No. 08 SSC 003

Student Supreme Court

Filed: 14 January 2009

ASHLEY KLEIN,
Plaintiff

v. **Opinion and Order**

RYAN MORGAN;
THE BOARD OF ELECTIONS,
Defendants

Complaint by Plaintiff Klein concerning actions of Defendant Board of Elections as reflected in Punitive Decision 08-BE-011, Administrative Decision 08-BE-001, and Administrative Decision 08-BE-010. Heard in the Supreme Court 12 November 2008.

*Ashley Klein, pro se, for plaintiff.*

*Val Tenyotkin, for defendant.*

ERICH M. FABRICIUS, Justice.

Plaintiff Ashley Klein, a prospective candidate, challenges the validity of a Board of Elections regulation concerning early campaigning and the propriety of a punitive elections decision against her campaign. We hold the regulation to be generally permissible, but invalid with respect to particular provisions. We further find that the Board erred in determining a particular interest meeting to be a campaign violation, but did not err in penalizing Klein for granting an interview to the Daily Tar Heel. Nevertheless, we hold this interview misconduct does not rise to a level adequate to support the levied fine and remand to the Board for imposition of appropriate penalty.

## I. Background

At trial, the parties did not contest the essential facts of this matter. Plaintiff Klein is a junior and a prospective candidate for Student Body President. As part of her campaign's early organization, she held an organizational meeting of prospective campaign staff in the Campus Y. The *Daily Tar Heel* learned of this meeting, and reported on it in its 27 August 2008 issue. The article, authored by Kevin Kiley, included a quote from Klein, namely: "Candidates in the past have shown that we can have large meetings like this if we've contacted campaign workers on a one-to-one basis."

These activities came under the scrutiny of the Board of Elections, and Klein and Board Chairman Ryan Morgan met concerning such. Following this investigation, the Board deliberated and held that both the meeting itself and the interview with the *Daily Tar Heel* constituted violations of VI S.G.C. § 402(A)(1) (2008). In a decision published

as Punitive Decision 08-BE-011, and dated 5 October 2008, the board levied a $40 fine on Klein, contingent on her later certification as a candidate.[1]

At the same time as the Board was investigating Klein's conduct, it also engaged itself upon regulating the boundaries of early campaigning. On 28 September 2008, it issued Administrative Decision 08-BE-001, which announced the Board's interpretation of § 402(A). In particular, this decision explained in para. 3(A) "Oral declaration of candidacy for office," in 3(B) "Campaigning," in 3(C) "Private Campaigning," and in 3(D) "Public Campaigning." The decision also set out several example of Public Campaigning.

On 5 October 2008, the Board replaced 08-BE-001 with Administrative Decision 08-BE-010. This later decision expanded the Board's definition of public campaigning to include campaigning occurring in locations "directly visible from UNC property," and added "[p]ublicly, in plain sight solicit votes, or otherwise engage in campaign-furthering activities with or without the use of campaign materials" as an example of impermissible public campaigning. Otherwise, the two regulations were the same.

Following verbal commencement on 8 October 2008, Klein filed the complaint in this action on 22 October 2008. Klein asserts that the Board of Elections acted contrary to Student Body law in holding her conduct to be in violation of the Student Code and exceeded its statutory authority when enacting the two Administrative Decisions.

## II. Jurisdiction and Standing

As this matter concerns the validity of actions of the Board of Elections under the Student Code, this Court holds jurisdiction to hear and decide the complaint. Standing in this matter is provided by III S.G.C. § 409 (2008), which provides:

> 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:
>
> . . .
>
> B. A student directly and adversely affected by a regulation, ruling, or determination of the Elections Board.

[1] VI S.G.C. § 403(E) (2008) authorizes the Board of Elections to fine "a student, candidate or campaign staff" for a violation of elections laws but does not explicitly provide the Board with the authority to fine a future campaign on a contingent basis. While this Court recognizes that it has been the historic practice of the Board of Elections to fine a potential candidate on a contingent basis, as opposed to fining the potential candidate as an individual student, and contingent fines have a role in the efficient administration of elections laws, we are concerned that the Student Code does not explicitly support current practice. While this case does not require us to evaluate the propriety of contingent fines, and we expressly decline to do so, poorly drafted statutes not reflecting modern practices invite uncertainty in a critical area of elections administration and complicate the adjudication and review of elections disputes.

