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| IN THE SUPREME COURT |) | |
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| Action No. 08 SSC 004 |) | |
| |) | |
| TIM NICHOLS |) | |
| SPEAKER OF STUDENT CONGRESS |) | |
| |) | |
| PLAINTIFF |) | |
| |) | |
| versus |) | ORDER |
| |) | |
| J.J. RAYNOR |) | |
| STUDENT BODY PRESIDENT |) | |
| |) | |
| RYAN MORGAN |) | |
| CHAIR, BOARD OF ELECTIONS |) | |
| |) | |
| DEFENDANTS |) | |

I. BACKGROUND

On February 16, 2009, the plaintiff, Tim Nichols, asked this Court to temporarily enjoin the Board of Elections from placing the Childcare Services Fee referendum on the ballot for the February 17 Special Election on the grounds that the Executive Branch of Student Government had violated VI S.G.C. §§ 402(L)(2) and 405 (2008). The Chief Justice granted the request to stop the election on the referendum, ordering the Board of Elections to halt the release of the final results of the vote on this matter. Subsequently, the plaintiff filed a complaint against Student Body President J.J. Raynor as well as Board of Elections Chair Ryan Morgan, asking the Supreme Court to invalidate the results of the referendum and order that a new vote be held on a later date. The defendants, in turn, filed a motion to dismiss, arguing that the plaintiff, having failed to file a complaint with the Elections Board before filing his complaint with the Supreme Court, lacked proper standing to bring his action. After considering the provisions in the Student Code addressing standing to bring an election action, this Court finds that plaintiff has standing under III S.G.C. § 409(C) (2008). Accordingly, defendants’ motion to dismiss is denied. Additionally, plaintiff’s motion to amend his complaint is denied.

II. DEFENDANTS’ MOTION TO DISMISS

In the hearing on the motion to dismiss, counsel for defendants argued that standing to bring an election error is derived from the title governing Elections Law, Title VI of the Student Code. Under III S.G.C. § 403(C)(1) provides the mechanism by which a student may challenge an action of the Chair of the Board of Elections before this Court. It provides that written administrative and punitive decisions made by the Elections Board Chair may be appealed to the Student Supreme Court. This section is qualified by § 403(J), which requires that such an appeal of the Chair’s decision must first be made in writing to the Board of Elections within forty- eight

(48) hours of such a decision. Plaintiff claims standing under the section of the Code governing Judicial Affairs, Title III. III S.G.C. § 409 provides:

“Standing to bring an action before the Supreme Court for an election error or fraud in the acts, decisions and rulings of the Elections Board extends to plaintiffs who must have his/her powers, rights, privileges, benefits or immunities adversely affected, restricted impaired or diminished and the plaintiff must be: . . . (C) A student alleging election error in relation to a constitutional referendum, a constitutional initiative, a special referendum, an initiative election, or a review election.”

In an effort to give effect to all provisions in the Student Code, we shall strive to interpret a provision so as to be consistent with all others, if inconsistency may be avoided. As such, we read III S.G.C. § 409 and VI S.G.C. § 403(C)(1) concurrently, finding that a petitioner may find standing under either of these provisions.

It is clear that the plaintiff does not have standing under VI S.G.C. § 403(C)(1). Mr. Morgan, the Chair of the Elections Board, never issued a written administrative or punitive decision in this matter. As such, no appeal may be made under this section.

III S.G.C. § 409 allows for any student alleging an election error in a referendum to bring their action before the Supreme Court. Counsel for the defendants argues that, as there was no action taken by the Board of Elections in response to the plaintiff’s initial complaints, there is nothing upon which to claim error. We disagree. The matter, when brought to the attention of Mr. Morgan, Chair of the Board of Elections, was extremely time sensitive. The issue was raised the night before the vote for the referendum was to be held, and therefore, time was of the essence. Mr. Morgan, by failing to begin an investigation, did in fact commit an act of omission upon which the plaintiff may claim an error. The plaintiff realized that there was only a small window of time in which he could halt the release of the results of the vote, and III S.G.C. § 409 was the only mechanism by which he could accomplish that objective.

We are not inclined to find that before one may bring an action before the Supreme Court, one must wait for the Board of Elections to conclude an investigation on a claim of election error, particularly if that investigation will not be concluded until after the release of election results to the public. If, with such time constraints, the Board takes no action on a complaint and releases results for not only referenda, but Student Government candidates as well, there is a risk of great, irreversible error. In matters such as this, when time is an essential element in obtaining relief, III S.G.C. § 409 is an appropriate mechanism by which one may prevent the release of the results of the student vote.

III. PLAINTIFF’S MOTION TO AMEND PLEADING

In his motion to amend his pleading, plaintiff argues that he has standing under III S.G.C. § 408 to bring an action based on “the invalidity or illegality of an act of a student body officer, member of the administration executive committee, cabinet or committee of the executive branch.” Plaintiff argues that because the Board of Elections falls under the executive branch of

government, that this section provides him with standing to bring an action against them. We find that this provision does not apply in this case, as all seats on the Elections Board are filled by the external appointment process, and as such creates the Board as a body independent of the executive branch. Because of these reasons, and because plaintiff has already secured standing under Title III, § 409, plaintiff's motion to amend pleading is denied.

IV. ORDER

1. The defendants' motion to dismiss is denied.
2. The plaintiff's motion to amend the complaint is also denied..
3. Although the temporary injunction never enjoined the Board of Elections from carrying on their duties in investigating this complaint, they have not yet begun such an investigation. This Court orders that they start investigation regarding the election error in this matter.
4. A full hearing will be conducted on this matter on Monday, February 23, 2009. In the interest of efficiency, the Court further orders each party to file briefs explaining their legal arguments against or in defense of the actions alleged in the complaint and answer. Briefs must be filed with the Court and served on the opposing party by 6:00 p.m. on Sunday, February 22, 2009.

Done this 20th day of February, 2009, at 9:00 p.m.

/s/Stephanie L. Kelly
Stephanie L. Kelly, J.
for the Court