No. 08 SSC 002

Student Supreme Court

Filed: 25 January 2009

MATT WOHLFORD,
Plaintiff

v. **Opinion and Order**

RYAN MORGAN;
THE BOARD OF ELECTIONS,
Defendants

Complaint by Plaintiff Wohlford concerning actions of Defendant Board of Elections as reflected in Punitive Decision 08-BE-012. Heard in the Supreme Court 22 January 2009.

Andrew Pham, for plaintiff.
Val Tenyotkin, for defendant.

EMMA J. HODSON, Chief Justice.

Plaintiff Matt Wohlford, a candidate for Student Body President, challenges 08-BE-012, a punitive decision fining his campaign forty dollars. Because VI S.G.C. § 403(D) (2008) requires the Board of Elections to follow certain procedures in investigating "possible violations of campus elections laws," and because the Board of Elections did not follow all of these procedural requirements in its investigation of Wohlford's alleged violations of campus elections law, we hold that 08-BE-012 is void and remand the matter to the Board for an investigation consistent with this opinion.

I. Procedural Background

Plaintiff Matt Wohlford, a prospective candidate for Student Body President, held an organizational meeting at the Campus Y and also gave an interview to *The Daily Tar Heel* in early August 2008. A student, whose name has not been disclosed by the BOE, brought the meeting and interview to the attention of Ryan Morgan, Chairman of the Board of Elections, as potential violations of election law. Following the report from this student, Chairman Morgan held a meeting with Wohlford to discuss the allegations.

On October 5, 2008, the Board of Elections held a closed meeting and issued 08-BE-12, a punitive decision supported by evidence that Chairman Morgan had obtained from his earlier meeting with Wohlford and from other sources. In this decision, the Board found that the organizational meeting and media interview violated VI S.G.C. § 402(A)(1), and levied a $40 fine on Wohlford, contingent upon later certification as a candidate.

Following verbal commencement on 8 October 2008, Wohlford filed the complaint in this action on 22 October 2008. Following a pre-trial hearing, Wohlford was granted leave to file an amended complaint, which was filed with this Court on 10 November 2008. Upon this complaint, Wohlford asserts the Board failed to failed to comply with the investigative and hearing procedures required by VI S.G.C. § 403(D) and the Board erred in finding his media interview to be a violation of VI S.G.C. § 402(A)(1).

A parallel case, *Klein v. Morgan,* No. 08 SSC 003, (Jan. 10 2009), was filed concurrently with this case, and heard and decided earlier this term. In *Klein,* Plaintiff Ashley Klein, also a prospective Student Body President candidate challenged the Board's Punitive Decision 08-BE-011 as well as an Administrative Decision, no. 08-BE-010. The conduct giving rise to 08-BE-011, concerning Klein, is similar to 08-BE-012, concerning Wohlford,. Administrative Decision 08-BE-010 published regulations concerning early campaigning, including conduct involved in the two punitive decisions.

As *Klein* voided Administrative Decision 08-BE-010 in part and vacated Punitive Decision 08-BE-011, we issued order for the parties in the present case to file briefs, so that they might inform this Court how *Klein* would factor into their arguments. Wohlford's use of *Klein* in his brief was largely meaningless,[1] and at argument, his counsel focused almost entirely on the core § 403(D) claim in his complaint. We read the brief as a more detailed version of the complaint.

II. Jurisdiction and Standing

III S.G.C. § 401 (2008) specifies that this Court has jurisdiction over "both questions of law and fact, over controversies where the matter in controversy is the validity, under the Student Constitution or laws enacted under its authority of actions of the . . . elections board." Because Wohlford challenges the validity of the Board's punitive decision, 08-BE-12, on the grounds that the investigation resulting in this decision violated procedural provisions of the code in VI S.G.C. § 403(D) and that portions of the decision were substantively inconsistent with the code in VI S.G.C. § 402(A)(1), this Court has jurisdiction.[2]

Because Wohlford's complaint challenges the validity of the Board's investigation, standing in this matter is governed by III S.G.C. § 409 (2008). Under § 409,

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[1] For example, Wohlford asserted a procedural defect with the punitive decision based on the holding that regulations must be "[e]nacted with an even-handed procedure designed to avoid prejudicing candidates." *Klein* at 4. This ignores that a punitive decision is not in any form a regulation, and the rationales for analyzing a regulation do not apply. Wohlford also appears to have missed this Court's analysis that the Administrative Decision and Punitive Decision were contemporary, but independent. *Klein* at 10. As such, Wohlford persisted in rearguing that his Punitive Decision was invalid due to errors with and the timing of the Administrative Decision. Further consideration of this matter requires substantial new information and argument, not the passing reference Wohlford provided in his brief.

