

IN THE SUPREME COURT

Action No. 16 SSC 001

G. Dylan Russell, )  
PLAINTIFF )  
 )  
versus )  
 )  
Grayson Berger, )  
Chair, Board of Elections )  
Grady Hale, )  
Member, Board of Elections )  
TJ Bakare, )  
Member, Board of Elections )  
Paul Kushner, )  
Member, Board of Elections )  
Maddie Marshall, )  
Member, Board of Elections )  
David Serody, )  
Member, Board of Elections )  
Elinor Solnick, )  
Member, Board of Elections )  
DEFENDANTS )

**Opinion**

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I. STATEMENT OF FACTS

On Sunday, April 10<sup>th</sup>, 2016, the Student Supreme Court convened a trial to address the case brought by GPSF President Dylan Russell against the Board of Elections concerning the Board of Election’s use of instant-runoff voting procedures in the Spring 2016 general election of two contradictory constitutional referenda, “Two for two” and “Better together”. The former referendum was sponsored by the plaintiff, who alleged that the use of instant-runoff voting and not a for-or-against ballot was illegal and outside of the Board of Election’s authority. This complaint followed an original complaint that alleged that the Board had not followed the procedures specified in SCB-97-303, a bill to allow instant-runoff voting procedures, which the Court nullified after an original complaint and answer were filed when it came to light that Student Congress had passed the bill errantly. Following a pretrial hearing to determine the questions to be answered at the trial, the Court decided to convene a trial to address the following question: “Did the Board of Elections exceed its authority when it held the Spring 2016 General Election constitutional election referendum using instant runoff voting?”

Representing the plaintiff at the trial was Travis Crayton, a graduate student at the University of North Carolina. Representing the defendants was Allie Crimmins, the

Student Solicitor General. At least one member of the Board of Elections, Grayson Berger, was present at the trial. Autumn McClellan, the Graduate and Professional Student Federation Treasurer, represented the plaintiff in his absence.

Present at the trial was Chief Justice Matthew Leming and Associate Justices Madeline McCabe, Nainisha Chintalapudi, and Alton Peques. Associate Justice Andre Ceccotti was previously excused. Pursuant to III S.G.C. § 305, this constitutes quorum of the Student Supreme Court.

Ultimately, all members of the Student Supreme Court that were present voted in favor of the plaintiff and the relief specified in this opinion.

## II. ANALYSIS

The essential question of whether the Board of Elections extended its authority in this case in using instant-runoff voting procedures was, in the Court's eyes, quite clear-cut. The plaintiff cited, in his brief, many examples in the Student Code and Court precedent that state that referenda must be decided upon in a yes/no fashion, and this Court has not typically been flexible in letting the Board of Elections decide on the model of the voting procedure used. For the most part, we are in agreement with the plaintiff's brief in that area.

The defendants' response to these allegations, during the trial, largely hinged on (1) the idea that the defendant believed that SCB-97-303 was legitimate at the time the election took place, (2) that Title VI does not specify how the Board of Elections should conduct elections, and so it should be allowed discretion.

The first point was moot because the Court had already clarified its stance on SCB-97-303. The second point was moot for a number of reasons; the most central argument, however, is that Article I, Section 11(5) of the Student Constitution states that Student Congress has the power to establish laws governing elections, and that the Student Code contains no references to the idea of instant-runoff voting for referenda. That there have been attempts to establish such laws in the past would indicate that legitimate legislation is needed to hold an election using instant-runoff voting.

This case is most unique because the Court found a pivotal bill, SCB-97-303, illegitimate in the middle of it due to the manner in which it was passed. After that, we treated the case as though the bill never existed. However, because this was unclear at the time of the act, we cannot act as though the defendants were at fault in acting the way they did in the light of the plaintiff's amended complaint. Thus, while remedying a situation that the defendants caused, we do not blame them for acting as they did.

While the Court agrees with the plaintiff in the matter of wrongdoing, we disagree on the relief sought. The plaintiff desires a revote only on the one referendum they sponsored, even though there were two being voted on in the election. However, the Court agreed to bring this case to trial, in part, because we believed that the use of instant-runoff voting

might have unfairly inhibited the plaintiff's referendum, thus necessitating relief. The best way to grant relief in the case of an unfair election would be to annul the original election and redo the same election in a fair manner (i.e., yes/no instead of instant-runoff voting). Had the other party's referendum won that election, annulling the election would annul that referendum; in such a hypothetical, it would hardly be fair to annul the winning referendum and only hold a revote on the one that a plaintiff sponsored. The plaintiff had grounds to seek relief on the grounds of his own referendum, but because we found the entire election on both referenda unfair, we must repeat the election for both referenda.

It has been brought up that these two referenda are contradictory. In the case that both were passed in the same election, it is undefined what would happen (the term "constitutional crisis" has been used to describe this situation). This is a concern, but it is an error inherent in the Student Code — albeit one that Congress attempted to address with SCB-97-303. It is the Court's job to interpret and follow the Student Code, not to fix it. Even so, this opinion will grant a concession in an attempt to avoid that situation.

### III. ORDER FOR RELIEF

The Student Supreme Court orders the following for the Board of Elections:

1. Place the two aforementioned referenda, "Better together" and "Two for two", in the Fall 2016 election ballot, such that voters decide for or against each separately, in the case that the situations described in (3) and (5) do not come to fruition.
2. Because this is a redo of the previous election, parties will not be required to collect signatures again or go through normal Congressional voting procedures to place these referenda on the ballot. They shall be automatically placed on the ballot.
3. Should Student Congress pass legislation to change the Student Code before the Fall 2016 election that addresses the issue of voting on contradictory referenda, "Better together" and "Two for two" shall be voted in the manner consistent with that legislation, which may not necessarily be in a separate for/against fashion. Thus, should an instant-runoff voting bill for contradictory referenda be legitimately passed before the Fall 2016 election, these referenda shall be voted upon using instant-runoff voting.
4. Because of the default ruling of 16-SSC-002, the amendment concerning Article 1, Section 11(11) and the addition of Article 1, Section 11(2)(g) shall be stricken off the "Better together" referendum.
5. Should the Chancellor, Provost, or Vice Chancellor for Student Affairs of the University of North Carolina at Chapel Hill directly order of the Board of Elections actions contradictory to those stated here, their orders shall hold precedent. This is not stated to act as though the Student Supreme Court has the authority to grant such power to these offices — we do not —, but, rather, for the sake of clarity of instruction to the Board of Elections.

A handwritten signature in black ink that reads "Matt Leo". The signature is written in a cursive, flowing style. The "L" in "Leo" is particularly large and loops around the end of the word.

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Matthew Leming  
Chief Justice, Student Supreme Court

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Filed this 20<sup>th</sup> day of April, 2016 at 5:45 PM