

IN THE STUDENT SUPREME COURT)	
)	
)	
Action No. 09 SSC 008)	
)	
Taylor HOLGATE)	
)	MINUTES
PLAINTIFF)	of
)	PRE-TRIAL HEARING
versus)	
)	
Peter GILLOOLY,)	
in his capacity as Chair)	
of the Board of Elections,)	
)	
DEFENDANT)	

A pre-trial hearing was conducted in the above captioned matter at 4:00 PM on February 28, 2010 in Van Hecke-Wettach Hall Room 4004. The minutes of this meeting are set forth herein.

CHIEF JUSTICE HODSON called the hearing to order at 4:05 PM. Present were plaintiff Holgate, defendant Gillooly, counsel for the plaintiff Erik Davies, and counsel for the defendant Kris Gould.

CHIEF JUSTICE HODSON: We are here for a pre-trial hearing in 09 SSC 008, *Holgate v. Gillooly*. We will hear from the movant first.

Mr. GOULD: This arises from the same facts as *Holgate and Seelinger v. Gillooly*, No. 09 SSC 007. There, you held that VI S.G.C. § 403(H) dealt only with campaign violations. These are technical issues. You held that § 403(H) did not grant this Court the power to call for a re-election in this scenario. The new complaint only adds a reference to § 602(K). This is the section that has to do with the date of re-election. It does not grant the power for the Student Supreme Court to call for re-election. The only section that is cited to give this Court the power to call for re-election is § 403(H).

Mr. DAVIES: We acknowledge that we did not cite any campaign violation. If I were to change the complaint at all, I would have added a reference to § 511, which reads:

Should the election experience technical difficulties, the Chair of the Board of Elections may extend the duration of the election. Technical difficulties may be grounds for the Board of Elections to call for a reelection if technical difficulties compromised the integrity of the elections process or affected the outcome of the election. A decision must be made within ninety-six (96) hours of the scheduled closing of the election, and must be made only after consultation with all affected candidates, who may present evidence and witness testimony of such difficulties.

The Board failed to address the technical difficulties. We have e-mail correspondence that shows that ITS was hesitant to proceed with the elections because they had been seeing signs of residential information difficulties that would have prevented students from casting valid votes. Some users did submit Remedy tickets, but the issues could not be resolved in time. The provisional ballots were only advertised during the day on the Website. Section 501 requires the board to certify that the election was not corrupted it clearly was in this case.

Mr. GOULD: ITS said after the elections that there were no issues with the ITS equipment. There were only two tickets submitted, and neither indicate that they were in District 5.

CHIEF JUSTICE HODSON: That's an evidentiary issue.

Mr. GOULD: True. The plaintiff did not put § 511 in her first complaint. She had the opportunity to file again and did not cite § 511. She had the opportunity to amend her complaint to add § 511 but did not.

CHIEF JUSTICE HODSON: I want to go through the Motion to Dismiss with you quickly. Is it your position that the Court is restricted in when it may call for a re-election through §§ 403(H) and 511?

Mr. GOULD: Yes.

CHIEF JUSTICE HODSON: Are you familiar with § 403(L).

Mr. GOULD: I can read it, but it would have needed to have been cited in the complaint.

CHIEF JUSTICE HODSON: I'm not sure about that.

Mr. GOULD: It still deals with granting the Supreme Court authority to deal with the complaints. They would have to cite this if they want the Supreme Court to act under this clause.

CHIEF JUSTICE HODSON: Any response to that argument?

Mr. DAVIES: This is my first time dealing with the Supreme Court. I feel that the purpose of this hearing is to see if there are grounds for an appeal.

Ms. HOLGATE: We have evidence that there are problems. You could dismiss it on a technicality, but that's a blow to the legitimacy of Student Government.

CHIEF JUSTICE HODSON: Anything else from either side?

Ms. HOLGATE: This election system has had the same problems for at least eight years. It's a shame that Mr. Gillooly has to get dragged

into this because it's the system that doesn't work. This issue has become bigger than me.

Mr. DAVIES: We don't see it as the role of the Court to act as an advocate. We're not asking you to act as an advocate, but just to see that the election is carried out fairly.

CHIEF JUSTICE HODSON: We will take a five minute recess.

AT WHICH TIME, THE HEARING RECESSED FOR SEVEN MINUTES.

CHIEF JUSTICE HODSON: Before rendering my decision, I'd like to address a comment made by the plaintiff regarding the dismissal of the previous case. When you plead before the Court, you need to tell the Court and the defendant what you're arguing. If you don't cite the authority, the defendant has no ability to defend. It's not a technicality; it's due process. **The defendant's motion to dismiss is denied.** I will allow the case to go forward. I believe that § 403(L) gives this Court the authority to move forward on this case, despite the fact that the plaintiff did not plead it. The plaintiff has cited a theory of relief under § 501(A). We will now simplify issues for trial. There are two issues before the Court: 1) whether the Court may call for a re-election if the Board of Election fails to comply with its duties under § 501 and 2) if the Board of Elections in fact failed to comply with those duties. Mr. Davies, I recommend that you read all of Title III. My Court will not hear evidence about anything related to § 403(H). Because you did not cite § 511, you may not argue that the Board abused its discretion. I'm not enamored with the argument that there is a violation of the Code because Holgate lost by only 25 votes, so that claim also may not be argued. Would the parties like to submit briefs?

Neither Mr. DAVIES nor Mr. GOULD responded.

CHIEF JUSTICE HODSON: I will not order briefs. The Court will hear legal arguments first on how to construe § 501, then we'll hear each side's case-in-chief. All of the evidence that you have now will need to be submitted to the other side by midnight tonight. Any additional evidence will need to be submitted to the other side within 48 hours. I will inform you of the time for the hearing when I have coordinated everyone's schedules.

AT WHICH TIME, THE HEARING WAS ADJOURNED.

I certify that the above minutes are a true and accurate representation of the pre-trial hearing in *Holgate v. Gillooly*, No. 09 SSC 008.

 /s/ Michael R. Gordon
Michael R. Gordon
Chief Clerk
University of North Carolina at Chapel Hill Student Supreme Court