

IN THE SUPREME COURT

Action No. 10 SSC 001)	
)	
Rick Ingram)	
PLAINTIFF)	
)	
Versus)	DEFENSE BRIEF
)	
Andrew Phillips,)	
DEFENDANT)	

TABLE OF CONTENTS

TABLE OF AUTHORITY	2
STATEMENT OF FACTS	3
QUESTIONS PRESENTED	4
ARGUMENTS	4
CONCLUSION	7

TABLE OF AUTHORITY

STUDENT CONSTITUTION:

N/A

STATUTES:

Title VI, § 301.....p. 129

The purpose of the Board of Elections is to conduct fair and impartial student elections in accordance to the Student Government Election Laws.

Title VI, § 306.C.....p. 131

If the Board of Elections determines that violations of Title VI have occurred, the Board shall have punitive powers including the issuance of fines, call for a re-election, issuance of warnings to campaign staffs, and disqualification of candidates. Penalties shall be appropriate to the relevant violation. The burden of proof shall rest on the Board of Elections to provide clear and convincing evidence of a violation. The Board shall not remove any campaign worker from a campaign without such proof that the worker was deliberately and maliciously in violation of election law.

Title VI, § 310.B.....p. 133

Other Disqualification. The Board of Elections may find that a campaign has violated the Election Laws in such a manner as to be considered malicious and harmful. These reasons shall include, but not limited to, repeated or multiple violations of Title VI by a candidate or his/her campaign workers, an intentional and/or organized act of a candidate or his/her campaign against another candidate, or a specific plan to obstruct the election process. If the Chair of the Board of Elections believes that such a level of evidence exists, the Board of Elections must conduct a hearing of disqualification.

Title VI, § 314.B.....p. 135

The Board of Elections shall use its powers specified in Title VI Section 306.A of Title VI to administer all laws pertaining to student elections.

Title VI, § 306.H.....p. 132

Investigation. The Board of Elections shall investigate by its own directive, outside reports, or prompts, cases of misconduct as they relate to Title VI. When an investigation is initiated by the Chair of the Board of Elections, the Vice-Chair of the Board of Elections shall preside over all meetings concerning the matter under investigation. The Chair of the Board of Elections shall report to the Board of Elections his/her findings with proper opportunity for the defendant to respond before issuing an administrative or punitive decision.

STATEMENT OF FACTS

- 1 On January 18, 2011 Rick Ingram formally declared his candidacy for Student Body President at the Mandatory Candidates Meeting, which concluded at approximately 6:45 pm. During the Mandatory Candidates Meeting, the Board of Elections notified all candidates of the residence hall solicitation policy issued by the Department of Housing and Residential Education. The Board also informed candidates that “dorm-storming” (a colloquial term for residence hall solicitation) would begin the following evening, January 19.
- 2 On January 31, the Board issued Punitive Decision 11-BE-03, which fined the Plaintiff’s campaign 5% of its campaign expenditures for violating residence hall solicitation policy. The Board issued this decision after opening an investigation of the Plaintiff’s actions on the night of January 19, and receiving a response from the Plaintiff in which he admitted that he and his campaign staff participated in residence hall solicitation on the evening of January 18.
- 3 On February 4, the Board issued Administrative Decision 11-BE-04, ordering that a hearing of disqualification be held to investigate allegations of malicious and harmful action by the Plaintiff’s campaign. After reviewing statements from fellow candidates Ian Lee and Mary Cooper, as well as students unaffiliated with any campaign, the Board believed that there was a sufficient level of evidence that harmful and malicious action occurred to warrant a hearing of disqualification pursuant to Title VI, Section 310.B.
- 4 On February 7, the Board held a hearing of disqualification into the actions of the Plaintiff’s campaign. As the Defense has already asserted in its answer, for each allegation, the witnesses alleging a violation 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 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.

