

IN THE SUPREME COURT

| | | |
|---------------------------|---|--------|
| Action No. 10 SSC 003 |) | |
| |) | |
| Deanna Santoro, |) | |
| PLAINTIFF |) | |
| |) | |
| Versus |) | ANSWER |
| |) | |
| Andrew Phillips, |) | |
| Chair, Board of Elections |) | |
| DEFENDANT |) | |

1. Jurisdiction

Deny the allegation in part. While the Defendant acknowledges the jurisdiction of the Court to review executive acts, as defined in Title III, Section 104, the Defense denies that an act of the Elections Board is an *executive* act. Instead, any act taken by the Elections Board is to be considered an *election* act, subject to Title III, Section 409. The Defense, however, does not contest the Court’s ability to review election acts and, therefore, does not deny the Court’s jurisdiction. The distinction between an executive act and an election act, however, will be explored in determining if the Plaintiff can establish standing.

2. Standing

Deny the allegation. This section states that any student (excepting the specific officers enumerated in §408.A-E) has standing to bring an action against any member of the executive branch. The Plaintiff is making the initially plausible claim that this section establishes the standing to bring this suit.

According to this reading of §408, however, §409 is rendered completely superfluous. §409 enumerates three possible conditions, one of which a student must meet to have standing to bring action based on election action:

- A. A candidate or political party alleging injury through an election error or fraud.*
- B. A student directly and adversely affected by a regulation, ruling, or determination of the Elections Board.*
- C. A student alleging election error in relation to a constitutional referendum, a constitutional initiative, a special referendum, an initiative election, or a review election.*

If the Plaintiff's reading of §408 is correct, §409 is rendered completely superfluous; as any action taken by the Elections Board is *necessarily* an executive act, §408 provides *all* student standing to bring a suit. However, §409 *restricts* the particular persons who qualify for such standing, as they must meet one of the three aforementioned criteria.

After careful scrutiny, it appears that §409, in cases dealing with the Elections Board, *supersedes* §408. That is to say, when considering an election action, §409 is the only standard for assessing which students have standing. Consequently, the Plaintiff must demonstrate standing according to §409, rather than the §408.

The Defense also **denies** that the Plaintiff has standing in this action based on §409. The Plaintiff has attempted to establish standing based on §409.B. That portion of the Student Code states that "A student **directly and adversely** affected by a regulation, ruling, or determination of the Elections Board" may bring action against the Election Board.¹ Specifically, the Plaintiff is asserting that it was her "duty to ensure the Code is enforced." As she had to resign from her position of Speaker to bring this suit, she has thus been affected directly and adversely.

The Defense finds that this claim is tenuous at best. The Plaintiff has tried to generate standing through her title of 'Speaker Emeritus.' The Defense finds it important to note that no such position is referenced in the Code; it logically follows that no such duty can exist. Presumably, the Plaintiff is referring to some personal or moral duty she believes she is tasked with executing. A duty of this kind, however, lacks any legal foundation and cannot have the power to generate standing.

Furthermore, the Plaintiff has conflated the cause of her being *directly* and *adversely* affected. In the Complaint, it is implied that the Plaintiff's resignation constitutes the sort of injury outlined in §409(B). The unstated assumption on which the Plaintiff's claim rests is that the Elections Board's act caused her resignation. It is readily apparent, however, that the adverse effect the Plaintiff experienced was caused by her voluntary decision to resign. The Plaintiff's injury, if any, cannot reasonably be construed as 'direct,' as the resignation would not have occurred but for the Plaintiff's willful action.

Finally, the Code reads that, in order for the student to have standing, he or she must have suffered directly *and* adversely, rather than directly *or* adversely. As the Defense has demonstrated that the former condition has not been met, the Plaintiff has therefore failed to establish standing. Therefore, the Defense moves for dismissal because the Plaintiff does not have standing to bring this action before the Supreme Court.

¹ Emphasis added

3. Necessary Defendants

Admit the allegation. Restatement of The Code.

4.a Relief

Admit the allegation. Restatement of The Code.

4.b

Admit the allegation.

