is approximately as follows: 1/3

Graduate Students, 1/3 Undergraduate Students, 1/3 International Students.

7. Code, Title I, Art. I, Sec. 7

8. Id.

9. Code, Title VI, Art. III, Sec. 123.B.3

10. Resident Assistants, on the other hand, are members of RHA because they receive only reduced room rent as remuneration and do pay the RHA fee. In addition, the Resident Assistant is less likely to make actual decisions over punishment, etc. of students in their area than an Assistant Area Director is. Thus, conflict of interest is less of a problem.

11. RHA President Jernigan testified at trial that graduate students who qualify (duly registered student, pay the RHA fee...) are eligible to run for RHA Area Governor, Floor Senator, etc.

12. Plaintiff alleged that Coleman had foreknowledge of a BSM voicemail endorsing him the night before the election. Plaintiff further alleged that Coleman was present and aware of certain poster violations. All evidence points either to the fact that Coleman never knew of the violations ahead of time or that at the time they occurred, he had no knowledge of their illegal nature because of his reliance on advice by Defendant Faulk to the contrary. Without foreknowledge, the sanctions on Coleman were under the discretion of the Elections Board Chair, and we do not find that there is any showing of an abuse of that sanctioning discretion in this instance.

13. "For the purposes of this act a Campaign Worker shall be defined as any person who, with the candidate's knowledge, assists the candidate either directly or indirectly in publicizing the candidate's name or candidacy, by giving his/her time, money or materials free of charge or at below cost."

14. We preface our remarks on Defendant Faulk's actions by recognizing that Elections Board Chair is one of the most thankless jobs in UNC-CH Student Government. It is a difficult and demanding job that is nearly impossible to perform flawlessly.

15. It was stipulated by the parties that the exclusion of the 107 votes dropped Reeves from 810 to 703 votes, whereas Murray Coleman's vote total remained unchanged at 743.

16. We recognize that there is latitude for the Elections Board Chair to make mistakes, even if they may affect the outcome of an election, this mistake not only violated the rights of the Plaintiff, but of an unknown number of graduate student members of RHA, and as such, crossed the line from harmless error to abuse of discretion.

17. For example, before computer use was widespread, we voted on slips of paper, showing our ID's. The Elections Board could have relied on the Honor Code to discourage unqualified voters from voting or use a voter list to be checked off at each poll station.

18. "The re-election shall be open to all qualified candidates of the initial election, except those disqualified by the Elections Board or the Student Supreme Court."

19. "It shall be the duty of the Elections Board Chair to determine the standing of all candidates qualified for election by petition or write-in."

20. "Any students who meet the qualifications for office may be elected to that office as a write-in candidate. The candidate and his/her supporters shall be subject to the limitations and regulations governing all candidates, except that he/she shall not be required to submit a petition nor attend the compulsory Candidates Meeting."

21. We stress that the Court has in no way required Elections Board Chair Faulk to resign or to abstain from conducting this re-election. If she feels she would be biased, we would encourage her to recuse herself, but this Court and the Code will not require such action.

22. "B. The Elections Board Vice-Chair shall serve as Acting Chair in case of the absence of the Elections Board Chair.

"C. The Elections Board Vice-Chair shall succeed to the office of the Elections Board Chair in case that office becomes vacant."

23. "The Chair and the Vice-Chair of the Elections Board shall serve one (1) year or until their successors are appointed and confirmed,..."