No. 08 SSC 007

Student Supreme Court

Filed: 7 April 2009

PROJECT DINAH
Plaintiff

v. **Opinion and Order**

STUDENT CONGRESS;
TIM NICHOLS, Speaker of Student Congress,
Defendants

Complaint by Plaintiff Project Dinah, a registered student organization, brought by member Alyson Culin, concerning the denial of funding to the organization during the 2009–2010 budget process. Heard in the Supreme Court 25 March 2009.

Alyson Culin, for plaintiff.

Student Solicitor General Kris Gould, for defendants.

ERICH M. FABRICIUS, Justice.

Plaintiff Project Dinah, a registered student organization, through member Alyson Culin, challenges the denial by Student Congress of funds in the 2009–2010 Annual Budget for the organization's "I Heart Female Orgasm" event as contrary to the Student Code's fundraising anti-speculation statute and based on funding doctrines not ground in student law. We hold the anti-speculation statute to be merely aspirational and not enforceable at law and that the use of extralegal funding doctrines is a permissible part of the political process.

I. Background

Project Dinah, a registered student organization, made application to the Student Congress for funding as part of the 2009–2010 Annual Budget. The organization initially sought approximately $6,000 for their annual program "I Heart Female Orgasm" and was allocated $1,000 in one draft version of the budget bill, SCB 90-086. However, this draft allocation was struck by amendment in full Congress during a meeting held 3 March 2009. The record indicates this amendment was passed by an 11-10 vote, and then the amended bill was itself passed by the Congress. Including the final meeting, the organization appeared twice before full Congress and once before the Finance Committee.

Plaintiff Project Dinah, represented by Alyson Culin, a member and former co-chair, filed suit challenging the process by which Congress came to adopt this amendment and the subsequent bill. In its complaint, Project Dinah asserts that members of Congress violated V S.G.C. § 108 (2008) by discussing its ability to fundraise, and that the member improperly relied on a informal rule against repeat funding of speakers. The organization requests we order a reconsideration of the bill and its amendment.

II. Jurisdiction and Standing

This Court has Jurisdiction in this matter, as it concerns a question of law arising out of the actions of the legislative branch of the Student Government. III S.G.C. § 401(A) (2008). The denial of funds constitutes a real and substantial controversy in which we may render judgment.

Standing in this matter is governed by III S.G.C. § 407, which provides:

> A. Standing to bring an action before the Supreme Court based on the invalidity of a legislative act by the Student Congress shall extend to any student or officially recognized student organization whose powers, rights, privileges, benefits or immunities are adversely affected, restricted, impaired or diminished by the legislative act in question.
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> B. No standing shall extend to any student or organization arising from a proposed legislative act.

As a further matter, legislative act is defined by III S.G.C. § 104(E) to mean:

> The phrase "legislative act" or legislative action means any act passed by the Student Congress and signed into law by the Student Body President or enacted over the veto of the Student Body President, any resolution passed by the Student Congress, or any completed action of a legislative nature.

Procedural errors in consideration of a funding request would impede the rights of a student organization to be considered for funding allocations. Therefore, in this matter, there are essential two standing issues remaining: the standing of Culin to sue on the behalf of Project Dinah[1] and status of the unsigned budget bill as a legislative act.

II A. Standing of Culin

Standing under § 407 includes both students and officially recognized student organizations that are impacted by the act in question. Therefore, standing can arise either in a suit by or on behalf of the organization, or in a suit by a student who is personally impacted. Personal impact from an act that clearly relates to an organization presents causation questions. Arguably, when an organization proposes a public event, every student possibly attending would be impacted by harm to the event. This is too tenuous of a connection for standing, and if Congress had intended such result, it would have chosen broader language. An active member presents a more difficult factual question, and in this case, insufficient facts have been presented for this Court to determine if Alyson Culin has been personally impacted by the legislative act. We will therefore only consider the organizational standing, discussed below, as determinative.

[1] As originally captioned as filed, this matter was Culin v. Nichols. In light of our foregoing analysis, we have elected to re-caption it the name of the organization.

