

IN THE SUPREME COURT

Action No. 10 SSC 002

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**ORDER GRANTING A TEMPORARY INJUNCTION TO DELAY THE CERTIFICATION OF THE UCOMMONS REFERENDUM RESULTS**

On February 7, 2011 at 6:02 p.m., the petitioners 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 petitioners contend 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 Code. See Title I, S.G.C. Article V §4, and Title VI S.G.C. §314, respectively.

In the event of “extreme circumstances and when necessary”, Title III S.G.C. § 410(A) (2009), the Student Supreme Court may issue temporary injunctions against the Elections Board stopping an election to protect the Court’s jurisdiction or to preserve the status quo until a judicial determination can be reached. Id. Where, in the opinion of the Chief Justice, there is insufficient time to convene the court in order to issue a temporary injunction, he/she may issue a temporary injunction in the name of the Supreme Court. Title III S.G.C. § 410(B) (2009).

The Student Code provides little guidance on the proper procedure for granting a temporary injunction. However, several preliminary determinations made on behalf of the Court regarding Title III S.G.C. § 410 in the order granting a temporary injunction to delay the release of the childcare services fee referendum in the case of *Nichols v. Raynor* (Action No. 08 SSC 004-04) provide guidance in deciding whether to grant the motion for a temporary injunction.

In the order for temporary injunction in *Nichols v. Raynor*, the Court first determined that Title III S.G.C. § 410 was put in place to allow the Court to act quickly in order to preserve an action without waiting for the parties to file pleadings in the matter. In keeping with the intention of this provision, the Court also understood that the Student Code gives the Court the authority to grant a temporary injunction when a motion has been filed that alleges extreme circumstances and necessity sufficient to warrant a temporary injunction. Therefore, the Court will grant a temporary injunction provided the motion on its face alleges “extreme circumstances” and it is necessary for the Court to grant a temporary injunction.

The order for temporary injunction in *Nichols v. Raynor* also included the Court’s determination the phrase “stopping an election” implies more than merely stopping voting. The Court elaborated that an election is not a singular event, but a series of actions occurring along a general timetable and such actions may include preparing the ballot, accepting ballots, counting the ballots, and announcing/certifying results. Therefore, the Court determined that it may enjoin any of these actions and not just voting.

Turning to the motion, Title III S.G.C. § 410(A) requires “extreme circumstances” and necessity before this Court may issue an injunction stopping an election. The extreme circumstances contemplated are those relating to the underlying harm, not the procedural circumstances. As such, in its order for temporary injunction in *Nichols v. Raynor* the Court stated that before an election is halted, the balance of

harms must be such that more harm occurs from the conduct of the election than from the injunction itself. The clearest case where this would enjoin voting is when the ballot itself contained an error that would lead to permanent harm to a party at interest.<sup>1</sup>

Here, if the facts alleged in the complaint are taken as true, it appears that the Union campaign may have engaged in violations of Title VI compromising the integrity of the elections process by lending the campaign unlawful advantages. If the facts alleged in the complaint are taken as true, it also appears that the Student Body President and the Board may have failed in their duties to address such violations. The harm to other parties of interest, as well as the harm to the authority of the Student Code and to the integrity of the elections process that would result from a potential violation of such magnitude is great; allowing the results of the referendum to be certified and later invalidating them may result in future problems. Thus, on balance, the best way for this Court to preserve the status quo in the election is to grant the petitioners' request to stop the UCommons referendum by ordering the Board of Elections not to certify the results of the vote on this matter.

#### ORDER

Accordingly, the Court grants a temporary injunction preventing the certification and release of the results of the UCommons referendum until the Court can decide whether there was indeed a violation of Title VI or Title I as it relates to applicable laws enacted under Title VI. In granting this temporary injunction, the Court is mindful that students will want to have the referendum results certified and released in a timely manner.

Therefore, the Court further orders that the answer in this matter must be filed with the Court and served on the opposing parties, Adam J. Horowitz, Leah Josephson, Christopher B. Lane, and Chelsea Cook, by 8 am on Wednesday, February 9, 2011. In the interest of judicial economy and efficiency, the Court further orders each party to file briefs explaining their legal arguments against or in defense of the actions alleged in the complaint and answer by Thursday, February 10, 2011 at 5 pm.

By ordering the Board not to certify the results of the referendum, this Court is in no way implying that the referendum results are to be automatically invalidated, nor issuing a formal or informal opinion on the actions of the Union campaign, the Student Body President, or the Chairman of the Board of Elections. Instead, this order merely preserves the status quo until a judicial determination can be reached.

Done this day February 8, 2011 at 6:01 p.m.

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

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<sup>1</sup> Note that *Nichols v. Raynor* is not the only instance where the Court has exercised its power to issue an injunction of the elections process. See *Seelinger v. Gillooly*, 09 SSC 006.