[2] As a subsidiary argument, Wohlford argues the closing of the meeting to the public violated his rights under § 403(D). However, even when closing a meeting, it is completely within the discretionary authority of the Board to invite any person into attendance for official purposes. *See infra,* Part V A. Accordingly, whether the public should have been excluded or not is irrelevant to Wohlford's rights under Title VI of the Student Code.

> Standing to bring an action before the Supreme Court for an election error or fraud in the acts, decisions and rulings of the Elections Board extends to plaintiffs who must have his/her powers, rights, privileges, benefits or immunities adversely affected, restricted impaired or diminished and the plaintiff must be:
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> > B. A Student directly and adversely affected by a regulation, ruling, or determination of the Elections Board.

Since the forty dollar fine issued by the Board in 08-BE-12 will prevent Wohlford from spending ten percent of the full amount allocated to Student Body President candidates for campaign expenses, the ruling directly and adversely affects his ability to run for Student Body President. Thus, he has standing to challenge the investigative acts of the Board that resulted in 08-BE-12.

III. Findings of Fact

At trial, the parties presented evidence about the procedures used to conduct the investigation of Wohlford's campaign organization meeting and *Daily Tar Heel* interview through the testimony of two witnesses: Ryan Morgan, Chairman of the Board of Elections, and Wohlford. Based on the testimony of these witnesses, this Court makes the following findings of fact:

> (1) In early September, a student, whose identity is known to the Board but not by this Court, brought two potential violations of elections laws—(1) holding an organization meeting in the Campus Y and (2) an interview with the *Daily Tar Heel*—by Wohlford and another potential Student Body President Candidate, Ashley Klein, to Chairman Morgan's attention.
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> (2) At the time that the potential violations were brought to Chairman Morgan's attention, the Board of Elections consisted only of Chairman Morgan.
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> (3) After learning of the potential violations but before the Student Body President nominated the rest of the Board, Chairman Morgan decided to investigate the allegations brought against Wohlford.
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> (4) Chairman Morgan contacted Wohlford via a Facebook message and asked him to come in for a meeting.
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> (5) At the meeting between Wohlford and Morgan, Morgan asked Wohlford to confirm that he had held a meeting and had spoken to the *Daily Tar Heel*. Wohlford confirmed that he had done both but did not admit they violated election law.
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> (6) Chairman Morgan did not tell Wohlford that their meeting was part of his investigation into Wohlford's alleged violations. However, he did indicate to Wohlford that while unlikely, the Board might take punitive action against Wohlford for the alleged violations.

(7) Chairman Morgan presented the evidence gathered from his meeting with Wohlford and other sources to the Board of Elections at a closed meeting held on October 5, 2008. In addition to presenting evidence, Chairman Morgan led this meeting.

(8) Based on the evidence presented by Chairman Morgan, the Board of Elections issued 08-BE-12, a punitive decision fining Wohlford forty dollars should he become a certified candidate.

(9) Wohlford was not given the opportunity to appear at the October 5 hearing. He was also not informed of the hearing until after the fact, when the Board issued 08-BE-12.

IV. Burden of Proof

As stated in III S.G.C. § 608 (2008), this Court presumes that any act of the Board is valid unless it is proven invalid. A plaintiff has the burden of proving to the satisfaction of this Court that there was an error on the part of the Board as "a matter of law and [that] there is reasonable probability that the error caused the injury." III SGC § 609 (2008).

Here, plaintiff's primary argument is that the Board of Elections did not comply with the investigative procedures required by VI S.G.C. § 403(D), coupled with a secondary argument that Punitive Decision 08-BE-012 is substantively in error.[3] The parties dispute the exact events of the § 403(D) investigation, and the only evidence presented at trial concerned the Board's investigation of Wohlford's alleged violations of campus elections laws.

