

No. 08 SSC 006

Student Supreme Court

Filed: 25 March 2009

RONALD F. BILBAO,
Plaintiff

v.

Opinion and Order

RYAN MORGAN;
THE BOARD OF ELECTIONS,
Defendants

Complaint by Plaintiff Ronald F. Bilbao concern orders of the Defendant Board of Elections as reflected in Punitive Decision 08-BE-030 and Punitive Decision 08-BE-031. Heard in the Supreme Court 23 March 2009.

Garrett L. Haywood, for plaintiff.

Val Tenyotkin, for defendant.

ERICH M. FABRICIUS, Justice.

Plaintiff Ronald F. Bilbao, a former candidate for Student Body President, challenges the validity of punitive sanctions issued by the Board of Elections for violation of VI S.G.C. § 402(G) (2008), concerning yard signs.

I. Background

The parties appear to be in agreement as to the basic events underlying this case. Ronald F. Bilbao was a certified candidate for Student Body President, with the general election occurring on 10 February 2009. The morning of election day, the Bilbao campaign decided to post stake-mounted campaign signs, in the quad immediately in front of Wilson Library. Prior to placing the signs, the campaign sought and received the approval of the campus grounds department, by way of one Ms. Nancy Graves, Administrative Assistant for the Office of the Associate Vice Chancellor for Campus Services.

Shortly after posting the campaign signs, the campaign was contact by Ryan Morgan, the Chairman of the Board of Elections, who informed them the signs were a campaign violation and ordered their immediate removal. Mr. Bilbao and his campaign disagreed with Mr. Morgan's determination, and refused to remove the signs. The campaign also consulted with the Board's vice chairman, Val Tenyotkin, regarding potential sanctions.

On the evening of 10 February 2009, the results were tabulated for the general election and released. Mr. Bilbao came in third, and was eliminated from the subsequent run-off.

Thereafter the Board issued formal written sanctions in this matter, both dated 12 February 2009. The first, Punitive Decision 08-BE-030, deemed the signs to in violation of VI S.G.C. § 402(G) (2008) and fined the campaign \$40.00. The second, Punitive Decision 08-BE-031, declared the aforementioned violation to be knowing and willful, and subject to automatic disqualification under VI S.G.C. § 403(I)(1)(e) (2008).

Plaintiff initially filed a complaint challenging only the disqualification, *Bilbao v. Morgan*, No. 08 SSC 005 (filed Feb. 20, 2009). However, this Court found such a challenge to be moot and dismissed it for lack of jurisdiction. *Bilbao v. Morgan*, No. 08 SSC 005 (Feb. 26, 2009) (order granting motion to dismiss). In dismissing, we granted leave to Bilbao to file a new complaint based on his initial notice of commencement. *Id.*

Bilbao filed his subsequent complaint, the instant action, on 27 February 2009. Bilbao asserts that his campaign activity did not violate VI S.G.C. § 402(G) (2008), and that therefore the Board erred in issuing the two sanctions.

II. Jurisdiction and Standing

As this matter concerns the validity of actions of the Board of Elections under the Student Code, this Court holds general jurisdiction to hear and decide the complaint. III S.G.C. § 401 (2008). Standing in this matter is governed by III S.G.C. § 409 (2008), which 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:

...

B. A student directly and adversely affected by a regulation, ruling, or determination of the Elections Board.

The fine against Bilbao levied in 08-BE-030 is a classic case where standing arises in the elections context. The ruling of Board was targeted directly against Bilbao, diminishing his freedoms by requiring a payment of \$40.00 out of funding under his control. *See* VI S.G.C. § 403(E)(3) (2008) (requiring payment of fines out-of-pocket for publicly financed campaigns).

However, standing does not arise to challenge the disqualification as an independent matter. As we noted in our order in the earlier *Bilbao v. Morgan*, Bilbao's disqualification after having already lost the election has no "meaningful impact on his rights, privileges, and interests under the Student Code." *Bilbao*, No. 08 SSC 005 (order granting motion to dismiss). Presented independently, such a standing defect is jurisdictional, as this Court has power under the Student Constitution only to hear live controversies. Mere bundling a challenge of disqualification along side other challenges does not change this reality. In the limited case where such disqualification is dependent on a separate punitive sanction properly before this Court, proper injunctive

invalidation of that separate sanction may necessitate invalidation of all subsequent and subsidiary acts of the Board.

