IN THE SUPREME COURT	)	
	)	
Action No. 10 SSC 002	)	
	)	
Adam J. Horowitz, Leah Josephson, Christopher B. Lane, Chelsea Cook,	)	
	)	
Plaintiffs	)	
	)	ORDER DENYING
versus	)	DEFENDANTS' SECOND
	)	MOTION TO DISMISS
Andrew Phillips, Chairperson, Board of Elections, Hogan Medlin, Student Body President	)	
Defendants.	)	

I. BACKGROUND

1. On February 7, 2011 at 6:02 p.m., Plaintiffs Adam J. Horowitz, Leah Josephson, Christopher B. Lane, and Chelsea Cook, filed a Complaint asking this Court to enjoin the Board of Elections from allowing the UCommons referendum from appearing on the February 8, 2011 ballot, or, alternatively, from certifying and releasing the results of the UCommons referendum on the grounds that the Union campaign in support of the passage of the referendum violated numerous election laws under Title VI of the Student Code. See Title VI S.G.C. §§ 404(B), 405(F), 405(G), 406(I)(1), and 406(J) (2009). Additionally, the Plaintiffs contended that both Student Body President Hogan Medlin and Chairman of the Board of Elections Andrew Phillips failed in their respective duties to address these alleged campaign violations, as required by duties charged to them by the Student Code. See Title I, S.G.C. Article V § 4, and Title VI S.G.C. § 314, respectively.

2. Defendants submitted a timely Answer with the Court responding to Plaintiffs' Complaint on February 9, 2011.

3. Upon receipt of the Complaint and Answer of all parties, the Court set the deadline for the submission of Motions and Briefs to Thursday, February 10, 2011 at 5pm.

4. On Thursday, February 10, 2011 at 12:12 a.m., Chief Justice Womack sent a reminder email to all parties as a courtesy. In the email, the Chief Justice reminded the parties as to all of the upcoming deadlines in the case, stating in part

> "any motions . . . are due at the same time the briefs are due-- 5 pm, Thursday February 10, 2011. If you need an extension, you will need to reference the procedure for requesting one-- located in

> Title III of the Code-- and submit the request prior to the 2/10/11 5 pm deadline."

5. On Thursday, February 11, 2011 at 12:52 a.m., Defendant Phillips emailed Chief Justice Womack requesting leave to file an extension of a brief. In this email, he asked for guidance as to the procedure for filing an extension of a Brief, noting that the Student Code provides a procedure for requesting an extension on an Answer while lacking express guidance on the procedure for filing an extension for a Brief. Specifically, Defendant Phillips stated

> "Counsel and I wish to file for an extension for one of the briefs due tomorrow at 5pm. While I have consulted Title III for guidance on the format and manner of submission for that document, the only portion of the Code that references an extension is in regards to an answer, rather than a brief . . . is there another potion of Title III that you were referring to in your email?"

6. On February 10, 2011 at 12:56 a.m., Chief Justice Womack responded to Defendant Phillips informing Defendant that, as there was no explicit procedure in the Student Code governing the extension of Briefs, that Defendant was to "use the procedure for requesting extensions for an Answer for requesting extensions for a Brief." Chief Justice Womack then immediately sent an email to all parties at 12:59 a.m. advising them of the procedure to be used.

7. Both Plaintiffs and Defendants prior to the Thursday, February 10, 2011 5 pm deadline filed timely Motions requesting the Court grant all parties an extension on the submission of both Motions and Briefs. Specifically, all parties both requested an extension on the submission of their Motions, proposing a new deadline of Friday, February 11, 2011 at 12 pm. In addition, all parties requested an extension on the submission of their Briefs, proposing a new deadline of Saturday, February 12, 2011 at 12 pm.

8. On February 10, 2011 at 3:50 pm, Defendants filed a timely Motion to Dismiss Plaintiffs' Complaint. See Motion to Dismiss of Medlin and Phillips, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).

9. On February 10, 2011 at 4:00 pm, Plaintiffs filed a timely Motion to Subpoena certain documents into evidence.

10. On February 10, 2011 at 4:30 pm, the Court granted both Plaintiffs' and Defendants' Motions requesting an extension of time on the submission of their Motions and Briefs. As per both Plaintiffs' and Defendants' requests, the Order extended the deadline for submission of Motions to Friday, February 11, 2011 at 12 pm and the deadline for submission of Briefs to Saturday, February 12, 2011 at 12 pm. See Order Granting Extension of Time, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002 (2011).