The key question for standing is the directness of the regulation's or ruling's harmful affect on the student. We have previously held this directness to be a function of the causal proximity of Board action to the harm on the student. *Wohlford v. Morgan,* No. 08 SSC 001, (Nov. 10, 2008) (order granting motion to dismiss). Such harm can include the preclusion of activities a student would otherwise complete, but for the existence of the ruling or regulation. *Id.*

Here, standing arises under III S.G.C. § 409(b) for Klein to challenge both Punitive Decision 08-BE-011 and Administrative Decision 08-BE-010.[2] In the case of the punitive decision, the ruling directly results in Klein owing a fine on perfection of her candidacy. For the administrative decision, Klein and other similar situated parties are directly restricted from undertaking the various activities the regulation contemplates as prohibited.

## III. Regulatory Power of Board of Elections

### III A. Power Generally

Klein's farthest reaching argument is that the Board of Elections lacks the authority to promulgate what are, in practical terms, written regulations. Klein petitions us to hold that the ability to interpret Title VI of the Student Code should be expressly limited to this Court and the Student Congress. Defendant answers this argument by asserting that interpreting ambiguity in the Code is intrinsic in the administration of elections. Defendant would have us view the Administrative Decisions as nothing more than advisory declarations of the collective opinion of the Board. On this later point, there is clearly no merit. A written decision, adopted by the Board, concerning the conduct of elections, and affecting either the future conduct of candidates, the Board, or other parties is a regulation, regardless of the name.

Title VI of the Student Code is largely silent on the concept of regulations.[3] No Code provision bans regulatory activity, nor does it provide any scheme for exercising regulatory powers. Instead, we must look to the general clause that is a "duty of the Board of Elections to administer all laws governing elections" in evaluating the existence of regulatory powers. VI S.G.C. § 302(A).

An initial question is whether the duty to administer includes the ability to interpret. We hold that it does. The alternative advanced by Klein—that interpretation is reserved for this Court and the Congress—fails to appreciate the practicalities of these bodies and of elections. Neither litigating nor legislating is likely to proceed quickly, address small matters, or respond to changing circumstances. Furthermore, when elections are in progress, it is potentially problematic for an elected legislature to involve itself in elections administration.

The overall effect of Title VI indicates that the Student Congress has intended the conduct of elections in this Student Body to be rigorously governed. It seems

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[2] Klein's challenge to 08-BE-001 is moot, as that Decision has already been repealed in fact by the Board.

[3] The Code makes passing reference to a joint regulation of residence hall campaigning in § 402(J) and to the applicability of "limitations and regulations" to write-in candidates in § 505(A). The first is a clear special-case provision, and the second seems to be using the term in a colloquial sense that would encompass all elections rules regardless of source. Neither has application here.

inconceivable in this context that the Congress would have the Board of Elections paralyzed and running for guidance every time it comes upon an ambiguity. There is no evidence that the Board interpreting the Code as it administers student election is at all a novel activity. Interpreting the Code is a necessary function within the duty to administer election laws.

Having set out that interpreting the Code is a permissible exercise of the Board's administrative powers, we must next reach the question of whether this interpretative authority is limited to an *ad hoc* case-by-case basis or is also exercisable prospectively by issuance of regulations. In essence, we must find if the absence of explicit reference to regulatory procedures in the Code allows or prohibits regulatory authority. Congress has a burden to actively legislate whenever the desired end would not arise naturally from other laws.

In this case, we hold that the Congress has a burden to expressly bar exercise of regulatory authority if the Board of Elections is not to have that power. As discussed above, the Congress surely expected that the Board would be confronted with a need to interpret the elections laws. In many cases, discharging this interpretive burden by means of written regulation is the most equitable and efficient procedure available. Resolving an interpretation question prior to an actual interpretative dispute allows the Board to avoid interjecting personalities into the interpretative process. Additionally, as even Klein admitted in oral argument, "candidates need to know what they can and cannot do." The additional certainty from written regulations allows candidates to better plan campaigns, and results in a cleaner election with fewer allegations of wrongdoing.

While the Board of Elections has an implied power to regulate, this power is not unlimited or absolute. Regulation must still yield to legislative enactments of the Congress, and this Court will grant no deference to Board in its interpretation of the Code, or of its own regulations. Exercise of regulatory authority need be:

(i) Concerning a subject matter within the authority of the Board. In this respect, we look to if the regulation acts in furtherance of the Board's duty under § 301(A) "to administer all laws governing election."

