

IN THE SUPREME COURT

Action No. 10 SSC 003 )  
 )  
Deanna Santoro, )  
PLAINTIFF )  
 )  
versus ) MOTIONS FOR DISMISSAL  
 )  
Andrew Phillips, )  
Chair, Board of Elections )  
DEFENDANT )

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**I. Motion to Dismiss on the Grounds that Plaintiff does not have Standing**

The Defense **denies** that the Plaintiff has standing under §408. 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.

The Plaintiff’s reading of §409 seems to ignore the existence of §409. §409 enumerates three possible conditions, one of which a student must meet in order to have standing to bring action based on *election* act:

- 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* students 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, then, 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 Elections Board.<sup>1</sup> 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. Consequently, the Defense moves for dismissal because the Plaintiff does not have standing to bring this action before the Supreme Court.

## **II. Motion to Dismiss on the Grounds that the Statute of Limitations has Expired**

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, the Plaintiff 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 Chairman Andrew Phillips and Ms. Santoro constituted an ‘act’, 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) approach

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<sup>1</sup> Emphasis added

entrapment. 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 expired.

### **III. Motion to Dismiss Injunction on the Grounds that the Investigation**

In her Motion, Plaintiff requests “an injunction of the Tuesday, February 8<sup>th</sup> election or postpone the certification of its results until this legal question is resolved.” If the Supreme Court (or its Chief Justice) grants either of the Defense’s aforementioned motions, the Defense subsequently moves to dismiss the injunction filed in Action No. SSC 003, as the legal question will have been resolved.

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

Respectfully Submitted,

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Filed this 8<sup>th</sup> day of February, 2011 at 6:30 p.m.