

IN THE SUPREME COURT

Action No. 10 SSC 002)	
)	
Horowitz et al.,)	
PLAINTIFFS)	
)	
Versus)	DEFENDANT’S BRIEF
)	
Medlin and Phillips,)	
DEFENDANTS)	

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TABLE OF AUTHORITY

STUDENT CONSTITUTION:

Title I, Article V, § 3

STATUTES:

Title III, Article IV, § 408
Title VI, Article I, § 102.f;
Title VI, Article III, § 314.b;
Title VI, Article IV, § 404.b;
Title VI, Article IV, § 405.f;
Title VI, Article IV, § 405.g;
Title VI, Article IV, § 406.I;
Title VI, Article IV, § 406.J;

STATEMENT OF FACTS

1. During the Spring 2011 election cycle, SCB-92-057, a resolution calling for a referendum on whether to approve a \$16 increase in the student debt services fee to fund the UCommons renovation of the Carolina Union was submitted to Student Congress by Student Body Treasurer Dakota Williams. The resolution was referred to the Student Affairs Committee, which held a hearing on the bill, and ultimately recommended the bill to full Congress unfavorably. Full Congress rejected SCB-92-057 on January 18th.
2. Following the rejection of the referendum by Student Congress, proponents of the UCommons referendum began collecting signatures to have the referendum appear on the ballot. This campaign to collect signatures was primarily organized by the Carolina Union Board of Directions and the Carolina Union Activities Board, both student-run and student-led organizations.
3. Union Design and Marketing Services, an administrative unit of the Union, began a marketing campaign to promote the proposed UCommons renovations. Materials for this marketing campaign included banners hung on and around the Union, a projection of an advertisement on the exterior of Student Stores, and numerous flyers and buttons.
4. As part of the campaign to put the UCommons referendum on the ballot, referendum proponents, headed by the Union Board of Directors, mobilized student organizations, to gather petition signatures.

5. Union administrators and Tyler Mills, President of the Carolina Union, met with Chair of the Board of Elections Andrew Phillips to discuss restrictions placed on referenda by Title VI of the Student Code. Chair Phillips informed them about relevant provisions in election law, relayed complaints received by the Board of Elections about the UCommons campaign, and informed them about aspects of the UCommons campaign that were currently in violation of Title VI.
6. The Board of Elections received additional complaints about the UCommons campaign, including allegations that pro-referendum materials were being distributed in the Union, that campaign materials were posted too close to University computing facilities as defined by Title VI, and that referendum proponents were using incentives to gain signatures.
7. President Medlin released a memorandum on January 27th, 2010. In that memorandum, the President Medlin discussed the lack of a clear standard for determining if petitions are in good order. He also stated that, to fulfill his duty under Title I, Article V, § 3, President Medlin would verify the authenticity of the signatures.
 - a. President Medlin used the Board of Elections signature verification software to check the authenticity of the signatures submitted for the UCommons referendum before directing the Board to place the referendum on the ballot.
8. Referendum proponents presented signatures to President Medlin on February 2nd. President Medlin, finding the signatures to be good order, directed the Board of Elections to place the referendum on the February 8th Spring General Election ballot on February 5th. The Board of Elections promptly added the referendum to the ballot, and gave public notice that the referendum would appear on the February 8th ballot.

STATEMENT OF THE QUESTIONS OF LAW PRESENTED

1. How should the phrase “in good order,” as it appears in Title I, Article V, § 3, be defined?
2. Without a clear definition of “in good order,” by what criteria can President Medlin be determined to have violated Title I, Article V, § 3 when declaring the UCommons referendum petitions in good order?
3. Does Title VI, Article III, Section 314.B grant the Elections Board the authority to regulate the campaigns of referenda?

ARGUMENTS

1. The Defense does not contest that Title I, Article V, § 3 places a duty on the Student Body President to determine if referenda petitions are “in good order.” The Plaintiffs, in their complaint, imply that ‘in good order’ means that a referenda campaign did not violate Title VI of the Student Code. What the Plaintiffs neglected to articulate in that same complaint is that the Student Code offers no definition of what it means to be ‘in good order.’ The Plaintiffs’ definition of ‘in good order’ is based on an interpretation of the Code without textual basis.
2. The Defense finds the Plaintiffs’ definition of ‘in good order’ to be implausible for a number of reasons. First, if the framers of Title I, Article V, § 3 truly intended that ‘in good order’ simply meant ‘legal’ or ‘not in violation of Title VI,’ it is truly perplexing as to why the language ‘in good order’ was ever adopted. The most commonsensical explanation for the use of the phrase ‘in good order,’ then, is that it was indeed meant to signify something else other than ‘legal with respect to Title VI.’
3. According to the Plaintiff’s reading of § 3, any violations of Title VI during the signature gathering *process* are grounds for ruling the petitions are *not* in good order. If this interpretation is correct, the various acts by Union employees would certainly count against any determination that the petitions were in good order. However, if the Defense can demonstrate that the legality of the signature gathering process is *not* an element in determining if the petitions are in good order, then the specific actions taken by Union employees during the signature gathering process are equally irrelevant.
4. Plaintiff’s reading, Title I, Article V, § 3 more directly implies that the Student Body President must make a determination on the petitions themselves, rather than the signature collection process. Consequently, Plaintiff’s allegation that the signature collection process *is* an element of ‘in good order’ is without textual basis.
5. The Plaintiff has attempted to construe Title VI, § 314.B as granting the Elections Board the authority to act on any act taken to advance a referendum. If this reading is correct, the Elections Board’s inaction may be considered nonfeasance in relation to § 314.B. If this reading of § 314.B is implausible, then the inaction of the Elections Board in response to the UCommons campaign cannot be construed as a failure to carry out one of its duties.
6. § 314.B reads that “The Board of Elections shall use its powers specified in Title VI Section 306.A of Title VI to administer all laws pertaining to *student elections*.”¹ However, the emphasized phrase suggests that the authority the Elections Board is granted is far more limited than the Plaintiff realizes. While Title VI, Article I, § 102.f broadly defines ‘campaign’ so as to include actions related to a referendum, § 314.B makes no reference to campaign activity generally. Instead, it grants the board authority to regulate *student elections* in accordance with Section 306.A. Given the intuitive understanding of ‘student election’ as a vote regarding a field of candidates for a particular office, § 314.B

¹ Emphasis added

does not establish for the Elections Board authority to hold referenda accountable to Section 306.A.

CONCLUSION

The Plaintiff fails to offer a compelling argument for why 'in good order' should be understood as merely 'legal with respect to Title VI.' This reading of § 3 of the Constitution, however, is without textual basis. Without any clear meaning of 'in good order,' there is consequently no clear metric for determining of President Medlin's action was illegal or invalid.

The Plaintiff has also failed to demonstrate how the Elections Board failed to carry out its duty in relation to § 314.B. That section of the Code only authorizes action in regards to student elections, rather than campaign activity generally. As the UCommons referendum does not constitute a student election, the lack of Elections Board action on the matter cannot be construed as nonfeasance.

I do affirm that I have read in full the foregoing complaint and that the allegations contained therein are true to the best of my knowledge and belief.

KEVIN WHITFIELD

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

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