

IN THE SUPREME COURT)	
)	
Action No. 10 SSC 002)	
)	
Adam J. Horowitz, Leah Josephson,)	
Christopher B. Lane, Chelsea Cook,)	
)	
Plaintiffs)	
)	ORDER GRANTING
versus)	PLAINTIFFS' SECOND
)	MOTION FOR AN
Andrew Phillips,)	EXTENSION OF
Chairperson, Board of Elections,)	SUBMISSION OF
Hogan Medlin,)	BRIEFS
Student Body President)	
Defendants.)	

I. BACKGROUND

1. On Monday, February 7, 2011 at 6:02 p.m., Plaintiffs 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 Plaintiffs contended 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 Student Code. See Title I, S.G.C. Article V § 4, and Title VI S.G.C. § 314, respectively.
2. On Tuesday, February 8, 2011 at 6:01 pm, the Court issued a temporary injunction enjoining the release of the February 8, 2011 elections' UCommons referendum results.
3. On Wednesday, February 9, 2011, Defendants submitted a timely Answer with the Court responding to Plaintiffs' Complaint on
4. Upon receipt of the Complaint and Answer of all parties, the Court set the deadline for the submission of Motions and Briefs to Thursday, February 10, 2011 at 5pm.
5. Both Plaintiffs and Defendants prior to the Thursday, February 10, 2011 5 pm deadline filed timely Motions requesting the Court grant all parties an extension on the submission of both Motions and Briefs. Specifically, all parties both requested an extension on the

submission of their Motions, proposing a new deadline of Friday, February 11, 2011 at 12 pm. In addition, all parties requested an extension on the submission of their Briefs, proposing a new deadline of Saturday, February 12, 2011 at 12 pm.

6. On Thursday, February 10, 2011 at 3:50 pm, Defendants filed a timely Motion to Dismiss Plaintiffs' Complaint. See Motion to Dismiss of Medlin and Phillips, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).
7. On Thursday, February 10, 2011 at 4:00 pm, Plaintiffs filed a timely Motion to Subpoena certain documents into evidence. See Motion to Subpoena Necessary Documents of Horowitz et al., *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).
8. On Thursday, February 10, 2011 at 4:30 pm, the Court granted both Plaintiffs' and Defendants' Motions requesting an extension of time on the submission of their Motions and Briefs. As per both Plaintiffs' and Defendants' requests, the Order extended the deadline for submission of Motions to Friday, February 11, 2011 at 12 pm and the deadline for submission of Briefs to Saturday, February 12, 2011 at 12 pm. See Order Granting Extension of Time, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002 (2011).
9. On Thursday, February 10, 2011 at 4:45 pm, Defendants timely filed their Brief with the Court.
10. On Thursday, February 10, 2011 at 5:45 pm, Plaintiffs filed a timely Motion to Amend their original Complaint.¹ See Motion to Amend of Horowitz, et al., ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011).
11. On Friday, February 11, 2011 at 12:19 a.m., the Court granted the Plaintiffs' Motion to Amend. In doing so, the Court granted Defendants leave to "file a new motion to dismiss if so desired" and the Court provided "a deadline for submission of the motion to dismiss of Friday, February 11, 2011 at 5 pm." See Order Granting Plaintiffs' Motion for Leave to Amend, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).
12. On Friday, February 12, 2011, the Chief Justice timely informed all parties via an email sent at 11:16 a.m. that the Plaintiffs' Motion to Subpoena Necessary Documents would not be decided until after the pretrial hearing made apparent whether there would be a trial on the merits of the case.
13. On Friday, February 11, 2011 at 11:39 a.m., Plaintiffs filed a timely Motion requesting a second extension for all parties' Briefs to Tuesday, February 15 at 12 p.m. See Second Motion to Extend of Horowitz, et al., ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011).

¹ Plaintiffs' Motion to amend is timely in light of the first extended deadline.

