

IN THE SUPREME COURT

Action No. 10 SSC 001)
)
Rick Ingram,)
PLAINTIFF)
)
Versus) ANSWER
)
Andrew Phillips)
Chair, Board of Elections)
DEFENDANT)

I. Jurisdiction

Admit the allegation. Restatement of The Code.

II. Standing

Admit the allegation. Restatement of The Code

III. Necessary Defendants

Deny the allegation in part. The Plaintiff is correct in asserting that, as a formal party defendant pursuant to Title III, Section 510, Chair Andrew Phillips is a necessary defendant. Thus, the Defense **admits** that portion of the allegation. The Defense **denies** that it caused harm in any manner inconsistent with the Student Code.

IV. Relief

1. *Deny the allegation.* Title VI, Section 310.B.1 establishes that if the Chair of the Board of Elections believes that evidence of harmful or malicious acts exists, the Board must conduct a hearing of disqualification. Plaintiff raises three individual objections as to how the Board proceeded in holding a hearing of disqualification:
 - (i) The two violations for which Mr. Ingram was found guilty are neither an intentional/organized act nor are they a specific plan to obstruct the election process
 - (ii) Confrontation is neither malicious nor harmful.

In response to the first claim: the purpose of the hearing of disqualification is to allow the candidate accused of harmful or malicious acts to respond to charges against them; thus it is only *after* the hearing has occurred that the Board can make a determination as to

whether or not there is clear and convincing evidence of a violation that the acts were malicious and harmful, and thus constituted sufficient cause for disqualification.

The Plaintiff is alleging that, because the Elections Board did not find sufficient evidence for some of the suspected violations, the hearing itself was unnecessary. If Plaintiff's assertion is correct, the Board can only request hearings for cases in which they have already ruled that there is clear and convincing evidence of a violation. However, if the Elections Board already has clear and convincing evidence before a hearing, that hearing would act as nothing more than a rubber stamp for a decision already rendered. One would be hard-pressed to find any legal procedure in which the standard of proof for making an allegation is identical to the standard of proof for determining the truth or falsity of that same claim. Furthermore, it was determined in that hearing that there was clear and convincing evidence for two counts against the Plaintiff's campaign, which weakens the assertion that the entire hearing of disqualification was unfounded. Consequently, the Defense finds that first claim is incoherent.

As to the second claim: the Defense is not alleging that *all* confrontations are malicious and harmful. Rather, the Elections Board was making a determination as to whether the confrontations, as executed by Mr. Ingram and his campaign staff, were malicious and harmful. In other words, the nature of the confrontation between the Plaintiff's and rival campaigns was the very issue being considered.

The Plaintiff also claims that "plain reading of the two charges for which the plaintiff's campaign was held responsible do not constitute an intentional or organized act against another candidate(s) nor do they convey the existence of a specific plan to obstruct the election process." As the relevant statute includes the phrase "These reasons shall include, but not limited to...", the Plaintiff's point is inconsequential. The Code allows the Elections Board to consider actions not specifically enumerated in the aforementioned statute.

2. *Deny the allegation.* Because the Dean E. Smith Center was not originally included on a list of locations in which petition solicitation is prohibited, the Elections Board did not hold campaigns responsible for signatures gathered at that location prior to the Board's directive.

In the mandatory candidates' meeting held on January 18, the Elections Board specifically stated that residence hall solicitation ("dorm-storming") would not begin until January 19. Rick Ingram and Jeff DeLuca, a member of Ingram's campaign staff, admitted to dorm-storming the evening of January 18. The Board subsequently fined the Ingram campaign for soliciting residence halls on the evening of January 18. Mr. Ingram's admission provided 'clear and convincing' evidence of a violation.

Furthermore, Mr. Ingram is incorrect in his assertion that complaints were filed that night against other student body president candidates. No complaints of this nature were filed against Brooklyn Stephens or Mary Cooper. Furthermore, the decision to fine *only* Mr.

Ingram was not the product of selective enforcement, but rather a function of the conclusive evidence of his violation.

3. *Deny the allegation.* The Board of Elections has never refused to investigate Ian Lee. The complaints filed by members of the Plaintiff's campaign have either (a) not contained any conclusive evidence warranting action by the Elections Board or (b) have in fact prompted action from the Elections Board. The Plaintiff asserts that the complaints from his campaign were not taken seriously, as there was no 'official follow-up.' However, there is no clause in Title VI of the Student Code that requires the Board of Elections to confirm or acknowledge receipt of any email.

The Plaintiff also raises concerns over the Elections Board decision allowing Mr. Ian Lee to run for Student Body President. However, the Elections Board ruled in December 2010 that Mr. Lee could run for Student Body President as long as he campaigns on behalf of himself, and not his office. The Plaintiff's assertion that this complaint has not been taken seriously, then, seems unfounded. Furthermore, the statute of limitations for bringing suit against the Elections Board for its administrative decision has long expired.

In regards to electronic signature gathering, the Board of Elections in fact released a decision on the validity of those signatures in 11-BE-02. As that decision was published on January 24, 2011, the statute of limitations for any action based on that decision has expired.