(ii) Not in conflict with the Student Constitution, the Student Code, or the decisions of this Court—as well as be consistent with those laws' underlying policies and intent.

(iii) Enacted with an even-handed procedure designed to avoid prejudicing candidates or campaigns and to prevent surprise adverse changes in policy. To the extent candidates or other parties have process rights under other law, regulations cannot be used to circumvent or short-cut those rights.

While these factors must be present in a valid regulation, we are careful to emphasize these factors are not the exclusive factors by which a regulation may be invalid.

III B. Administrative Decision 08-BE-010.

Having concluded that in the general case, it is permissible for the Board of Elections to issue written regulations, we must next examine the particular regulation at issue here. This regulation is issued under VI S.G.C. § 402(A) (2008), and purports to clarify subparts (1) and (2) of that section in particular. This section provides:

> A. (1) No candidate, nor any campaign worker, shall publicly campaign for said candidate, nor publicly seek to further the interests of said candidacy prior to one's candidacy being certified by the Board of Elections. . . . Upon providing the BOE with an official declaration of candidacy a candidate and his/her campaign workers may begin seeking signatures for his/her candidacy petition and inform students, on a personal basis, about the candidate's platform, including information relating to their website. Further, none of the above is permitted until a regular election is within twenty-eight (28) days or in the case of a special election within fourteen (14) days.
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> (2) Candidates and their campaign workers may at any time orally declare candidacy for a given office in a public setting and may orally provide contact information at public forums for those who may wish to join their campaign.
>
> (3) Candidates and their campaign workers shall at no time be restricted in their engagement in any private meeting or private campaigning.
>
> (4) Upon certification of the petition/candidacy by the BOE, candidates may publicly campaign for office, with or without campaign materials.

VI S.G.C. § 402(A) (2008).

The core of the regulation is its "decision" section, which provides:

> To preempt confusion and avoid unnecessary sanctions against potential candidates of all upcoming elections of the 2008-2009 school year, BOE issues this administrative decision of its interpretation of the aforementioned sections [§ 402(A)(1) & (A)(2)].
>
> (A). Oral declaration of candidacy for an office shall consist of no more than specifying one's desire to run a particular office, soliciting, without elaborating on any details whatsoever, campaign workers, and orally conveying contact information.

(B). Campaigning shall be defined as any candidacy/campaign-related activity other than those described in (A).

(C). Private Campaigning. Nothing in this decision shall be construed as to restrict private campaigning, which is not regulated by the BOE, and shall be defined as any gathering, at any time, for any purpose, encompassing any activities, that takes place either in student's dormitory room or on private property.

(D). Public Campaigning shall be defined as (B), which takes place outside of the student's residence and on UNC property or directly visible from UNC property.

(A) and (C) may occur at any time. Potential candidates are hereby expressly forbidden from engaging in (B) and (D) earlier than 28 days prior to a Regular Election or 21 days prior to a Special Election. Examples of (B) and (D) include, but are not limited to:

(i). Giving interviews to The Daily Tar Heel or other campus media.

(ii). Soliciting coverage in The Daily Tar Heel or other campus media.

(iii). Attaching information to the outside of one's dormitory room, vehicle, or any location on campus.

(iv). Creating marks on pavement, grass, earth, trees; e.g. chalk, graffiti, carving, etc.

(v). Wearing clothes with campaign-related information, messages, or slogans.

(vi). Holding rallies or interest meetings;

(vii). Publicly, in plain sight solicit votes, or otherwise engage in campaign-furthering activities with or without the use of campaign materials.

(viii). Creating websites, Facebook groups or pages, sending mass emails using mailing lists to anyone other than one's campaign workers, putting up away messages on instant messaging clients, recording voicemail or answering machine messages; which seek to promote and/or advertise candidate(s) or any campaign-related activities.

Administrative Decision 08-BE-010 (footnotes omitted).