14. On Friday, February 11, 2011 at 4:45 pm, Defendants submitted a timely second Motion to Dismiss Plaintiffs' Complaint.
15. On Saturday, February 12, 2011 at 12:05 a.m., the Court issued an Order denying the Defendants' Second Motion to Dismiss the Plaintiffs' Complaint.
16. On Saturday, February 12, 2011 at 12:39 a.m., the Chief Justice informed the parties via email that the Court granted both Plaintiffs' Motion requesting an extension of time for its Brief and Plaintiffs' Motion for Subpoena of Necessary Documents. The Chief Justice additionally informed the parties that the Order would be available to the parties later that day, and she informed the parties of the relevant details of the Order.

II. ANALYSIS

The Student Code authorizes parties to submit Motions to the Court under Title III S.G.C. §§ 516, 517 (2009). Additionally, the Student Code authorizes parties to submit Briefs to the Court under Title III S.G.C. §§ 516, 519 (2009). However, the Code provides no express or implied guidance to the Court as to the proper procedure for granting parties' requests for extensions on deadlines set by the Court regarding the submission of Motions and Briefs. In fact, the Student Code is completely silent on the matter.

The sole guidance the Student Code provides as to the procedure to be followed by the Court when granting extensions on a document submitted to the Court is found in Title III S.G.C. § 507. This statute states that

If the defendant is required to file an answer to a complaint and he/she fails to file an answer in the time directed, the Chief Justice of the Student Body may grant him/her an extension of time in which to file the answer if the Chief Justice determines that there were circumstances beyond the control of the defendant justifying the delay and the extension of time will not result in injury to the rights and remedies of the plaintiff.

However, for several reasons, it is unreasonable to construe the Student Code's silence on this procedural matter as forbidding the Court leave to grant extensions on the submissions of Motions and Briefs.

First, the decision of the Court to grant an extension of the submission deadline for a Motion, Brief, or any other document submitted to the Court is a procedural decision of the Court akin to the many procedural decisions that the Code leaves to the discretion of the Court, such as the filing deadline for Answers to a Complaint. See Title III S.G.C. §507 (noting that a defendant must file an answer in the time directed by the Court). As such, it is hard to imagine that Student Congress intended to grant the Court the power to require such filings while simultaneously depriving them of the procedural authority to administer them.

Second, as the Student Code is completely silent on the issue and includes no other statutes that can be reasonably construed as forbidding the Court this procedural power, the Court is not engaging in judicial law making or in any way depriving Congress of its “supreme legislative authority.” Title I S.G.C § 1(A).

Third, the parties’ due process rights and the best interest of the student body both require, in part, access to and assurance of a fair and efficient judicial process. As such, where: 1) the Code lacks any statutory directive providing guidance as to Court procedure; 2) the Student Code contains no statute expressly or impliedly forbidding the instant exercise of the Court’s procedural powers over its own affairs; and 3) the Court has docketed before it pressing matters, waiting for legislative directive on the procedural question is not a viable option. Thus, for the aforementioned reasons, I hold that, despite the Student Code’s silence on the matter, the Court has the power to grant parties’ Motions for extensions of filing deadlines, including those concerning Motions and Briefs.

With that issue aside, the question then turns to whether granting an extension at this time is proper. Here, Plaintiffs have requested an extension for the deadline of Briefs for all parties. Plaintiffs’ cite as the reason for their request their concern that, as the Court informed Plaintiffs that their Motion for a Subpoena would not be decided until after a pretrial hearing—which was to occur after the deadline for the briefs—Plaintiffs’ brief and argument may see significant changes should the motion to subpoena be granted.² See Second Motion Requesting Extension of Horowitz et al., *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).

As the only statutory guidance available under the Student Code as to the proper judicial procedure for granting extensions on filings—Title III § 507—I think it proper to consider its two prong test when deciding whether to grant the extension requested.

Under Title III S.G.C. § 507, an extension on a defendant’s Answer may be granted at the Chief Justice’s discretion if a) the Chief Justice determines that there were circumstances beyond the control of the defendant justifying the delay and b) the extension of time will not result in injury to the rights and remedies of the plaintiff. Id.