11. On February 10, 2011 at 4:45 pm, Defendants timely filed their Brief with the Court.

10. On February 10, 2011 at 5:45 pm, Plaintiffs filed a timely Motion to Amend their original Complaint to address concerns over wording of their standing allegation in response to Defendants' Motion to Dismiss.[1] See Motion to Amend of Horowitz, et al., ¶¶ 1, *Horowitz, et al. v. Medlin and Phillips*, 10 SSC 002 (2011).

11. On Friday, February 11, 2011 at 12:19 a.m., the Court granted the Plaintiffs' Motion to Amend. In doing so, the Court granted Defendants leave to "file a new motion to dismiss if so desired" and the Court provided "a deadline for submission of the motion to dismiss of Friday, February 11, 2011 at 5 pm." See Order Granting Plaintiffs' Motion for Leave to Amend, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).

12. On Friday, February 11, 2011 at 10:50 am, Defense Counsel Kevin Whitfield sent Chief Justice Womack an email stating

> "The Defense has a question it would like to pose to the Court in regards to action 10 SSC 002, *Horowitz et al v. Medlin and Phillips.* As plaintiffs have submitted a motion to subpoena, the Defense wishes to respond with a motion to quash . . . . as the Code is silent on the particular issue of motions to quash, the ability to submit such a motion is, presumably, the discretion of the Court."

13. On Friday, February 11, 2011 at 11:16 am, Chief Justice Womack sent the following response to all parties:

> "In regards to a motion to quash:
> This issue is not at the discretion of the Court. III S.G.C. Sections 521-525 explicitly state the types of Motions that may be submitted to the Court-- a listing from which Motion to quash is absent. As such, a Motion to quash is unavailable to all parties. For the Court to allow the submission of such a Motion when Student Congress has explicitly listed the Motions authorized differs from the Court simply deciding a procedural matter as to the timing of the presentation of an already lawful filing-- the former scenario resulting in judicial law-making while the latter scenario does not.
>
> As to Plaintiff's Motion for a Subpoena:
> This Motion will not be decided until after the deadline passes for Motions and it becomes clear that there will be a trial.
> If Defendants submit a motion to dismiss the case, and that motion is decided in Defendants' favor at a mandatory pre-trial hearing, then the gathering of the evidence requested would be irrelevant.

[1] Plaintiffs' Motion to amend is timely in light of the extended deadline.

> Alternatively, should the parties file no motions requiring the mandatory pretrial hearing authorized under 535(A), 535(B) allows me to convene a discretionary, private pre-trial hearing where the Plaintiffs' motion for a subpoena can be considered. Note 535(B)(3). Defendants at that time are free to argue against Plaintiffs' request-- note 535(C). Defendants simply may not submit a Motion to quash to do so."

14. On Friday, February 11, 2011 at 4:45 pm, Defendants submitted a timely second Motion to Dismiss Plaintiffs' Complaint.

II. ANALYSIS

Defendants' Motion to Dismiss Plaintiffs' Complaint cites as its grounding authority III S.G.C. §523 (2009). §523 states

> Before trial of an action, a party may file a motion to dismiss the claim based on failures of the opposing party to comply with the requirements of this Title or any Sections or provisions under its authority, or if justice requires.

Defendants' Motion then goes on to allege that "the Court has given two rulings that (i) are incompatible with one another and (ii) place undue hardship on, and prejudice the outcome against, the Defendants [because] these rulings were conflicting answers as to how absences of explicit standards in Title III should be resolved." Defendants then use this allegation as their foundation to advocate-- with much detail and zeal-- that these allegedly inconsistent rulings of the Court have prejudiced Defendants' case and otherwise caused Defendants hardship by allegedly allowing Plaintiffs' unfair advantages.