We evaluate this regulation under the three factors set out in part III A, *supra.* The broadest question is if this regulation concerns a subject matter open to Board administration. Section 402(A) is a dense section of the code, setting out the framework for permissible and impermissible activities prior to public campaigns by certified candidates. The section is not unambiguous, as conduct can be envisioned on the margins presenting a close question as to how it is to be governed. Furthermore, nothing in the Code or Constitution prevents the Board from interpreting in this area of law. Setting forth the Board's interpretation of an ambiguous statute likely to create student confusion is a beneficial and appropriate use of a written regulation. Accordingly, we hold that regulating in this subject matter is a generally permissible exercise of Board power.

Having found it permissible for the Board to issue a regulatory interpretation, we must next look to the second factor and determine if the interpretation itself is proper and consistent with relevant law. The essential structure of Administrative Decision 08-BE-010 is set out the general rule that campaigning is prohibited prior to the beginning of the campaign period, with two exceptions: (1) oral declarations of candidacy and (2) private (as opposed to public) campaigning. This structure itself is substantially parallel to that of VI S.G.C. § 402 (2008). What the regulation adds is an interpretation of "oral declaration of candidacy," an interpretation of the public/private boundary of campaigning, and several interpretive examples of what constitutes campaigning or furthering interests of candidacy—both of which are restricted by § 402(A)(1).

The first interpretation concerns "oral declaration of candidacy." Under the Code, candidates "may at any time orally declare candidacy for a given office in a public setting." § 402(A)(2). This must be read together with § 402(A)(3) concerning private campaigning, to the effect that declarations of candidacy can occur either in private or orally in pubic. Undefined in the Code is what constitutes a mere declaration of candidacy and what constitutes full—and forbidden—campaigning. The Board has determined that such declarations "consist of no more than specifying one's desire to run a particular office, soliciting, without elaborating on any details whatsoever, campaign workers, and orally conveying contact information." 08-BE-010 para. 3(A). While restrictive, we cannot say this is not a viable and proper interpretation of the Code provision. However, it must be read together with private campaigning rules, discussed *infra*, to allow that if a student responds to the declaration with a question concerning the campaign, that question can, in general, be answered.

The second interpretation concerns the line between public and private campaign activity. The Code, in IV S.G.C. § 102(N) (2008), provides that:

> Private shall be defined as that which is not in the general view, not widely known, and not facilitated by University or government resources. Public shall be defined as that which is not private. For the purposes of this Act all University forums or forums sponsored by University organizations shall be considered public.

In the regulation, the Board effectively classified all activities as public or private based on location alone, so that activities on private property and in dorms are private, and

activities on or visible from UNC property are public. This is an oversimplification of the public/private distinction, and results in an impermissible regulation.

In determining if a given activity is public or private, § 102(N) provides three dimensions to consider: (1) whether or not in the general view, (2) whether or not widely known, and (3) facilitation or lack of facilitation by government resources. The regulation at issue emphasizes (3) while largely ignoring (1) & (2). This is incorrect, as (1) and (2) will often provide the vital distinction between public and private behavior.

The issue of public/private is clouded by the fact the Congress appears to be reaching two separate but distinct harms by way of the public/private definition. One is the perceived need to keep campaigns quiet prior to the campaign period, so that students at-large will not be bothered or otherwise confronted with campaigning well in advance of the election. The other is abuse of University and taxpayer resources in the process of campaigning. Effectively, public is both as in "public knowledge" and as in "public sector."

In regulating campaign conduct, Administrative Decision 08-BE-010 both over-includes and under-includes conduct. For one, it is not reasonable to conclude that merely being on University property is being "facilitated by University . . . resources." VI S.G.C. § 102(N). Rather, facilitated requires some active use of resources above and beyond that occurring in the regular student experience. As such, we see no reason that Code contemplates prohibiting discrete campaign-related activities on campus in the pre-campaigning period. If a student stops a candidate in a quad and queries about the candidacy, the candidate is free to respond in detail in such a way not likely to be overheard by other disinterested parties. This example is by no means exclusive, but illustrates how private campaign-related activity could occur on University property.

On the other hand, absence of proximity to the University does not make something conclusively private. Should a campaign activity be in the general view or otherwise widely known, the Board must enforce the prohibitions on early public campaigning against the campaign. The jurisdiction of the Board is personal to the candidates and campaigns, wherever they may be.

Accordingly, we hold that sections (C) and (D) of paragraph 3 in Administrative Decision 08-BE-010 are contrary to student law and are hereby found void.