4. *Deny the allegation.* The anecdote provided by the Plaintiff does not offer a clear narrative of how the Elections Board violated Section 306.H. That statute requires the Elections Board notify the accused of any investigation. It does not, however, require that complaints *against* a candidate receive some formal acknowledgement or notification of receipt. Contrary to the Plaintiff's allegations, it would have been a violation of Section 306.H to not notify Mr. Lee of an ongoing investigation.
5.
 - a. *Deny the allegations.* The Plaintiff does not in fact raise a matter of law in this allegation. As an editorial board of *The Daily Tar Heel* does not have any authority under the Student Code, and the Elections Board is in no way subject to any decisions or opinions of that body, the Plaintiff's reference to the article is irrelevant. While the Plaintiff may be frustrated by the conflicting opinions of the editorial board and the Elections Board, his concern has no legal basis.
 - b. *Deny the allegations in part.* The Plaintiff did appear before the Board of Elections for a hearing of disqualification on Monday, February 7, but the proceedings were entirely consistent with the Plaintiff's due process rights. The Plaintiff agreed to the Board's suggestion for how the hearing would be structured. The case would proceed count by count so each allegation against the Plaintiff would be examined by the Board. In each instance, the witnesses alleging misconduct by the plaintiff were brought forward to testify, reminded that their testimony was governed by the Instrument of Judicial Governance, and asked to

tell the Board about the actions of the Plaintiff in question. The Board was given the opportunity to ask additional questions of the witnesses, and then the Plaintiff was allowed to cross-examine the witnesses called against him. Next, the Plaintiff was called to the testify about the allegation in question, with the Board and the campaign alleging the misconduct given the opportunity to ask additional questions. For those allegations in which individuals not affiliated with a campaign brought allegations against the Plaintiff, the Plaintiff still maintained the right of cross-examination, but only the Board was permitted to ask questions, not members of rival campaigns. The Plaintiff was also given the opportunity to respond to evidence (photograph, text messages, and email) brought against him, and in once instance did deny the authenticity of a piece of evidence, a denial the Board took into consideration in its final deliberations. Moreover, the Board allowed the Plaintiff to call additional witnesses to support his claims. Finally, the Plaintiff was given the opportunity to give a closing statement to the Board.

Throughout the hearing, the Board remained in control of the proceedings, and comment from the audience was restricted by the Chair. The seriousness with which the audience, or the campus generally, regarded the proceedings, is beyond the Board's control and outside the Board's legal authority. Thus, it presents no question of law. As in the allegation in 5a, the Plaintiff's references to articles in *The Daily Tar Heel* are irrelevant, as the publication has no authority under the Student Code.

Moreover, any superficial examination of the video footage of the meeting will attest to the fact that, if any party contributed negatively to the atmosphere of the hearing, it was the campaign staff of the Plaintiff. The person best suited to regulate the actions of the Plaintiff's campaign staff is, quite obviously, the Plaintiff himself.

Finally, the Plaintiff's allegation that the Board failed to conduct "fair and impartial student elections" is unfounded, since this Section 301 clearly requires the Board to conduct student *elections*, and is silent on the issue of the proceedings by which the Board must investigate and pass judgment on alleged violations of election law.

6.
 - a. *Deny the allegations in part.* The Plaintiff is correct in asserting the Board issued a 10% fine against the Ingram Campaign (which amounts to \$25) for collecting signatures in classroom buildings as a result of evidence presented during the hearing of disqualification on February 7. The Plaintiff is also correct in asserting that the Board fined the Plaintiff's campaign 5% of its campaign expenditures (which amounts to \$12.50) in response to illegal residence hall solicitation on February 2. Yet the Plaintiff ignores the additional allegation and rationale outlined by the Board in 11-BE-05, the punitive decision issued after the hearing of disqualification. In 11-BE-05, the Board found the Plaintiff's campaign to be in violation of Title VI by gathering signatures in classroom buildings, *and* to have obstructed the election process by trying to dissuade Krisitian Doty, a student who

had observed the signature gathering and questioned its legality, from reporting the incident to the Board of Elections as required of all students under Section 410 of Title VI. The fact that the Plaintiff's campaign violated an express provision of Title VI by gathering signatures in classroom buildings and then proceeded to deter a student from reporting the violation as required by Section 410, in the opinion of the Board, warranted a larger fine. Thus, the fine was "appropriate" to the relevant violations.

- b. *Deny the allegation in part.* In response to evidence presented at the February 7 hearing of disqualification, the Board did fine the Plaintiff's campaign an additional 5% of its campaign expenditures (which amounts to \$12.50). The Plaintiff has, once again, ignored the Board's rationale in 11-BE-05. The incident in question was an interaction between Billy Kluttz and the Cooper campaign in which Mr. Kluttz said "Thank you for taking the sexist language off your website" to Ms. Cooper in the Pit. During the hearing of disqualification, the Plaintiff, Ms. Cooper, Mr. Kluttz, and Adam Jutha (a student who witnessed the incident) all agreed that the incident took place and all parties concurred on the wording of the statement in question. The corroborating testimony of all parties, including Mr. Kluttz's admission that he had made that statement to Ms. Cooper, provided the Board with clear and convincing evidence that the incident occurred. The Board further determined that this action constituted a malicious and harmful action to the campaign of Ms. Cooper, due to the fact that the comment was made publicly and could therefore negatively impact the campaign of Ms. Cooper.

V. Demand for Judgment

Based on the implausibility of the Plaintiff's claims, the Defense requests that the Supreme Court deny the Plaintiff's demands for judgment on the grounds that the fines issued by the Board of Elections were consistent with the violations admitted by the Plaintiff and that the authority of the Supreme Court does not extend to ordering individuals to issue public apologies.

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

Respectfully Submitted,

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