At the outset, the Court notes that Defendants' Motion to Dismiss relies on a statute authorizing the filing of a Motion to Dismiss based on the failure of an opposing party to comply with "the requirements of this Title or any Sections or provisions under its authority."[2] III S.G.C. § 523. Yet throughout the entirety of their Motion to Dismiss, Defendants fail to allege any independent specific act of Plaintiffs that can be reasonably construed as "fail[ing] to comply with the requirements of Title III," or with "any Sections or provisions" enacted under Title III's authority." III S.G.C.§ 523. Instead, Defendants choose to focus on the alleged "inconsistencies" in two of the Court "rulings" in the case at bar, alleging that these "inconsistencies" have allowed Plaintiffs an unfair advantage. However, neither III S.G.C. §523 nor any other Section of Title III grant a party the ability to file a Motion to Dismiss another party's Complaint because the filing party perceives the Court's rulings in the case to be inconsistent or otherwise unfair. Additionally, parties have no right under the Student Code to appeal a decision of this Court. Thus, as a matter of law, III S.G.C. §523 can only support Defendants' Motion to Dismiss if

[2] Emphasis added.

Defendants sufficiently allege facts showing that dismissal is proper under the last phrase of §523-- because dismissal of a party's Complaint is what "justice requires." Id.

In conducting its analysis as to whether justice requires dismissal of Plaintiffs' Complaint under III S.G.C. §523, the Court will address each of Defendants' two major arguments in turn.

1. **Defendants' allegation that the Court granted the parties' Motion requesting an extension *ex post facto***

According to Defendants, the parties' Motions requesting an extension of Motions and Briefs were "not reviewed until after the deadline in question had elapsed," and, as such, there was no valid extension of the original Thursday February 10, 2011 at 5 pm filing. Thus, Defendants allege that Plaintiffs failed to comply with Court deadlines in the filing of their later Motion to Amend, and, as such, Defendants allege that, contrary to the requirements of Justice, the Court has given Plaintiffs an unfair advantage in granting Plaintiffs' Motion.[3] See Second Motion to Dismiss of Medlin and Phillips, *Horowitz et al. v. Medlin and Phillips*, (2011).

While it is true that there was a brief delay in sending out the formally authorized Order to the parties, if Defendants read the Order carefully, they will see that the Order in question was granted at 4:30 p.m.—before the original deadline of Thursday February 10, 2011 at 5pm. As such, neither the parties' Motions nor the Order were reviewed or granted *ex post facto*. Indeed, here the only *ex post facto* occurrence is Defendants' raising their concerns as to the timing of the release of the Order well after the fact.

Additionally, while Chief Clerk Gordon did inform Chief Justice Womack shortly before the Chief Justice emailed the aforementioned Order to the parties that Defense Counsel had recently inquired into the timeline of the decision, neither Defense Counsel nor Defendants actually contacted the Chief Justice to request such information or to express any concerns about the upcoming deadline. It is not the responsibility of the Chief Clerk or the Chief Justice to advocate for either party, or to ensure that parties make wise strategic decisions. If Defense Counsel or Defendants had concerns as to when they should expect to receive the Order or whether the Order would be granted, they should have contacted the Chief Justice to confirm. The record shows that the Chief Justice has timely responded to all inquires directly posed to her by all parties throughout the case, and as such, there is no objectively reasonable explanation for Defendants failure to do so in this instance. Thus, any "prejudice" that Defendants perceive from submitting their Brief or any other filings prior to the original deadline stems from Defendants' failure to confirm with the Court the status of their Motion prior to filing their Brief. In such a case, the requirements of justice as envisioned in III S.G.C. §523 certainly do not entail a dismissal of the opposing party's complaint, but rather that Defendants cope with the consequences of what may later prove to be a poor strategic decision on their part.

[3] Emphasis in original.

2. Defendants' allegation that inconsistent rulings of the Court have caused them prejudice and hardship

Defendants allege that because the Court has allegedly promulgated "two mutually exclusive interpretations of Title III" as to how to deal with judicial issues on which the Student Code is silent, the Court has, in granting Plaintiffs' Motions, allowed Plaintiffs to " repeatedly us[e] the efforts of the Defendants as a crutch" and that, in promulgating these allegedly mutually exclusive interpretations, twice "ruled against the interests of the Defense." See Second Motion to Dismiss of Medlin and Phillips, *Horowitz et al. v. Medlin and Phillips*, (2001). [4] Thus, Defendants claim, even if Plaintiffs' subsequent filings were submitted, Defendants have nevertheless been unfairly prejudiced and subject to hardship.