While this statute does not deal with Answers filed by defendants specifically, the test is applicable guidance to analyzing the request for an extension presented in this case nonetheless. Here, Plaintiffs cite the potential prejudicial effect of the discretionary decision of the Court as to the timing of its decision regarding Plaintiffs’ Motion for a Subpoena as the source of its request for an extension on parties’ Briefs—a circumstance indeed outside of Plaintiffs’ control. Thus, prong one of the test is easily met. However, the second prong of the test requires closer analysis.

² See the Background section contained in this Order for the exact timing of these events.

Per the second prong of III S.G.C. § 507, the extension of time will not be granted if doing so will cause injury to the rights and remedies” of the opposing party.³ Thus, I must consider whether Defendants rights or remedies will be injured if Plaintiffs’ request for an extension on the submission of Briefs for all parties is granted.

It is true that Defendants have already submitted their Brief. However, as the Court previously noted, any harm Defendants experience from submitting their Brief to the Court prior to confirming with the Court its decision on Plaintiffs’ and Defendants’ initial Motions to extend the deadline for Briefs is the Defendants’ responsibility and thus their burden to bear. See Order Denying Second Motion to Dismiss of Medlin and Phillips, Horowitz at al. v. Medlin and Phillips, 10 SSC 002, (2011).

However, in light of Plaintiffs' granted Motion to Subpoena and its intention to use information obtained from that subpoena in its Brief and later in oral arguments, the balancing of the equities shifts somewhat. If Plaintiffs’ Motion requesting an extension is granted with no provision for Defendants' protection, Plaintiffs would not only have the benefit of getting a preliminary glance at Defendants' Brief prior to submitting Plaintiffs’ Brief, but Plaintiffs' would also have the opportunity to gather additional evidence in support of their Brief. Plaintiffs could then potentially use this additional evidence to tailor their Brief to that of Defendants when Defendants would have no such opportunity. Certainly, such a scenario reasonably could be viewed as giving Plaintiffs’ an advantage over Defendants’ to the point of injuring Defendants’ right to a fair trial.

However, the Court is also mindful that many of the documents requested by the Plaintiffs in their Subpoena are documents to which the Defendants, as members of the Board of Elections, already likely have access. As such, commonsense dictates Defendants may likely have had access to information for purposes of their Brief and later oral arguments important to both Defendants’ and Plaintiffs case, while, due to the Court’s initial decisions as to when to decide Plaintiff’s Motion to Subpoena, Plaintiffs’ would have had no such access. This original imbalance between the parties in initial access to information when coupled with protections the Court can provide to Defendants in issuing an Order granting Plaintiffs’ Motion requesting an extension balance each other out, effectively neutralizing any significant injury that might otherwise occur to the rights or remedies of Defendants if Plaintiffs’ Motion is granted.

I therefore find it proper under application of the test codified in III S.G.C. § 507 to grant Plaintiffs’ Motion requesting an extension on the submission of all parties Motions and Briefs, while allowing simultaneously for Defendants’ protection through ordering additional provisions to those requested by Plaintiffs.

³ Note the standard for granting extensions under III S.G.C. § 524 (2009) differs from the standard codified in III S.G.C. § 524 (2009) used for deciding whether to accept a motion to amend a pleading before trial. The former considers the rights and remedies of the opposing party, while the latter considers prejudice and hardship wrought against the opposing party by issuing the order.

III. ORDER

ACCORDINGLY,

The Court GRANTS Plaintiffs' Motion requesting an extension on the submission of all parties' Briefs, granting a new deadline of Tuesday, February 15, 2011 at 12 p.m. In addition, the Court GRANTS Defendants leave to file Motions to Subpoena additional evidence by 9 pm Saturday, February 12, 2011. Finally, the Court GRANTS Defendants leave to withdraw their presently filed Brief and to submit a new one by Tuesday, February 15, 2011 at 12 p.m., incorporating into the new Brief any additional evidence they may discover through subpoena.

Done this 12th day of February 2011, at 12:39 a.m.

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