The third interpretation concerns the nature of what is campaigning or campaign furthering activity, and is embodied in the list of examples in Administration Decision 08-BE-010. The Code does not provide definition to exactly what campaigning is, although in the context of pre-candidacy activity, Congress intended to reach more activity than merely traditional campaigning. *See* VI S.G.C. § 402(A)(1) ("No candidate . . . shall publicly campaign . . . *nor publicly seek to further the interests* of said candidacy") (emphasis added). While this reach is broad, it cannot be read to all-inclusive, as in a strict sense, anything a candidate does whatsoever may further the interests of their campaign. Students routinely have opportunities to make positive impressions on their classmates and the public in general. There is no indication the grant of authority the Student Body gave this government in the *Student Constitution* is so broad as to permit punishing students for favorable conduct that happens to occur while they are a prospective candidate for office.

In determining if conduct impermissibly furthers campaign interests, a balance must be struck between the importance the activity outside the campaign, including to the student academically and personally, as well as to the student body, and the degree of objective benefit to the campaign. Conduct only tangentially benefiting a campaign, but important to a class, to the student's physical or emotional health, or to the public affairs of this Student Body, is clearly allowed. On the other hand, an activity that a reasonable candidate would expect to significantly bolster their campaign is impermissible, regardless if it also happens to have some minor positive impact outside the campaign. In the middle, the balance is necessarily fact-specific.

On their face, two examples enumerated by the Board raise concerns for this Court. The first is (i), prohibiting "[g]iving interviews to The Daily Tar Heel or other campus media." While true this is conduct a candidate should oftentimes avoid, it is not universally impermissible as the regulation stipulates. If a potential candidate has a unique perspective on an issue of news due to, for example, his academic major or involvement in an extracurricular activity, the Student Body should generally be permitted to learn of it, should the media find it is valuable. However, in some cases the effect on the campaign may be so strong, that the interview should be forbidden. Regardless, a blanket rule as provided by Administrative Decision 08-BE-010 is incorrect.

The other is (vii), prohibiting in part "[p]ublicly, in plain sight . . . otherwise engag[ing] in campaign-furthering activities." This misapplies the concept of public campaign furthering. The same aspect of an action that qualifies the activity as public must also qualify it as campaign-furthering. An activity in plain sight must further the campaign in the eyes of the seer, by means of the sight.

Accordingly, we hold that examples (i) and (vii) of paragraph 3 in Administrative Decision 08-BE-010 are contrary to student law and are hereby found void.

The final factor under which the regulation must be evaluated is the procedural fairness by which the regulation was enacted. Here, we have the somewhat unusual case of a regulation, Administrative Decision 08-BE-010, that served to supercede another issued a week prior, Administrative Decision 08-BE-001. As such, the Student Body was on notice that the Board was regulating in the subject area. While such notice is not strictly required, the presence of such is certainly favorable to a determination of procedural fairness.

Also favorable for this regulation is that it was issued not as a means to punish Klein in this action, but in order to promulgate the underlying rationale of the board for future occurrences. Thus, the regulation serves not to prejudice parties, but to promote consistent administration. Lastly, when a regulation is issued far in advance of an election, it is inherently less likely to cause irreparable harm to a campaign. Indeed, Klein did not seek a temporary restraining order or preliminary injunction, motions that we would typically see when a plaintiff alleges harm from the timing of an action. Thus, we will not invalidate the remainder of regulation for procedural deficiencies.

## IV. Punitive Decision 08-BE-011

Beyond challenging the regulatory exercise of the Board of Elections, Klein also alleges that Punitive Decision 08-BE-011 is contrary to student law. While this ruling was contemporaneous with Administrative Decision 08-BE-010, and appears to be decided consistent with the regulation's pronouncements, it is, at least on its face, distinct and independent. However, we will note that much of our reasoning in analyzing 08-BE-010 as a regulation under VI S.G.C § 402(A) (2008) will also apply to 08-BE-011 as a punitive ruling under the same § 402(A).

### IV A. Interest Meeting

The activity punished under 08-BE-011 includes the conduct of "an interest meeting held at the Campus Y" by Klein. The Board found this to be a violation of § 402(A)(1), that it was either public campaigning or public furtherance of a campaign prior to the statutory campaign period. Parties agree that this meeting consisted of individuals interested in campaign staff roles, not of general prospective voters.