- 5 On February 7 following the hearing of disqualification, the Board issued Punitive Decision 11-BE-05, which fined the Plaintiff's campaign 10% of its campaign expenditures for gathering signatures in classroom buildings illegally and, by dissuading a student from reporting the violation, obstructing the election process. In addition, the Board fined the Plaintiff's campaign 5% of its campaign expenditures for an incident, detailed in the Defense's answer, a member of the Plaintiff's campaign staff made a public comment about Mary Cooper's campaign that, given the use of the word "sexist" and the public nature of the comment, the Board deemed was harmful and malicious to Ms. Cooper's campaign.

STATEMENT OF THE QUESTIONS OF LAW PRESENTED

- A. Did the Elections Board act in a manner that jeopardized its purpose of conducting fair and impartial student elections?
- B. Was the fine the Elections Board levied against the Plaintiff proportionate to the violated, as required in Title VI, Section 306.C?

ARGUMENTS¹

- 1 In the Plaintiff's Complaint (both original and amended), Plaintiff makes reference to the Elections Board's "failure" to investigate the student body president candidate Ian Lee. The result of these failures, according to the Plaintiff, is that the fairness and impartiality of the Spring 2011 election cycle is suspect. In order to best address each instance of such, the Defense has summarized Plaintiff's specific allegations in the following manner:
- i. Elections Board failed to properly investigate Ian Lee's eligibility to run for student body president
 - ii. Elections Board failed to properly investigate Mr. Lee's use of an electronic signature collection process
 - iii. Elections Board failed to properly investigate complaints filed against Mr. Lee's campaign for "dorm-storming," while Plaintiff's campaign was both investigated and issued fines
- 2 In response to (i): The Defendant did in fact conduct an investigation into Mr. Lee's eligibility to run for student body president, culminating in "Administrative Decision 10-BE-07." That document was published on December

¹ The Defense has filed several motions to dismiss particular allegations based on the statute of limitations. Those motions were still pending at the time this brief was drafted and submitted. The arguments contained in this brief respond to some of the very same allegations the Defense has moved to dismiss. This document, however, only considers the merits of the case, rather than procedural issues.

13th, 2010. That administrative decision allowed for Mr. Lee to concurrently run for student body president and serve as student body secretary.

- 3 In response to (ii): The Defendant did in fact conduct an investigation into the legality of electronic signatures, culminating in “Administrative Decision 11-BE-02.” That document was published on January 24, 2011. That decision rules that “Electronic signature gathering is permissible under the Student Code because there is no provision that prohibits it.”
- 4 In response to (iii): The Elections Board did, in fact, treat all complaints with equal weight. However, the Elections Board was only able to find ‘clear and convincing evidence’ of Plaintiff’s violation. This should be no surprise to the Plaintiff, as he admitted to “dorm-storming” at the time and locations alleged. The mere fact that Plaintiff was the only candidate fined does not necessitate that the Elections Board was selectively enforcing campaign law. A far more plausible explanation is that there was enough evidence for the Elections Board to find the Plaintiff guilty under the standard of proof required under *Title VI, § 306.C*. The Plaintiff’s allegation is plausible only if we accept the unstated premise that *all* complaints sent to the Elections Board are truthful and can be supported by enough evidence as required by the standard of proof.
- 5 In summation, Plaintiff’s claims of (i) and (ii) are only plausible if one ignores the simple fact that the Elections Board *did* take action on those particular issues. Claim (iii) loses any potential force when one recognizes that the Elections Board can find one candidate guilty of a violation and another not guilty without selectively enforcing the law. Instead, the Board could have simply had more evidence supporting certain allegations.
- 6 The Plaintiff has alleged that there is an “unethical sharing of information,” evidenced by Mr. Lee’s awareness of a complaint submitted by a certain Jeff DeLuca before Mr. DeLuca was aware his complaint had been received. While the Plaintiff asserts that this violated *Title III, § 306.H*.
- 7 The preceding allegation is implausible for several reasons. First, *Title III, § 306.H* does not require the Elections Board to notify complainants that their report has been received. Neither does it expressly or implicitly forbid the “sharing of information.” The Code does, however, require that the candidate accused of a violation be given adequate time to respond to that accusation. Contrary to Plaintiff’s assertion, the fact that Mr. Lee was aware of Mr. DeLuca’s report *proves* that the Elections Board was acting lawfully.
- 8 The Plaintiff makes the assertion that several members of his campaign who have filed reports of election violation to the Elections Board have failed to

receive an “official follow-up from anyone on the Executive Board [sic].”² As was stated earlier, the Board of Elections is under no obligation to notify complainants their reports have been received. Therefore, the Defendant has acted lawfully. Nevertheless, the Board did acknowledge receipt of a complaint filed by Jeff Deluca on January 19th on behalf of the Plaintiff’s campaign with an email later the same day. The Board subsequently voted to initiate an investigation regarding the allegation submitted by Mr. Deluca on January 19th; no punitive decision was issued due to a *lack of evidence*, not disregard.

