

IN THE SUPREME COURT)

Action No. 08 SSC 004)

Tim Nichols)
Speaker of Student Congress)
PLAINTIFF)

PLAINTIFF’S BRIEF

Versus)

JJ Raynor)
Student Body President)

And Ryan Morgan)
On behalf of the Board of Elections)
DEFENDANT)

Done this the 19th day of February 2009.

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I. Index of Legal Citations

A. Student Code

1. Prohibition of Student Government emails ----- Title VI, 402(L.2)
“Email lists reserved for the use of Student Government officials or any party acting on behalf of Student Government may not be used to advance the candidacy of any individual or support the passage or failure of a referendum.”
2. Call for re-election -----Title VI, 403(H)
*“The Board of Elections may call for a re-election if a violation occurred and it could have affected the outcome or **compromised the integrity of the election.**”*
3. Duty of the BOE -----Title VI, 602(A.3)
*“Certification of the results of an election shall consist of... Affirmation that no Election Law violations, or other election irregularities have been detected which could **compromise the integrity of the election process.***

II. Facts of the Case Presented

- A. On February 16, 2009 at 9:49pm a mass email was sent to the student body by Student Body President JJ Raynor in support of the pending February 17 Childcare Services fee referendum.
- B. The email clearly stated within its body: “This email is sponsored by: Student Government” and was signed by “The Executive Branch of Student Government”.
- C. The email was sent to the entire student body and provided information about the referendum and a link to the Executive Branch website for more information, which originally contained a conspicuously displayed link to a PDF file which expresses in glowing terms the benefits of the fee as well as the dangers of not passing the fee (i.e. emotional pleas and testimonials from recipients of the fee money obviously urging passage of the fee).
- D. At approximately 11:40pm on February 16, the Executive Branch removed the PDF file from its website and replaced it with several DTH articles, including two “pro” and two “con” letters to the editor.
- E. A Facebook group #1 (<http://www.facebook.com/group.php?gid=53727321197>) created by Emily Joy Rothchild (a former Executive Branch appointee and current Student Congress member) clearly labeled “Student Government” urged students to vote for the referendum and listed the Student Government office (Union Suite 2501) as its location. Kaila Ramsee, an admin for group #1, is a member of the Student Government Public Service and Advocacy Committee. The group has approximately 222 members.
- F. Another Facebook group #2 (<http://www.facebook.com/group.php?gid=50645052091>) advocating passage of the referendum, and created by Leah Josephson (a member of Student Government’s Women’s Affairs Committee) told volunteers to pick up campaign materials from the Student Government office, indicating that materials in support of the referendum were kept stored in the office. A notice placed under the “Recent News” heading reads:

“Several student government members (along with the Student Parent Association) will be **campaigning for the Child Care Services fee referendum** tomorrow (Monday, February 16) and Tuesday the 17 in the Pit from 10-2. Come out with your friends and show your support--signs will be provided, and several A-frames will be set up in the Pit this evening!”

Facebook group #2 also sent multiple Facebook email messages urging members to “vote for” the referendum.

III. Questions of Law Presented

- A. *When an email sponsored by the Executive Branch contains a single link that provides information solely in support of a referendum, does this trigger the Title VI Section 402L prohibition against Student Government, or a party acting on its behalf, using email to support or oppose a referendum?*
- B. *Can a Facebook group and its email functions serve the equivalent of an “email list...for the use of... any party acting on behalf of Student Government” thereby triggering the Title VI Section 402L prohibition?*
- C. *Does storing election materials in the Student Government office, in support of a fee referendum, violate the prohibition on campaign materials being stored in the Student Government suite as outlined in Title VI Section 405A?*
- D. *Taken together, does such Student Government influence on the outcome of a referendum rise to a level that compromises the integrity of the election?*
- E. *What is the proper remedy for when the integrity of an election is compromised?*

IV. Arguments for Plaintiff

- A. *When an email sponsored by the Executive Branch contains a single link that provides information solely in support of a referendum, does this trigger the Title VI Section 402L prohibition against Student Government, or a party acting on its behalf, using email to support or oppose a referendum?*
 - 1. The rule prohibits two types of emails in support or opposition to a referendum: 1) emails sent on Student Government listservs; and 2) emails sent on behalf of Student Government.
 - 2. Since the email was clearly endorsed by the Executive Branch, it must be either sent by Student Government or on behalf of Student Government, it makes no difference which.

3. The email contained a single link to the Student Government website for more information. This website contained a single relevant link to a PDF document (attached) which contains only favorable language toward the referendum and testimonials from fee recipients who obviously support the fee. The PDF was also used in a presentation before Student Congress where it was used by JJ Raynor and others to persuade members of Congress to vote for the referendum. It is absurd to claim that when placed on the Student Government website, the PDF document suddenly lost its persuasive character.
4. When the link to the website containing persuasive information was included in the email, the persuasive character of the website and PDF became linked to the email. Thus the email itself took on a persuasive character.
5. The fact that the email was sent by the Student Body President, was signed by the Executive Branch, and was sponsored by Student Government, plus the pro-referendum information linked to the email gave the referendum the endorsement of Student Government. This endorsement was carried out by email. This is precisely the type of undue influence contemplated and prohibited by the Code.
6. Additionally, the Student Body President and others associated with the Executive Branch conducted an extensive signature petition to get the referendum on the ballot. Sending out an informational mass email the night before the election, with Student Government endorsing voting in the referendum which JJ Raynor and the Executive Branch have previously, widely and notoriously advocated the passage of, created a situation in which a reasonable student would infer that the Executive Branch and Student Body President actively endorsed actual passage of the referendum.
7. Approximately two hours after Plaintiff and others began to complain of this violation (some directly to JJ Raynor) the website was altered, adding links to Daily Tar Heel articles, listed as “pro” and “con”. The PDF remained, however.
8. Regardless the Code prohibits both advocating for and against a referendum. Quickly throwing some pro and con articles, while keeping the persuasive PDF, does not negate the harm that was caused, nor does it comply with the rule that prohibits both pro and con advocacy of a referendum.
9. Such a swift alteration of the website implies that the Executive Branch knew its actions were in violation of the Code.