V. Procedural Requirements for the Board of Elections to Investigate an Alleged Elections Law Violation

V A. VI S.G.C. § 403(D)

VI S.G.C. § 403(D) (2008) gives the Board of Elections Chair authority to "investigate matters that have come to his/her attention through direct or indirect means about possible violations of campus election laws," and specifies the procedure by which an investigation is to be conducted. Specifically, § 403(D) requires that the Chair provide written and oral notice to the accused of the investigation "within twenty-four hours after commencement of the investigation." After the investigation, the Chair must report his or her findings from the investigation to the Board of Elections. VI S.G.C. § 403(D)(1). "At all meetings concerning the matter under investigation," the Vice Chair is to be in charge of the Board. VI S.G.C. § 403(D)(1). Additionally, § 403(D) requires that the accused be given "proper opportunity" to respond to the Chair's findings and that "no administrative decision . . . be issued until defendant has been given an opportunity to respond."

[3] Presumably, the plaintiff believes that *Klein* supports the conclusion that 08-BE-012 is substantively in error. However, the plaintiff made at most passing mention to such a belief at trial in and written filings.

These specific procedures ensure that the Board acts fairly and that the accused is give the opportunity to gather and present evidence and arguments in his or her own defense. Failure to comply with these procedures will result in depriving the accused of statutory safeguards enacted by Congress and will directly result in injury to the accused.

Because Wohlford contends that he was not given notice of the investigation or an opportunity to respond, we must clarify what constitutes (1) adequate notice of an investigation and (2) a "proper opportunity" to respond to the Chair's investigative findings. We must also consider the Board's arguments that (1) there is no need for the accused to respond to an investigative report if the accused has admitted that he or she participated in certain activities and (2) alternatively that it has no duty to provide an opportunity to respond to the Chairman's investigative findings when it has closed a special meeting concerning the enforcement of elections laws under VI S.G.C. § 403(A).

Turning to what constitutes adequate notice of an investigation, we note that Title VI does not define notice. However, based on a general understanding of the term, we believe that the purpose of giving the accused notice of an investigation into a possible violation of elections law is to enable the accused gather evidence and prepare a defense against the accusations brought against him or her. While the best oral and/or written notice of an investigation of a possible elections violation would provide a formal statement that the Board is giving notice to a person of an investigation into the alleged violation, we believe that the Board could satisfy its duty to apprise a person of an alleged election's law violation by providing enough information to the party to apprise them of the investigation.

In deciding whether notice is adequate or not, we are less concerned about the means used to provide notice than the actual contents of the notice. Email and other electronic media used to reliably convey text messages, such as a Facebook message to an active Facebook user, are just as adequate a means of providing written notice to the accused as a paper letter. Additionally, an in-person meeting between the Chairman and the accused, a phone or Skype conversation between the Chairman and the accused, or a voicemail message to the accused from the Chairman are sufficient means of providing oral notice to the accused.

Next, we consider what constitutes a proper opportunity to respond to the Chair's investigative findings. Congress most likely afforded the accused a "proper opportunity" to respond to the Chair's investigative findings because it wanted the accused to have the chance to present additional evidence for Board members to consider, but the Code provides little guidance on what a "proper opportunity" to respond might entail. An opportunity to respond also reduces the need for re-hearings, appeals, and litigation, by ensuring the Board has a complete picture of the allegation prior to rendering a decision.

In considering what the Board must provide to give the accused a "proper opportunity" to respond, we note the accused will not be able to make a meaningful response to the Chair's investigative findings without knowing what the findings are, the Board must allow the accused to have access to the findings. Therefore, we find that a proper opportunity to respond must include an opportunity for the accused to present evidence in response to these findings.

While the Board must give the accused access to the Chair's investigative findings and allow the accused to respond to these findings to meet its procedural duty of giving the accused a

"proper opportunity" to respond, the Board may comply with these requirements by a variety of means. For example, the Board could accomplish its duty of providing access to the Chair's investigative findings by providing a copy of the findings to the accused in advance of the punitive decision meeting or by allowing the accused to be present at the meeting where the findings are presented to the Board by the Chair. The Board could also afford the accused an opportunity to respond to its findings by allowing the accused to present oral or written evidence to the Board before it renders its punitive decision. Oral response, by testimony to the Board after the Chair's report, but prior to deliberations, is preferred. This practice avoids the possibility of error caused by the Chair presenting different investigative reports to the Board and to the accused for response.