As an initial point, this activity concerns an area—the organization of campaigns—that must be treated with utmost caution when restricting. A core purpose of the *Student Constitution* is to provide for orderly self-government. Student Constit. Preamble. Critical to this order is the ability of students who disagree with incumbent governments to organize campaigns to elect replacement officers. While the foregoing does not open the door to unrestrictive activity in the name of organizing a campaign, we will read narrowly any statute or regulation that purports to restrict the ability to organize a campaign.

In this case, there is no creditable argument that Klein's meeting did not further the interests of the campaign. Instead, the question is whether the meeting publicly furthered the interests under § 402(A)(1).

As discussed above, in determining if a given activity is public, § 102(N) provides three dimensions to consider: (1) general view, (2) extent widely known, and (3) facilitation by government resources. Here, the Board is of the view that by using the Campus Y, the campaign-related meeting was facilitated by University resources. We disagree that the Campus Y is a University resource in this context. When the University makes one of its resources available for use by students-at-large, either for free or for a set charge, it becomes a community resource. The question is not whether the University owns the facility, but whether the usage right of the facility is limited to University or governmental purposes, or available for general consumption. Interpreting this otherwise would erect a substantial practical impediment to the fundamental ability of students to organize candidacies.

The other § 102(N) dimensions are less at issue. While the secrecy of the meeting was not absolute, given that the *Daily Tar Heel* and others learned of it, such strict secrecy is not required for an activity to out of the general view and not widely known. Closed-door meetings are presumptively out of the general view. Wide knowledge of such an activity cannot be inferred absent a pattern of pre-activity indiscriminate communications.

Accordingly, we find the Board erred in ruling that Klein's meeting was a violation of § 402(A).

IV B. Media Interview

Klein's interview with the *Daily Tar Heel* concerning the aforementioned meeting is the second activity punished under Punitive Decision 08-BE-011. The Board also found this to be a violation of § 402(A)(1), that it was either public campaigning or public furtherance of a campaign prior to the statutory campaign period.

With regards to the interview comments, the question before this Court is whether they fall within the bounds of conduct "seek to further the interests of said candidacy." VI S.G.C. § 402(A)(1). The public nature of the comments needs no further consideration, given that they occurred in an on-the-record interview with a leading campus publication. As discussed above, we balance the non-campaign interests of the comments against the campaign impact of the comments to determine if their overall character is furtherance of the campaign.

Here, Klein has an interest in defending the nature of her conduct, and the Student Body has an interest in having knowledgeable parties speak when its government allegedly violates its own laws. Campaign rules cannot be used to stifle public discourse on the proper conduct of elections. At the same time, during the earliest junctures of a Student Body President campaign, there is substantial value in building awareness of potential candidacy. There is a practical limit on the number of viable campaigns organized, so there can be first-mover advantage in respect to gaining the critical mass of supporters to be viable.

This is a fact-specific situation. Had it been closer to the campaign period, the benefit to the campaign would have been less substantial, and the conduct might have been permissible. Furthermore, if Klein commented on an actual complaint with this Court, that conduct would need to egregious campaigning to not be shielded by public interest in open access to the judiciary.

We note that the interests of Klein and Student Body could have been served with options less beneficial to the campaign. For example, Klein could have spoken regarding the meeting on a condition of anonymity. Accordingly, we hold that it was proper for the Board to punish the interview conduct. However, we find that the violation is distinctly minor in character, unable to support the $40 fine, or even half that amount. Thus, we vacate the imposition of the fine and remand to the Board for determination of a proper penalty.

V. Order

As we have found portions of Administrative Decision 08-BE-010 to be inconsistent with, and therefore improper interpretations of, the Student Code, we order that the regulation be de-published until such time that the void provisions are removed by the Board. The Board is permanently enjoined from enforcing these provisions, as embodied in sections (C) and (D) and examples (i) and (vii) of paragraph 3.

With respect to Punitive Decision 08-BE-011, we reverse the Board's determination of campaign violation in the matter of Klein's interest meeting. In the matter of the press interview, we vacate the Board's imposition of penalty and remand to the Board for imposition of an appropriate fine, or other lesser punishment, consistent with the minor magnitude of the campaign violation.

Chief Justice EMMA J. HODSON, Justice SAM HARRELL, and Justice ALLEN SOUZA concur.

Justice STEPHANIE KELLY did not participate in the consideration or decision of this case.