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| IN THE SUPREME COURT               | ) |                    |
|                                    | ) |                    |
| Action No. 10 SSC 002              | ) |                    |
|                                    | ) |                    |
| Adam J. Horowitz, Leah Josephson,  | ) |                    |
| Christopher B. Lane, Chelsea Cook, | ) |                    |
|                                    | ) |                    |
| Plaintiffs                         | ) |                    |
|                                    | ) | ORDER GRANTING     |
| versus                             | ) | PLAINTIFF'S MOTION |
|                                    | ) | TO AMEND THEIR     |
| Andrew Phillips,                   | ) | COMPLAINT          |
| Chairperson, Board of Elections,   | ) |                    |
| Hogan Medlin,                      | ) |                    |
| Student Body President             | ) |                    |
| Defendants.                        | ) |                    |

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I. BACKGROUND

- (1) On February 7, 2011 at 6:02 p.m., Plaintiffs Adam J. Horowitz, Leah Josephson, Christopher B. Lane, and Chelsea Cook, filed a Complaint asking this Court to enjoin the Board of Elections from allowing the UCommons referendum from appearing on the February 8, 2011 ballot, or, alternatively, from certifying and releasing the results of the UCommons referendum on the grounds that the Union campaign in support of the passage of the referendum violated numerous election laws under Title VI of the Student Code. See Title VI S.G.C. §§ 404(B), 405(F), 405(G), 406(I)(1), and 406(J) (2009). Additionally, the Plaintiffs contended that both Student Body President Hogan Medlin and Chairman of the Board of Elections Andrew Phillips failed in their respective duties to address these alleged campaign violations, as required by duties charged to them by the Student Code. See Title I, S.G.C. Article V § 4, and Title VI S.G.C. § 314, respectively.
  
- (2) Defendants submitted a timely answer to the Court responding to Plaintiffs' Complaint on February 9, 2011.
  
- (3) Defendants submitted a timely motion to dismiss Plaintiffs' Complaint on Thursday, February 10, 2011. Defendants based their motion to dismiss on Plaintiffs' alleged failure to adequately establish standing in the Complaint as required by Title III § 501(A)(2) by failing to "explain, in any detail, how they have been directly and adversely affected." See Motion to Dismiss of Medlin and Phillips, ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011).

- (4) Upon receiving the Defendants’ motion to dismiss, Plaintiffs filed a timely motion to amend their Complaint, requesting to cure the alleged standing defect. See Motion to Amend of Horowitz, et al., ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011).

## II. ANALYSIS

Title III § 524(A) (2009) allows parties to motion to amend their pleadings after submitting the pleadings to the Court, so long as the motion to amend is made prior to trial. However, § 524(B) mandates that amendments to pleadings “shall be granted and the proper order shall be issued if it is determined that the granting of the amendment will not result in prejudice or hardship to the other party”—implying that motions to amend pleadings prior to trial shall be denied if granting the motion would cause prejudice or undue hardship to the opposing party.<sup>1</sup> Thus, in determining whether to grant Plaintiffs’ motion to amend their Complaint, I must determine whether granting Plaintiffs’ motion will result in prejudice or hardship to Defendants.

At first glance, it appears that granting Plaintiffs’ motion to amend their Complaint could potentially cause prejudice or undue hardship to Defendants-- by depriving them of what appears on its face to be a likely successful motion to dismiss-- in order to allow Plaintiffs to cure a defect brought on by their own careless drafting. However, a closer examination of the Student Code reveals that “looks can be deceiving”, and that in fact, granting Plaintiffs’ motion to amend causes Defendants neither prejudice nor undue hardship.

It is true that Title III § 501(A)(2) requires Plaintiffs to assert in their Complaint their right to bring their claim before the Court by alleging proper standing. § 501(A)(2) defines standing as “an allegation of the grounds upon which each plaintiff claims standing to bring the action.” In Defendants’ motion to dismiss, however, Defendants concede that Plaintiffs cite the correct portion of the Student Code to establish standing by Plaintiffs citing Title III § 409(B). As such, Defendants’ motion to dismiss can only be interpreted to assert that Plaintiffs’ failure to support their statutory allegation of standing with specific factual details as failing to sufficiently allege the “grounds” required by § 501(A)(2). See Motion to Dismiss of Medlin and Phillips, ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011). However, though Defendants’ interpretation is not unreasonable, their interpretation is not the only reasonable interpretation of the meaning of “grounds” as used in § 501(A)(2).

§ 501(A)(2) gives no express guidance as to whether “grounds” as used in the definition of “standing” must include both citation to the correct statutory section and underlying factual details, and no other part of the Student Code addresses this procedural issue. Additionally, no part of the Student Code expressly prohibits a party from later providing or elaborating upon the factual details underlying a correct statutory allegation of standing in either a pre-trial hearing or during trial simply because the facts were not alleged in a party’s Complaint. Thus, § 501(A)(2) reasonably may be interpreted as only requiring that parties state the correct statutory allegation, or alternatively as the defect being curable during oral arguments and thus not fatal by itself to the party’s claim. I interpret § 501(A)(2) in the latter manner, and not in the manner advanced by

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<sup>1</sup> Emphasis added.

Defendants in their motion to dismiss. Thus, I conclude that granting Plaintiffs' motion to amend causes Defendants no prejudice or undue burden in the sense that it does not deprive them of an automatic win.

However, I must still consider whether any other effect of granting Plaintiffs' motion to amend may cause the Defendants prejudice or undue burden. In this instance, I see one potential issue—though it is curable.

In this case, Plaintiffs—the instigators of the suit-- filed a Complaint containing a correct statutory standing allegation that nevertheless failed to support the statutory allegation with relevant factual details. While I have determined that Plaintiffs' failure is not fatal to their suit—and thus not grounds for dismissal-- their drafting did potentially prevent Defendants from seeking other grounds on which to file a motion to dismiss, particularly in light of the ambiguity contained in § 501(A)(2). As such, to avoid prejudice to Defendants, I grant Defendants leave to file additional motions to dismiss based on any other theory that they may find in the merits of the case, finding that this deadline will not impose an undue burden on Defendants.

#### ORDER

ACCORDINGLY,

The Court GRANTS Plaintiffs' Motion requesting leave to amend their original Complaint. The Court also ORDERS Defendants be GRANTED leave to file a new motion to dismiss if so desired, and the Court provides a deadline for submission of the motion to dismiss of Friday, February 11, 2011 at 5 pm.

Done this 11th day of February 2011, at 12:19 a.m.

/s/Jessica E.H. Womack  
Jessica E.H. Womack, C.J.  
for the Court