Turning to the Board's arguments that (1) there is no need for the accused to respond to an investigative report if the accused has admitted that he or she participated in certain activities and (2) alternatively that it has no duty to provide an opportunity to respond to the Chairman's investigative findings when it has closed a special meeting concerning the enforcement of elections laws under VI S.G.C. § 403(A), we find that both can be easily rejected based on our analysis of what constitutes a "proper opportunity" to respond.

With respect to the argument that there is no need for the accused to respond to an investigative report where the accused has admitted that he or she engaged in certain conduct, we note that an admission is not a response to the Chair's entire set of investigative findings. It is possible that the admitted conduct may be only a small part of the Chair's investigative findings or that the Chair's investigative report presents the conduct in a manner that is prejudicial to the accused. Furthermore, a factual admission does not mean the candidate has to admit the conduct violates campaign laws, and a response to an investigation can contain both factual and legal defenses. Therefore, whether or not the accused has admitted that he or she engaged in certain conduct, he or she must still have an adequate opportunity to respond to the Chair's investigative report.

The Board's second argument is slightly more complicated. While VI S.G.C. § 403(A) gives the Board the power to close a meeting for the enforcement of elections laws, VI S.G.C. § 403(D) requires that the Board allow a candidate to respond to the Chairman's investigative findings at a meeting. Based on the text of these provisions, the Board seems to believe that it is unable to comply with its duty to allow the accused respond to the Chair's investigative findings when it exercises the option to close a meeting because the accused cannot attend the closed meeting. This argument is entirely without merit.

While Title VI authorizes the Board to enter closed session, it does not define what closed session entails. Parliamentary authority can fill in the details here, as per VI S.G.C. § 204(B) (2008), all meetings of the Board of Elections are conducted pursuant to the most recent edition of Robert's Rules of Order. Under such rules, which accord with the general practice of deliberative bodies, the organization is permitted to allow invitees of its choosing into closed executive sessions. RONR (10th ed.), § 9, p. 92–93. Accordingly, it is within the Board's discretion to invite the accused into an otherwise closed meeting to respond to the investigation. Such an interpretation that closed meetings are not absolutely closed, but closed except to invited attendees, removes any conflict between the provisions of Title VI, and thus is a favored interpretation under our rules of construction in III S.G.C. § 703(B) (2008).

We would also note that the Board could also reconcile this apparent conflict by returning to its historic practice of closing only the portion of the meeting where it determines whether punishment for violation of campus elections laws is warranted or not. At these partially open meetings, the accused has been given an opportunity to appear, hear the Chair's investigative report, and to respond with his or her own evidence. Allowing the accused to appear at a punitive decision meeting and to respond to the Chair's evidentiary findings with his or her own evidence is a means by which the Board can provide a proper opportunity for the accused to respond to the accused in a partially open meeting.[4]

V B. Board's Failure to Comply with VI S.G.C. § 403(D)

Turning now to the facts of this case, we look to see whether the Board complied with the investigative procedures specified in § 403(D). As stated in Section IV of this opinion, Wohlford must prove to the satisfaction of this Court that there was an error on the part of the Board as "a matter of law and [that] there is reasonable probability that the error caused the injury." III S.G.C. § 609 (2008). Because we have found that failure to comply with the procedures outlined in § 403(D) will directly result in injury to the accused, we look to see whether Wohlford has established that the Board failed to comply with § 403.

As set forth above, adequate oral and written notice of an investigation is notice that informs the accused of the investigation so that he or she may gather evidence in his or her own defense. Though Wohlford alleged that he was not given notice of an investigation by Chairman Morgan, this Court finds that Wohlford has not met his evidentiary burden of proving that the Facebook message from Chairman Morgan and the meeting where Chairman Morgan and Wohlford discussed Wohlford's campaign organization meeting and interview with the DTH were invalid means of providing notice of the investigation. Because the contents of the Facebook message from Chairman Morgan were not discussed by either witness, we assume that this message contained sufficient information to make Wohlford aware that he was under investigation by the Board for holding an organization meeting at the Campus Y and for speaking to the *Daily Tar Heel* and that he needed to prepare to defend against these accusations. Therefore, we find that the Chair provided written notice to Wohlford of the investigation.