- 9 In the Plaintiff’s Complaint (both original and amended), Plaintiff makes reference to the Elections Board’s hearing of disqualification. In order to best address each instance of such, the Defense has summarized Plaintiff’s specific allegations in the following manner:
 - i. There was no basis for calling the hearing of disqualification because the two charges the Plaintiff *was* found Guilty of violating do not constitute grounds for disqualification
 - ii. The conditions of the hearing denied the Plaintiff due process
- 10 In response to (i): the Defense agrees with the Plaintiff’s assertion that the two charges for which he was found guilty do not warrant disqualification. That is precisely why the Plaintiff was not disqualified as a candidate. If the student *was* found guilty of other counts with which he was accused (the number of counts against the Plaintiff totaled five), the Elections Board may very well have considered disqualification. The hearing of disqualification, however, was necessary for the Elections Board to arrive at an informed decision as to the correct course of action. Consequently, the Board acted lawfully.
- 11 In response to (ii): the conditions of the hearing, while not ideal, did not deny the Plaintiff due process. All parties were given the right to provide their testimony. Additionally, the Plaintiff and his campaign staff (specifically, Mr. Billy Kluttz) were given the ability to cross-examine any witnesses that testified against his interests. Finally, all parties were allowed to give closing arguments. At no point during the proceedings did the Plaintiff request a postponement of the hearing. Therefore, unless the Plaintiff can cite some legitimate procedural concern that jeopardized his right to due process, the presence of refreshments is inconsequential.
- 12 Plaintiff alleged that a fine of \$25 was levied against his campaign for collecting two signatures in a classroom building. He goes on to say the fine is disproportionate to the violated, thereby violating *Title VI, § 306.C*. The Plaintiff is factually incorrect on this issue. As is made clear in Punitive Decision 11-BE-

² As the “Executive Board” has previously been unmentioned in this action, the Defense’s response assumes that Plaintiff meant the Elections Board.

05, the \$25 fine was issued in response to collecting signatures in a classroom building *and* dissuading a witness from submitting a report of his observations. This last attempt to obstruct the election process was an aggravating factor the Board considered when deciding the appropriate amount. As dissuading a student to report violations compromises the integrity of the election process and jeopardizes the Board's ability to enforce laws, the fine levied was absolutely appropriate. Consequently, the Board acted lawfully.

13 The Plaintiff alleged that a \$12.50 fine issued against the Plaintiff's campaign was "based on a highly subjective interpretation of how long it took Mr. Kluttz's smile to convey an emotion to Mary Cooper," a student body president candidate. Carefully reading Punitive Decision 11-BE-05 will reveal that the smile to which Plaintiff is referring is not mentioned at all. The basis for the fine was a comment made by Billy Kluttz in the "Pit" that unfairly implied Ms. Cooper had "sexist language" on her website. As any appearance of sexism can plausibly be said to negatively affect a candidate's chance of success, the amount of the fine was appropriate to the relevant violation. Consequently, the Board acted lawfully.

CONCLUSION

As the Defense has conclusively refuted the allegations made by the Plaintiff. The Plaintiff has failed to demonstrate how the Elections Board acted against their purpose as captured in *Title VI, § 301*. Additionally, the Plaintiff failed to prove that the fines issued were not lawful, as defined in *Title VI, § 306.C*.

In summation, the Plaintiff cannot provide any significant evidence of malfeasance, misfeasance, or nonfeasance. Therefore, the Defense requests that the Court **deny** Plaintiff's petition for relief as stated, or any other remedial measure.

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