A registered student organization is an artificial legal entity, incapable of acting on its own. Instead, an organization must act through its officers and agents. Regrettably, the Code is silent on the question of who has the power to act on behalf of a student organization in this Court.[2] As such, we are reluctant to impose harsh rules that serve to practically limit organizations' access to this Court. Instead, we will operate with a rebuttable presumption of agency for any student member who is active in the affairs of the organization. Such presumption may be rebutted by the defendant, or by the intervention of an officer-in-fact of the organization. Here, Culin is a past chair who has had considerable involvement in the financing activities at issue in this suit. No other party has contested her agency. Accordingly, we find that she has standing to sue on behalf of Project Dinah.

II B. Status as Legislative Act

Defendants have petitioned this court on multiple occasions to deny plaintiff standing on grounds that, as of this Court's hearing, the budget act has yet to be signed into law by the Student Body President. In defendants' view, such unsigned legislation remains a proposed legislative act, to which there is no standing to challenge.

It is clear from § 407 and § 104(E) that proposed legislation may not be challenged in this Court. However, those statutes are hardly necessary to reach that result. A mere proposal in the Congress lacks the sort of institutional assent for a controversy under the laws of this student body to exist. Representatives are entitled to make proposals as they see fit to advance their constituents' interests, and these proposals may run afoul of any number of laws—we are only concerned with the end outcome.[3]

In this case, the challenged legislation is not a mere proposal. Instead, it is a finalized action of the collective Congress, sent off to President, not to in ordinary course be considered again in the legislature. While the definition of legislative act under § 104(E) expressly includes signed bills and adopted resolutions, it also contemplates that something else is included: "any completed action of a legislative nature." We hold that final adoption of a bill is such a completed action, to which standing arises to challenge.

A separate question is whether this court should, in the interest of judicial economy, defer consideration of a suit challenging a bill until after the Student Body President has acted upon it. Such a question can only be answered on a case-by-case basis. Some bills, there will be no harm waiting to review. Others, quick review is prudent as to expedite reconsideration in event of a reversal. Here, we are presented with a matter close to the end of a legislative session. Therefore, time is short in which the originating Congress could complete a potential re-hearing of the legislation.

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[2] III S.G.C. § 533 (2008) provides for process to be served on a student organization by means serving process upon the chief officer of the organization. However, this statute presents no reason why it should be extended to other situations. Process is a specialized case as the service needs to be designed to effectively alert the organization, while also being uniform enough to allow application by plaintiffs without specialized knowledge of that organization's structure.

[3] Bismark may have summed this up best: "laws are like sausages; it's better not to see them being made."

Accordingly, it is prudent for us to hear the case prior to the President's signature in order to maximize this time window.

III. Challenges to Non-Appropriation

As a general matter, Congress has exclusive constitutional power to provide for the appropriation of funds. While an appropriation may conceivably violate law and be reversed, non-appropriation is a matter of legislative discretion. Furthermore, the right of a Representative to vote no on a legislative measure is absolute. Available avenues of substantive attack on non-appropriation all are based on an attacking the substance of a related affirmative appropriation. Such policy underlies the ability to challenge discriminatory funding. *See, e.g.,* V S.G.C. § 109 (2009) (concerning viewpoint neutrality).

Here, no discrimination has been alleged. Moreover, Congress concluded the budget with a surplus, so there may in fact be no corresponding affirmative appropriation at all. As such, no substantive remedy is available to the plaintiff. The only remedies possible are procedural. These procedural remedies are grounded in the belief that, but for the procedural violation, Representatives might have acted differently. While a different deliberative outcome need not be proved as a certainty, plaintiff must present a strong credible theory as to why the procedure affected the outcome. Absent such showing, this Court must find that the error in legislative process was harmless.

IV. Applicability of V S.G.C. § 108

Project Dinah first challenges the Congress's procedure under V S.G.C. § 108 (2008). This statute provides that "[t]here should be conscientious efforts made by [Student Congress] to reduce speculation in regards to an organization's ability to fund-raise or in regards to what effect partial funding of a program might have." Project Dinah alleges that no efforts were made to reduce speculation, and instead members spent considerable time speculating about other sources of funding available to the organization. Defendants do not substantially dispute the facts of the hearing and deliberation.