III. Applicability of § 402(G)

The crux of the plaintiff's argument is that since they sought and gained approval of the campus grounds officials, they cannot, as a matter of law, have violated IV S.G.C. § 402(G) (2008). Bilbao premises this argument on the belief that violations can be issued under this section only with the advice and consent of university officials, so if those officials grant consent in advance, the campaign can be later issued a violation for the conduct. This belief flies in the face of a tradition of student self governance at this university and is entirely without merit.

In its entirety, § 402(G) provides:

No campaign materials may be placed on trees, shrubs, or other plants on the University campus. The Board of Elections shall fine such candidate the sum of five dollars (\$5.00) plus the estimated cost of restoration for each violation with a total fine not to exceed fifty dollars (\$50.00) with the advice and consent of the proper University officials.

While Bilbao is correct that advice and consent of university officials is involved in the process of administering this section, such advice and consent does not have the role he would assign it. The plaintiffs would read this section to require approval of any fines. We disagree with this reading. Rather, we find that the purpose of university consultation is to determine the estimated costs of restoration, for which the Board has no independent basis to determine.¹ When multiple ways exist to interpret a statute, we will adopt the interpretation that minimizes administrative involvement in student governance.

As the Board issued a fine of \$5.00 per sign, they levied the statutory minimum fine, and assessed no costs of restoration. When no costs of restoration are assessed, the university's opinion is immaterial, and advice and consent unnecessary. Accordingly, we hold that the penalty clause of § 402(G) was not violated by the Board's decision.

Bilbao also disputes that his actions fall within the scope of the conduct clause, which provides that "[n]o campaign materials may be placed on trees, shrubs, or other plants." IV S.G.C. § 402(G). Bilbao's position is that ground in which the stakes were inserted was barren, and that no plants, including grass, were involved. Plaintiff is correct that if the ground was barren, there is no basis for the Board to issue sanctions under this section. However, the burden falls on the plaintiff to prove such an error by the Board. III S.G.C. § 608 (2008). In the instant case, plaintiff has made no showing

¹ Even under the plaintiff's reading, the statute speaks only to advice and consent at the time of fining. This statute in no way contemplates advance approval, and nothing stops a university official from changing his or her mind when presented with the same situation before and after the fact. An agreement by the official to not give consent is unenforceable in this Court as counter to public policy, if not for outright want of jurisdiction.

whatsoever on which this Court could find that the ground as barren and the statute inapplicable.

Thus, we decline to invalidate 08-BE-030. As 08-BE-030 remains in effect, we need not address the issue of whether the disqualification in 08-BE-031 can survive without the violation 08-BE-030.

IV. Board of Elections Process

In course of oral arguments, counsel for the plaintiff delivered a narrative harshly critical of the process the Board of Elections used to review and issue the punitive sanctions. Such criticism is disturbingly familiar, as we have previously vacated actions of this very Board for failure to comply with the procedural standards of Title VI. *Wohlford v. Morgan*, No. 08 SSC 002 (Jan. 25, 2009). Nevertheless, Bilbao choose not to raise a procedural challenge to the Board's actions in his initial complaint, nor did he seek amendment to his pleading. A plaintiff has discretion to choose on which grounds to seek relief, and a defendant is entitled to an opportunity to respond.

This is not to say new arguments cannot emerge at trial. However, taken as a whole, Bilbao's procedural remarks do not rise to level of asserting an argument on which relief could be granted. As such, we decline to consider whether procedural laws were followed in the course of issuing the Bilbao punitive decisions.

V. Order

We find for the defendant in this matter, and Punitive Decision 08-BE-030 is affirmed. In affirming, we express no opinion as to the propriety of the process used by the Board of Elections in issuing this sanction and decision.

Justices SAM HARRELL and ALLEN SOUZA and Chief Justice EMMA HODSON concur.

Justice STEPHANIE KELLY did not participate in the consideration or decision of this case.