The two "rulings" to which Defendants refer when alleging inconsistency are 1) the Court's decision that, despite the Student Code lacking an explicit procedure for the Court to extend its discretionary deadline for the filing of Motions and Briefs, the Court could still consider and grant such extensions, and 2) that, because the Student Code does not explicitly provide for a Motion to Quash in III S.G.C. §§ 521-525 (2009) , such a motion is unavailable to Defense in responding to Plaintiffs' Motion to Subpoena.

A. The Court's ruling that it is authorized to grant extensions to parties' filings of Motions and Briefs

At the outset, the Court notes that Defendants are simply incorrect in their statement that both interpretations "ruled against the interests of the Defense." It the first alleged instance of inconsistency-- the case of the Court interpreting that despite the Student Code lacking an explicit procedure for the Court to extend its discretionary deadline for the filing of Motions and Briefs, the Court could still do so-- it was Defendants, not Plaintiffs who initially requested an extension. Additionally, the Motions submitted by the two parties were identical. So, the Motion was granted in both Plaintiffs' and Defendants' favor. Thus, the only prejudice or hardship resulting to Defendants from this ruling, as discussed above, arose solely from Defendants' failure to communicate in a timely manner to the Chief Justice any questions or concerns they may have had as to the status of their Motion and deciding to submit their Brief absent that information.

Additionally, in claiming inconsistency, the Defendants' Motion fails to cite any language from the relevant Order, instead choosing to focus on the limited information available in two email correspondences.[5] If the Defense had read carefully the reasoning of the Order granting the requested extensions, it would have noted that rationale underlying the Court's Order in granting the extensions is not mutually exclusive with the rationale stated in the email informing Defendants that a Motion to Quash was not available to them—rather the rationales

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[4] The Court notes that Defendants did not have any initial quarrel with the Court's Order granting Plaintiffs' leave to amend or with Plaintiffs' submission of a subpoena-- Defendants only raised their alleged concerns argued in their Second Motion to Dismiss when they were informed they were not able to file a Motion to Quash in response to Plaintiff's subpoena. This fact calls further into question the rationales offered by Defense underlying of their Second Motion to Dismiss.

[5] See Background

complement each other perfectly. While the Court is loath to repeat itself, for the benefit of Defendants, the Court lists below an excerpt from the Order listing the three factors that, when considered together, indicated that the exercise of the power contemplated was proper.

"For several reasons, it is unreasonable to construe the Student Code's silence on this procedural matter as forbidding the Court leave to grant extensions on the submissions of Motions and Briefs.

First, the decision of the Court to grant an extension of the submission deadline for a Motion, Brief, or any other document submitted to the Court is a procedural decision of the Court akin to the many procedural decisions that the Code leaves to the discretion of the Court, such as the filing deadline for Answers to a Complaint. See Title III S.G.C. §507 (noting that a defendant must file an answer in the time directed by the Court). As such, it is hard to imagine that Student Congress intended to grant the Court the power to require such filings while simultaneously depriving them of the procedural authority to administer them.

Second, as the Student Code is completely silent on the issue and includes no other statutes that can be reasonably construed as forbidding the Court this procedural power, the Court is not engaging in judicial law making or in any way depriving Congress of its "supreme legislative authority." Title I S.G.C § 1(A).

Third, the parties' due process rights and the best interest of the student body both require, in part, access to and assurance of a fair and efficient judicial process. As such, where: 1) the Code lacks any statutory directive providing guidance as to Court procedure; 2) the Student Code contains no statute expressly or impliedly forbidding the instant exercise of the Court's procedural powers over its own affairs; and 3) the Court has docketed before it pressing matters, waiting for legislative directive on the procedural question is not a viable option. Thus, for the aforementioned reasons, I hold that, despite the Student Code's silence on the matter, the Court has the power to grant parties' Motions for extensions of filing deadlines, including those concerning Motions and Briefs."

See Order Granting Extension of Time, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011).

However, at least two of the three factors cited in the Order do not apply to Defendants' emailed request to submit a Motion to Quash.