B. *Can a Facebook group and its email functions serve the equivalent of an “email list...for the use of... any party acting on behalf of Student Government” thereby triggering the Title VI Section 402L prohibition?*

1. We argue that in this context, Facebook group #1, labeled “Student Government”, served an equivalent function of an email sent on behalf of Student Government.
2. The creator of the group was a former Executive Branch member, and a current Student Congress member. Another Admin is a member of the

Student Government Public Service and Advocacy Committee. The group was labeled “Student Government” and urged students to vote in favor of the referendum.

3. Facebook group #2 also advocated passage of the referendum and was created by a current member of Student Government’s Women’s Affairs Committee. Multiple Facebook email messages were sent to group members in support of the fee. The information listed under the Recent News heading indicates close association, involvement, and coordination between Facebook group #2 and Student Government members.
4. The purpose of the law is to prevent Student Government from using electronic means of mass communication to influence a vote. Creating an exception for Facebook in this instance will allow the law to be subverted, and let Student Government unduly influence elections.

C. *Does storing election materials in the Student Government office, in support of a fee referendum, violate the prohibition on campaign materials being stored in the Student Government suite as outlined in Title VI Section 405A?*

1. The spirit of the law is to make the Student Government office a neutral zone in regards to advocacy for current student elections.
2. We argue that materials were at some point stored in the Student Government office located at Union Suite 2501 (a Facebook group directed volunteers to Union Suite 2501 to pick up materials).

D. *Taken together, does such Student Government influence on the outcome of a referendum rise to a level that compromises the integrity of the election?*

1. Yes the integrity of the election was compromised.
2. Untold hundreds or thousands of students potentially saw the SBP’s mass email that was in violation.
3. A reasonable student aware of the Student Body President’s active campaign for the referendum would construe her email and the linked persuasive information as an endorsement by Student Government.
4. The Facebook groups were used by Student Government as another means of getting around the email prohibition, influencing countless hundreds of voters.
5. The standard for ordering a revote is a low threshold. In 2005 election irregularities were reported in the October special election. The Board of Elections was prevented from ordering a re-vote because the language of the Code only permitted re-vote if the results of the election were affected. Subsequently Congress changed the language to call for revotes when the “integrity of the election is compromised”.
6. Indeed, before the BOE can certify results it must affirm “that no Election Law violations, or other election irregularities have been detected which could compromise the integrity of the election process.” Title VI, 602 (A.3).
7. Based on the change in the Code and a prior decision by this Court, Plaintiff does not need to show that the results of the election were changed in order for the Court to order a re-election. In *Tenyotkin v. BOE* (2007) the Court

ordered a re-election for a referendum to amend the Constitution even though no evidence was given that the results of the outcome were changed by the election irregularity.

8. Other student government officials and entities that followed the rules and refrained from sending emails with links to persuasive websites, did not have the same opportunity to influence the outcome of the election as those who violated the rules.

E. *What is the proper remedy for when the integrity of an election is compromised?*

1. When the integrity of an election has been compromised the proper remedy is to order a re-election. There are no candidates to fine, and no mechanism for punishing violators of the election law. The only remedy available is a revote, as crude a tool as it is. However, not every violation requires a revote, but only those that compromise the integrity of the election or affect the outcome.
2. Title VI, 403(H) states that “*The Board of Elections may call for a re-election if a violation occurred and it could have affected the outcome or compromised the integrity of the election.*” Plaintiff has argued that the integrity of the election was compromised, triggering a re-vote.
3. Plaintiff has made complaints with the Board of Elections but it has taken no action. It is incumbent upon this Court to order a re-vote where the Board has failed to act.

V. Petition for Relief

- A. Plaintiff asks that in order to preserve a fair revote, the Supreme Court to order a permanent injunction against the Board of Elections prohibiting the release or publication to any outside party of the results of the February 17 Childcare Services fee referendum.
- B. Plaintiff also asks the Supreme Court to invalidate the results of the February 17, 2008 Childcare Services fee referendum and order that a new vote be held on a date sufficiently delayed so as to minimize the harm and undue influence exerted by the Executive Branch on the election process.
- C. Plaintiff further asks the Court to enjoin all Student Government to refrain from violating the prohibition on electronic communication in support or against the referendum.

PLAINTIFF

Tim Nichols

Speaker, Student Congress

I do affirm that I have read in full the foregoing complaint and that the allegations contained therein are true to the best of my knowledge and belief.