From the testimony of the witnesses, it seems clear that Wohlford was aware that Chairman Morgan was inquiring into his actions, even though Chairman Morgan indicated that the Board was unlike to pursue punitive action in the future. Although any given meeting with Chairman Morgan may be insufficient to make a person aware that he or she is under investigation for an alleged elections violation, here, Wohlford was aware from the meeting that his actions could result in punitive action and that Chairman Morgan was gathering information about his campaign organization meeting at the Campus Y and interview with the *Daily Tar Heel*. This was enough to make Wohlford aware that Chairman Morgan was investigating Wohlford and that Wohlford needed to gather evidence in his own defense. Accordingly, we

[4] Interestingly, the Board's counsel argued that it has been an historic practice of the Board to close meetings where it decided to fine a candidate. However, we note that the Board's action in this matter diverged from historic practices in that the entire punitive decision meeting was closed. Previous Boards have opened the Chairman's evidentiary report to the public and have given the accused an opportunity to respond but have closed the portion of the meeting where it decides whether or not punitive action is warranted.

find that the meeting with Chairman Morgan was sufficient to give Wohlford oral notice of the investigation.

Having established that the oral and written notice was adequate, we must determine whether the notice was given within twenty-four hours after the commencement of the investigation. Because Wohlford's counsel did not present any evidence about the amount of time between the Facebook message and meeting, we must conclude that Chairman Morgan's actions were valid and that the message and written notice were given within twenty-four hours after the commencement of the investigation.

Next, we consider whether the meeting at which Chairman Morgan's investigation was presented was led by the Vice Chair as required by VI S.G.C. § 403(D). By his own admission, Chairman Morgan stated that he was in charge of this meeting of the Board. Thus, we find that Chairman Morgan failed to comply with this requirement of § 403(D).

Finally, we consider whether Wohlford was given a "proper opportunity" to respond to the Chair's investigative findings by first presenting him with the findings and then allowing him to make some form of response to them. It appears from the testimony that Chairman Morgan based most of his evidentiary findings on a *Daily Tar Heel* article and his meeting with Wohlford where he discussed the campaign meeting and Wohlford's interview with the *Daily Tar Heel*. Based on this evidence, Chairman Morgan made his investigative findings. However, he did not later share these findings with Wohlford. The Board never afforded Wohlford an opportunity to present evidence in his own defense, and whatever opportunity it could have given would not have met the requirement of a "proper opportunity to respond" as defined in this opinion because Wohlford never had a chance to review Chairman Morgan's evidentiary findings. Therefore, we find that the Board also failed to comply with the "proper opportunity" to respond requirement of VI S.G.C. § 403(D).

Because the Board did not give Wohlford an adequate opportunity to respond to the Chair's investigative findings before it issued 08-BE-12, we find that the Board also failed to comply with the requirement in § 403(D) that it not issue punitive decision against Wohlford's campaign until he had an opportunity to respond.

VI. Substantive Validity of Punitive Decision 08-BE-012

In his complaint, Wohlford asserted that Punitive Decision 08-BE-012, insofar as it concerned the interview with the *Daily Tar Heel*, was contrary to election law. Wohlford did not plead error with the decision as it related to the interest meeting. The facts underlying these two campaign activities were barely discussed by parties, and little argument was provided to this Court on how the facts of this case compare to those in *Klein.* Because we have found Punitive Decision 08-BE-012 procedurally invalid, evaluating the substance of the decisions is unnecessary, and we decline to do so.

VII. Order

Because we have found that the Board of Elections did not comply with the requirements of VI S.G.C. § 403(D) because it did not give Wohlford a "proper opportunity" to respond to the results of Chairman Morgan's investigation and that the Vice Chairman did not chair the

meeting, we hold that its investigation of Wohlford's alleged campaign violations is invalid. Punitive Decision 08-BE-012 is vacated and the case is remanded to the Board to conduct an investigation in compliance with this opinion, and to issue any punitive decision that it deems necessary, consistent with the Student Code and *Klein v. Morgan*.

Justices STEPHANIE KELLY, ERICH FABRICIUS, SAM HARRELL, and ALLEN SOUZA concur.