B. Chief Justice Womack's Email Response to Defense Counsel Whitfield Informing Him that a Motion to Quash Is Unavailable to Defense Because It Lacks Explicit Authorization in the Student Code

When Defendants requested to submit a Motion to Quash, unlike when Defendants requested a time extension on the submission of Motions and Briefs, they were not simply requesting the Court's guidance on a purely procedural matter. Rather, they were

requesting that the Court authorize a type of Motion which Student Congress had expressly excluded from the list of Motions available to parties codified in III S.G.C. §§521-525 and as such impliedly forbade. Thus, as explained in the Chief Justice's emailed response to Defense Counsel's emailed request, this request was not procedural in nature "akin to the many procedural decisions that the Code leaves to the discretion of the Court", and indeed allowing such a motion would have resulted in judicial law making. This is because Defendants, rather than requesting the Court to provide procedural guidance on the judicial administration of an already lawful Motion was instead requesting that the Court promulgate an entirely new type of Motion that had been expressly omitted by Student Congress when it enacted the Student Code. Thus, nothing in the Chief Justice's response contradicted the Court's reasoning in its previous Order granting an extension to the parties in the filing of their Motions and Briefs. Therefore, Defendants' claim that the Court issued two inconsistent rulings harming them fails—there were no inconsistent rulings issued. As such, Defendants suffered neither prejudice or hardship due to the two rulings of the Court, and as such they cannot succeed in their Motion to Dismiss Plaintiffs' complaint on those grounds under the "if justice requires" clause of III S.G.C. §523.[6]

Finally, the Court wishes to note that Defendants' claim that granting Plaintiffs' Motion to Amend their Complaint caused Defendants' prejudice because " there could perhaps be no more prejudicial outcome than being deprived of what was "a likely successful motion to dismiss" is misguided-- it takes the Court's language totally out of context and omits the crucial phrase "at first glance."[7]

If read carefully, the Defendants would notice that the Court's language they quote was used to set up the premise demonstrating that absent a careful reading of the Student Code, the Defendants' rationale that Plaintiffs' lack of factual support constituted a fatal flaw as opposed to a mere technical error would appear reasonable. The Court then subsequently rejected Defendants' rationale, finding that a party's failure to factually support a correct statutory allegation of its "grounds" for standing under III § 501(A)(2) (2009) was a defect curable during oral arguments at a hearing or trial regardless of whether an amended complaint was filed prior to those proceedings. Thus, the Court ultimately found that the Motion to Dismiss, when based solely on an allegation of failure to assert standing properly, was not necessarily likely to prevail.

3. Authority to Issue Orders Denying Defendant's Motion Prior to a Pre-trial Hearing

III S.G.C. § 520(A)(4) grants the Court power to issue Orders for purposes of "perform[ing] such other functions as may be appropriate and consistent with law.

In this case, Defendants have submitted a Motion that cannot be granted as a matter of law. Thus, there are no factual arguments to be presented by the parties at a pretrial hearing. Additionally,

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[6] In her email to Defense Counsel, Chief Justice Womack also advised Defense Counsel as to the Defense's other options available under the Code to contest Plaintiffs' subpoena. As such, the Defense was not without recourse to advance its best interests, nor was it subjected to prejudice or hardship as a result the Chief Justice's decision.

[7] Emphasis in original.

the Defendants' Motion itself contemplates that the Motion may be rejected by the Court prior to a Pre-Trial Hearing by its statement "In the event the Court denies this Motion to Dismiss . . . the Defense requests that the Court set a time for a pretrial hearing in order to review the merits of the Defendants' original Motion to Dismiss." See Second Motion to Dismiss of Medlin and Phillips, *Horowitz et al. v. Medlin and Phillips*, 10 SSC 002, (2011). Certainly, then, deciding Defendants' Motion at this time is an appropriate act "consistent with law" under § 520(A)(4) as it allows for the efficient administration of the Court while not infringing unduly upon the rights of any party.

As such, the Court has the authority to decide Defendants' Motion to Dismiss at this time.

III. ORDER

ACCORDINGLY,

For the all of the aforementioned reasons, the Court DENIES Defendants' Second Motion to Dismiss Plaintiffs' Complaint. However, the Court GRANTS leave to Defendants to argue their initial Motion to Dismiss at the pretrial hearing.

Done this 12th day of February 2011, at 12:05 a.m.

/s/Jessica E.H. Womack
Jessica E.H. Womack, C.J.
for the Court