We empathize with the plaintiff—the evaluation of the proposal based on speculation and assumption presents a hearing of a sort different than that envisioned by the Code. Nevertheless, the statute in question is plainly aspirational. Terms such as "should" and "efforts" move it from the realm of enforceable provisions to aspirational goals. Furthermore, "to reduce" leaves the statute without a quantifiable measure to evaluate performance, and the mandate on the collective Congress to act leaves ambiguous exactly whom has a cognizable duty under its terms.

A statute with such wobbly wording cannot in practice be enforced in a legal proceeding. This is not to say the statute has no purpose; rather, it remains enforceable politically. Representatives ignoring the statute may have to face their constituents' scrutiny, and the statute serves as a tool with which other members can impress a particular manner of conduct on their colleagues. Such political actors are more suited to judge the section's broad aspirations than is this Court.

Accordingly, we find no violation at law of § 108 exists that would require action by this Court.

V. Informal Rules and "Title V for Dummies"

Projct Dinah further alleges that Congress improperly relied on an informal rule not to fund speakers who have appeared on campus in the previous four years. This rule or principle is noted in the "Title V for Dummies" booklet published by finance officials. Affidavits from several Representatives acknowledge this principle exists and was persuasive in their decision not to fund Project Dinah's request. The question presented to this Court is whether members of Congress can rely on rules and doctrines not based in the Student Code. With caution, we find that members are entitled to look to any authority they desire.

Parties acknowledge that the organization funding process is highly competitive. As a practical matter, members of Congress must apply tests, standards, and rules to sort out funded and non-funded requests. The Code provides some guidelines for evaluating funding, but it does not purport to be exhaustive. *See* V S.G.C. § 202 (2008). Indeed, if the Code provided an exhaustive list of criteria, it would reduce the Congress from a representative body to a mere mechanical enterprise of applying formulae to determine objectively correct results.

A fundamental tenant of representative democracy is that each representative brings his or her opinions, together with the views of constituents, to bear upon the decisions to be made as a legislature. In fulfilling this role, a Representative can properly look to any authority he or she views as providing advice that would be consistent with his or her representative objectives. Any source of political doctrine might be involved, be it observations from past leaders, platform promises, the manifesto of eccentric thinkers, or the patterns in one's tea leaves. This is the representative thought process. To attempt to enjoin a Representative from having particular thoughts would expose the very heights of folly.

Here, the repeat funding doctrine noted in "Title V for Dummies" is an extra-statutory political doctrine that is within the rights of a Representative to consider and apply. The defendants note that the doctrine is grounded in fairness concerns. We would view such fairness as political fairness—Representatives know that if they are political fair, they can justify their actions to constituents. Such fairness is of an entirely different sort than the fairness of due process this Court is called upon from time-to-time to enforce.

While the facts of this case do not present a legal issue with the use of "Title V for Dummies" and its embodied repeat funding doctrine, this opinion should not be read to validate this document in general. Congress has enacted laws allowing publication of rule and advisory documents in other contexts. *See*, *e.g.*, II S.G.C. § 178(B) (2009) (providing for a "Guests' Handbook"); II S.G.C. § 230 (authorizing a legislative style manual). Such laws provide clear guidelines and control over documents. Publishing advisory documents without a legal grant presents risks of misinterpretation by students and Representatives. Some misinterpretations, while embarrassing to the Student Government, do not present legal problems. Others may present problems. For example, it is problematic if Representatives feel compelled to follow the publications,

not out of political motivations, but out of fear of legal or ethical sanction. While the identical affidavits in this case from Representatives professing loyalty to the repeat funding doctrine raises questions as to how this doctrine is being used within Congress, there has been nowhere near the sort of evidentiary showing necessary to conclude that Representatives have been bamboozled into following false law.

Thus, we find that the use of the repeat funding doctrine in Congressional deliberations does not violate student law.

VI. Order

For the foregoing reasons, we find for the defendants on all matters. Plaintiff's petition for relief is denied.

Done this 7th Day of April 2009.

Chief Justice EMMA J. HODSON, Justices STEPHANIE KELLY, SAM HARRELL, AND ALLEN SOUZA Concur