4.c

Deny the allegation in part. The Defense does not contest that the Elections Board released administrative decision 10-BE-07 on the date specified in the complaint. However, the Defense denies the allegation that the aforementioned decision “misinterpreted” Title VI Section 408.A, for reasons specified in 4.f and 4.g of this answer to the complaint.

4.d

The Defense also denies that the Plaintiff has standing on the grounds that the statute of limitations has expired in relation to the act in question. The Student Code states that “Actions shall be commenced in the Supreme Court no later than ninety-six (96) hours after the legislative, executive, elections board, or other act which causes injury” (Title 3, Article IV, § 513). In their complaint, Plaintiffs endeavored to demonstrate how the statute of limitations, defined by the aforementioned section of the Student Code), has *not* elapsed in this particular incident. The Plaintiff’s explanation was that a conversation between Board of Elections Chair Andrew Phillips and Ms. Santoro constituted an ‘action’, thereby renewing the ninety-six hour rule.

The Defense finds this assertion implausible. To reiterate, the Plaintiff’s standing must be founded on §409.B. That portion of the Student Code states that “A student directly and adversely affected by a regulation, ruling, or determination of the Elections Board” may bring action against the Elections Board. Even assuming that the Plaintiff has standing (a claim the Defense has conclusively refuted), the act in question is neither a ‘regulation, ruling, or determination,’ but rather an informal conversation with *one* member of the Elections Board. If Plaintiff is asserting that any comments regarding previous judgments constitutes a new regulation, ruling or determination, any comment made by the Election Board is a proper act, no matter how casual, informal, or benign the comment is. Furthermore, if the Plaintiff is

correct, her repeated attempts to communicate with the Elections Board (see: Complaint IV.D) appear to be an ill-guided effort to revive an otherwise belated action. Therefore, the act subject to review cannot be the discussion that took place on February 6, 2011.

Consequently, the act under scrutiny is in fact administrative decision 10-BE-07 published on December 13, 2010. However, that act occurred several weeks ago and the time allowed for bring suit has expired. As such, the Defense moves for dismissal on the grounds that the statute of limitations has been reached.

4.e

Deny the allegation in part. The Defense *admits* with Plaintiff's statement that Title VI, Section 408.B.1 precludes the Speaker from speaking publicly for or against Mr. Lee's campaign. The Defense *denies* Plaintiff's assertion that the Defendant "failed" to investigate reports submitted by the Plaintiff. As the Plaintiff illustrated, the Elections Board "shall investigate *by its own directive*, outside reports, or prompts, cases of misconduct as they relate to Title VI."² In fact, the Elections Board did make a decision on the precise issue the Plaintiff raised in her reports; on December 13, 2010 the Elections Board released administrative decision 10-BE-07, the effect of which allowed Mr. Lee to continue his campaign for Student Body President. The Plaintiff's 'reports' raised the same issue that the Board resolved with 10-BE-07.

4.f

Deny the allegation. The Plaintiff asserts that she defines understands the word "official, as it appears in Title VI, Section 310.A.5 , to "refer to any student participating in Student Government who is not named in Title VI, Section 408.B.1. Any thorough examination of Section 310, however, reveals that it is unclear as to who precisely qualifies as an 'official.'

4.g

Deny the allegation. The Elections Board did not establish any new standard publishing 10-BE-07. Given the unclear nature of Section 408, the Elections Board deferred to the most plausible reading of 408.B.3. That reading suggests that, so long as candidates make it "clear that [they are] speaking only on behalf of themselves and not for Student Government or any subsidiary thereof," they are authorized to participate in student body elections.

5 Demand for Judgment

² Emphasis added

The Defense requests that the Supreme Court deny the Plaintiff's demands for judgment and also requests that the injunction against revealing the outcome of the Student Body President be released.

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

Respectfully submitted,

DEFENDANT
Andrew Phillips
Chair, Board of Election
205 Raleigh Street #301
Chapel Hill, NC 27516
andrewrphillips@gmail.com
(919) 259-4681

Kevin Whitfield
Counsel for the Defense
146 East Longview Street
Chapel Hill, NC 27516
kmwhitfield@gmail.com
252.367.1177

Filed this the 8th day of February, 2011, at 4:50 p.m.